

## THE ASUC JUDICIAL COUNCIL

The powers of the ASUC government are divided among three branches, roughly in the same manner as the federal government. Executive authority resides with the President and Executive Officers, legislative power resides in the ASUC Senate, and judicial authority is vested in the ASUC Judicial Council. As such, the Judicial Council (JCouncil) approximates the “Supreme Court” of the ASUC. According to Article IV, Section 1 of the ASUC Constitution:

“The Judicial Council of the Association shall be vested with the judicial authority of the Association. The council's authority shall extend to all judicial cases arising under this Constitution, the ASUC By-Laws, official actions of ASUC executive officers, employees, and the Senate, and any matters delegated to the council by the ASUC Senate or this Constitution.”

For example, the JCouncil may be asked to interpret the Constitution and/or By-Laws, compel an ASUC official to carry out his/her duties as proscribed by the Constitution or By-laws, determine the legality of certain executive or legislative actions, or rule on the impact of wrong-doing and the validity of an official ASUC action, such as an election.

A hearing is the vehicle used to present evidence, testimony, and contrasting opinions. The JCouncil evaluates the evidence presented at a hearing and after private deliberation, delivers a decision. Despite its “official format,” a hearing is not really a complicated process. Anyone familiar with the issues and possessing an understanding of the By- laws or rules in question is qualified to argue before the Council. In other words, the JCouncil is accessible to all students and does not require any particular expertise. One does not have to be a “JCouncil Lawyer.”

The action taken by the JCouncil following a hearing depends on the nature of the case. An Advisory Opinion is simply the formal opinion of the Council on a question of constitutional interpretation, and it carries no binding power. The Council may also deliver one of three “remedies.” A Direct Judgment states the rights of the parties or expresses the opinion of the Council on a matter of law. A Restraining Order is a preventative order of the Council ensuring that any action the Council deems illegal does not take place. A Writ of Mandamus is a writ issued by the Council to an official of the Association compelling performance of an act that the Constitution recognizes as a duty. (JRP 3.13.1.1)

Although the analogy between the role of the JCouncil in the ASUC and that of the Supreme Court in the federal government is apt in some respects, there is one significant difference. The JCouncil is used as recourse only when all other avenues of remedy fail. The Council draws a strict line between Judicial and Legislative authority and will not accept a case or matter which properly belongs to the ASUC Senate. Similarly, the Council does not rely on precedent in its decision- making. Although a certain degree of continuity must be maintained, the Council does not temper its interpretation of the Constitution with past decisions. This sort of reliance on precedent leads to decisions which depart from the original intent of the Constitution. The Council recognizes that the ASUC Constitution, ratified by the entire student body, is the supreme law of the Association.

**THE FOLLOWING IS A SUMMARY OF IMPORTANT POINTS IN THE JUDICIAL RULES OF PROCEDURE. THE NOTATION “JRP” REFERS TO THESE RULES AND IS FOLLOWED BY THE SECTION REFERENCE WHERE MORE INFORMATION MAY BE FOUND.**

### HOW TO FILE A SUIT UNDER THE ASUC CONSTITUTION

Judicial Council – The Judicial Council (JCouncil) is a nine-member board of students nominated by the President and approved by the Senate with a two-thirds majority vote. It holds jurisdiction pursuant to Article IV of the ASUC Constitution and can adjudicate (JRP 2.1):

- a. All cases arising under the ASUC Constitution.
- b. All questions of interpretation of the ASUC Constitution.
- c. Charges of violation of the Constitution, or of the rules and regulations of the ASUC.
- d. Charges of violations of the duly approved by-laws of the subordinate organizations of the ASUC.
- e. Charges of violations of rights of the individual in the ASUC.

If you feel that someone has violated either the ASUC Constitution, or one of the various rules, regulations, or by-laws of the Association, you should first inform him/her of his/her alleged violation. Many cases heard in the past by the Judicial Council have turned out to be simple misunderstandings. By talking it over with the alleged violator, you can often satisfactorily resolve the problem, but if the disagreement persists, you should file a Charge Sheet.

Filing a Charge Sheet – The filing of a charge sheet initiates action for a hearing. A charge must be filed for ALL TYPES OF HEARINGS to request:

- a. a direct judgment
- b. a restraining order
- c. an advisory opinion
- d. a preliminary injunction
- e. a writ of mandamus
- f. a gag order
- g. an appeal
- h. a re-hearing
- i. an expedited hearing
- j. subpoenas and witness depositions

After filing the charge sheet, submit it via email to the ASUC Secretariat and Jan Crowder from the ASUC Auxiliary. Also submit electronic copies of the charge sheet to the Chairperson of the Judicial Council and the defendant(s). Filing will be complete only when the Chairperson receives the charge sheet.

If any part of the charge sheet is ambiguous, it will be returned for clarification and filing will not be satisfied until the ambiguities are cleared up. The charge sheet must contain (JRP 3.6.1.4):

1. The names, mailing addresses, phone numbers, and e-mail addresses of the person(s) filing charges.
2. The list of persons charged, along with e-mail addresses and phone numbers when available.
  1. For all cases - list all parties that could be directly affected by the outcome of the hearing.
3. All specific violations the plaintiff complains about.
4. All relevant supporting evidence, or detailed descriptions of such evidences.
5. Statements as to the constitutional, statutory, and/or regulatory provisions allegedly violated.
6. The type of judicial relief sought.
7. Requests for Preliminary Injunctions and the rationale (regarding irreparable harm) for the request.
8. Requests for an expedited hearing, and the rationale for the request.
9. Requests for Gag Orders, and the rationale for the request.
10. Whether the Charge Sheet is being filed under seal.

#### AFTER THE SUIT HAS BEEN FILED

Review of Charge and Notification – The Judicial Council first determines if the suit is in its jurisdiction. It then decides if sufficient grounds are established to warrant a hearing (JRP 3.6.2.2). If the suit is to be heard, the case will be placed on the Council calendar and the plaintiff and defendant shall be notified of the tentative date.

Filing a Brief – A written brief must be filed with the Council by both the defendant and the plaintiff at least 48 hours before the general hearing (JRP 3.12.2). In the case of an election hearing, a brief must be filed by both the defendant and the plaintiff before the introduction of oral arguments. The brief shall include a summary of the party's arguments and any other appropriate material relevant to the factual issues. It is often a more detailed version of the charge sheet text with any new evidence. In the case of a general hearing, one copy should be sent via email to the Judicial Council, ASUC Auxiliary and the ASUC Secretariat. In the case of an election hearing, ten copies should be brought to the hearing.

The Hearing (JRP 4.0) – The hearing shall be conducted by the Chairperson of the Council or by a designated assistant and will be attended by a majority of current active members of the Council. Each party shall choose one spokesperson (unless the requesting party can demonstrate compelling need and rational justification for more than one spokesperson) who shall present himself/herself to the Council as the designated spokesperson(s). Only the spokesperson(s) may address the Council to make arguments, present evidence including examination of witnesses, and raise objections (JRP 4.7).

Each party is allotted twelve (12) minutes to present oral arguments, testimony, and evidence, followed by ten (10) minutes of cross-examination by the adversary. The Council may periodically ask questions, and each party is allowed five (5) minutes for closing arguments (JRP 4.11.1). These times may be modified.

The Judgment (JRP 5.1) – After the conclusion of the hearing, the Council shall discuss and consider the case in closed deliberation in order to arrive at a decision. A copy of the Council's decision will be given to plaintiff(s) and defendant(s) within a reasonable amount of time after a hearing. A copy of the decision will also be posted on the JCouncil bulletin board in Room 200 Eshleman Hall.

Cases may be appealed by filing a new Charge Sheet and will be granted only if there is (JRP 5.4.1):

1. Demonstration that a reversible error with regard to a conclusion of law exists.
2. Demonstration that the judgment was significantly influenced by a violation of due process, as set forth in these rules of procedure.

Cases may be reheard by filling a new Charge Sheet and will be granted only if there is:

1. Introduction of newly discovered evidence of a significant nature which could not have been introduced before.
2. Demonstration that previously introduced evidence is false.
3. Demonstration that any participant in a hearing committed perjury.

The Chair of the Judicial Council shall be available for consultations on procedural matters.

# JUDICIAL COUNCIL RULES OF PROCEDURE

## **ARTICLE 1.0 Validity**

### 1.1 Purpose

The purpose of these Judicial Council Rules of Procedure is to establish guidelines for the conduct of the ASUC Judicial Council, and members of the Association, and to provide for the proper execution of its duties laid forth in Article IV of the ASUC Constitution.

### 1.2 Equal Protection

These rules of procedure ensure that the ASUC Judicial Council provides every person or group with an equal opportunity to receive fair and just protection under the ASUC Constitution, and under all other rules and regulations of the Association.

## **ARTICLE 2.0 Jurisdiction**

### 2.1 The Council shall have the power to hear and adjudicate the following types of cases:

1. All cases arising under the ASUC Constitution.
2. All questions of interpretation of the ASUC Constitution.
3. Charges of violations of the Constitution, or of the rules and regulations of the ASUC.
4. Charges of violations of the duly approved by-laws of the subordinate organizations of the ASUC.
5. Charges of violations of the rights of the individual in the ASUC.

### 2.2 The Council shall have the power to issue orders to ensure the proper execution of its responsibilities and authority derived from the ASUC Constitution and from the rules and regulations of the ASUC.

## **ARTICLE 3.0 Pre-Hearing Procedure**

### 3.1 Initiation of Actions

1. The Judicial Council may summon any body of the Association that seeks to affect the Judicial Council or its actions to a hearing to determine the legality of the body's actions.
  1. Should the body refuse to appear, the Judicial Council may continue to behave according to these rules or the status quo.
2. A written request for judicial action or remedy may be brought to the Council by any member or employee of the Association. Such written materials will be considered from the time they are submitted and reviewed in a regular Judicial Council meeting.
3. Failure to abide by the guidelines for the filing of documents set forth by these rules of procedure may result in a Default Judgment at the time of the hearing (see JRP 4.1).

### 3.2 Justices of the Judicial Council will be available for consultation on procedural matters.

- 3.3 If at any time a Justice recognizes that they possess a conflict of interest, they shall recuse themselves from all matters concerning the hearing.
- 3.4 Advisory Opinion
1. An advisory opinion is a formal opinion of the Council on questions of the law within its jurisdiction.
  2. A petition for an advisory opinion must be filed in writing with the Council. Copies of the petition must also be filed with the Attorney General and with the ASUC Auxiliary. The petition should include a description of the matter requiring clarification, as well as the portions of the Constitution and/or other rules and regulations of the Association that pertain to the matter. The advisory opinion will be issued as soon as Council arrives at a decision.
  3. An advisory opinion has no binding force on any persons or organizations within the ASUC, including the Council.
- 3.5 Types of Hearings
1. Trials are used to determine the guilt or innocence of a defendant brought before the Council. Trials will take the form in one of the following manner.
    1. General Hearing

For a general hearing, the hearing shall take place no sooner than seven days after the case is accepted and no later than is reasonable.
    2. Allocution Hearing

If the Council orders an allocution hearing, the defendant will appear before the Council to give a full account of the infraction. The Council will also take statements from interested parties regarding the appropriate remedy.
  2. Questions of Interpretation

For hearings in which the Council is asked to clarify a question of the law, the hearing shall take place no sooner than seven days and no later than is reasonable. The hearing will take place according to procedures for Interpretative Hearings.
  3. Expedited Hearing

Any form of hearing may proceed according to an expedited schedule if the Council deems it necessary. The hearing will take place after all parties have been notified and have had an appropriate amount of time to prepare arguments.
- 3.6 Initiating the Hearing Process
1. Charge Sheet
    1. To request a hearing, a charge sheet must be filed via email with the Council. Copies of the charge sheet must also be sent to the Attorney General the ASUC Auxiliary and the ASUC Secretariat.
    2. Public Records
      1. Charge sheets are accessible to the public once they

are filed.

2. Charge sheets are not accessible to anyone other than the Justices if the plaintiff files the sheet under seal. The Council may unseal the charge at anytime.
3. Charge sheet forms will be made available at the Judicial Council's office and on the ASUC website, if at all possible.
4. The charge sheet shall include:
  1. The names, mailing addresses, phone numbers, and e-mail addresses of the person(s) filing charges.
  2. The list of persons charged, along with e-mail addresses and phone numbers when available.
    1. For all cases - list all parties that could be directly affected by the outcome of the hearing.
  3. All specific violations the plaintiff complains about.
  4. All relevant supporting evidence, or detailed descriptions of such evidences.
  5. Statements as to the constitutional, statutory, and/or regulatory provisions allegedly violated.
  6. The type of judicial relief sought.
  7. Requests for Preliminary Injunctions and the rationale (regarding irreparable harm) for the request.
  8. Requests for an expedited hearing, and the rationale for the request.
  9. Requests for Gag Orders, and the rationale for the request.
  10. Whether the Charge Sheet is being filed under seal.
2. Review of Charge Sheets
  1. After the filing of a charge sheet, the Council shall meet as soon as possible to determine if the case should be accepted.
  2. In order to accept a case, the Council must find that four conditions are met:
    1. The case is within its jurisdiction.
    2. The factual allegations constitute violations of the Constitution, statutory, and/or regulatory provisions stated on the charge sheet.
    3. The constitutional, statutory, and/or regulatory provisions cited provide adequate grounds for the remedies requested.
    4. The case is filed in good faith. The following are non-restrictive guidelines for determining this condition:
      1. Election violation cases are considered filed in good faith if they are originally filed before 4 p.m. on the Tuesday following the close of polls.

2. Appeals for election violation cases are considered filed in good faith if they are filed within seven days following the release of the original decision.
  3. Cases to invalidate an election are considered filed in good faith if they are filed within seven days after the election count.
  4. A case is not filed in good faith if it can be shown that the petitioner has a malicious intent to delay or interfere with the judicial process.
3. A majority vote of those Justices participating at a meeting shall determine if the case is accepted.
  4. The Council shall review the charge sheets in closed sessions.
  5. In the extreme event the Council does not believe a hearing will provide any substance to its consideration of the controversy brought to its attention, the Council may issue a summary judgment directly after considering and accepting the case. The Council may issue such a judgment without prior consultation with, or consent from, either party involved in the case.
3. Notification
    1. If the Council rejects the case, the plaintiff(s) shall be notified of the decision. Explanation shall be given in writing.
    2. If the Council accepts the case, all parties shall be notified of the time and place of the hearing.
      1. If a particular individual is named in the case's corresponding charge sheet, he/she shall act as his/her own spokesperson until a possible hearing. At the hearing, he/she may motion during Pre-Oral Arguments for an alternative or additional spokesperson.
      2. The Chair shall assign a Justice to consult with the participants in a hearing regarding procedural matters and aid in the smooth progression of pre-hearing matters. The Chair or the assigned Justice may delegate these pre-hearing responsibilities to a Council Clerk.
    3. If the defendant does not wish to contest the charge, they must so indicate to the plaintiff and the Justice assigned to oversee their case.
    4. When not inconvenient, notice shall be given of the hearing by posting in a conspicuous location such that parties with interest in the hearing will be notified.
      1. As hearings are not motions brought by members of the Council, they are not main motions subject to the public posting requirements in the ASUC Constitution.

1. A Gag Order may be issued by any Justice at any time a Justice believes the situation merits such an order.
- 3.8 Once a Gag Order has been issued, the parties involved with the matter may not discuss the matter publicly, or with individuals not directly involved in the matter.
- Preliminary Injunction

The Council will issue a Preliminary Injunction when there is adequate reason to believe irreparable harm will be done prior to a formal hearing of the Council. Such an order will preserve the status quo of the situation at the time of filing, and shall be rescinded upon a decision of the Council.

1. Emergency Preliminary Injunction
  1. Any Justice may order an Emergency Preliminary Injunction if there is adequate reason to believe irreparable harm will be done before the Council can meet.
  2. Before issuing such an order, a Justice must consider, in his/her best opinion, that the four criteria for accepting a case are met by the plaintiff's charges.
  3. Before issuing such an order, a Justice will make a good faith attempt to contact the opposing party and offer the opportunity, within the applicable time constraints, to issue rebuttal to argumentation for irreparable harm against the plaintiff and/or to offer their own argumentation for irreparable harm against the defense.
    1. The Justice will not wait longer than the maximum time before, in his/her best opinion, irreparable harm would be done.
  4. Before issuing such an order, an Associate Justice will attempt to contact the Chair and/or Assistant Chair for consultation. The Assistant Chair will attempt to contact the Chair.
  5. An Emergency Preliminary Injunction is considered to be an order of the Judicial Council en banc if it is not rescinded at the meeting immediately following its inception.

3.9 Summons and Subpoenas

1. Summons

Any Justice may issue a summons, which is an order compelling the appearance of defendant(s) at a hearing. A summons shall serve as a subpoena for all elected officials of the Association and in all election matters.

2. Subpoena

Any Justice may issue a subpoena, which is a writ issued under the authority of the Council to compel the appearance of a witness or any relevant evidence at a judicial proceeding.

3. Requests for Subpoenas

Counsels for both sides are responsible for providing the Judicial Council with names and contact information of the people and a list of all relevant evidence they wish to introduce at the hearing.

### 3.10 Depositions

1. Witnesses shall be deposed at the request of either the plaintiff or defendant prior to a Council hearing.
2. If it is impossible for a requested deposition to take place before the time in which briefs must be submitted, the Council will have the option of barring the witness's testimony at the time of the hearing.
3. Depositions will be presided over by a Justice assigned by the Chairperson.
4. An audio recording or transcript of the testimony given during a deposition shall be made available upon request to the Justices, the plaintiff, and the defendant.
5. Depositions shall be conducted in the same manner as a regular Judicial Council hearing.
6. Plaintiff and defendant are encouraged to be present at the time of the deposition.
7. The plaintiff and the defendant(s) are responsible for informing their witnesses and spokespersons about their rights and responsibilities under the ASUC Constitution, By-Laws, and the Judicial Rules of Procedure.

### 3.11 Witnesses and Evidence

#### 1. Witness Lists

A list of all witnesses testifying in a hearing shall be submitted to the Council and opposing parties forty-eight hours prior to the time briefs are due.

#### 2. Evidence

1. All evidence relevant to a hearing must be submitted to the Council and opposing parties forty-eight hours prior to the time briefs are due.

2. If it is not logistically feasible to submit the actual evidence to the Council and the opposing parties prior to the hearing, a list with detailed descriptions of the evidence may be submitted instead. The detailed descriptions of the evidence will serve to inform the Council and all involved parties of the composition and content of the evidence until that evidence is submitted at hearing for complete review.

1. Individual Justices may compel the parties in a hearing to submit the actual evidence prior to the brief's due date if the Justice believes it is logistically feasible to do so.

#### 3. Subpoena Requests

A list of all subpoenas requested shall be submitted to the Council and opposing parties forty-eight hours prior to the time briefs are due.

### 3.12 Briefs

1. A brief shall include a summary of the party's arguments and all relevant evidence

2. A brief must be e-mailed to the Council by both the plaintiff(s) and the defendant(s) no later than forty-eight hours before a general hearing (note JRP 4.1).
3. The brief must be filed with the Council as well as the opposing party(ies).
4. An amicus curiae brief may be submitted by an interested party before the hearing only if these briefs are also submitted to both parties twenty-four hours before the hearing.

### 3.13 Judicial Remedies

#### 1. Hearings

1. The following remedies may follow as the result of a hearing:

1. Direct Judgment

The direct judgment states the rights of the parties or expresses the opinion of the Council on a matter of law.

2. Restraining Order

A restraining order is a preventative order of the Council ensuring that any action the Council deems illegal does not take place.

3. Writ of Mandamus

A writ of mandamus is a writ issued from the Council to an official of the Association compelling performance of an act that the Constitution recognizes as a duty.

### 3.14 Plea Agreements

1. If a defendant does not wish to contest the charge, they must notify the plaintiff and a Justice of their decision. The Justice will then forward the notification to the rest of the Council for judicial consideration and approval.
  1. The Council may schedule a hearing to have the defendant give a full account of the infraction, and take statements from other interested parties in order to decide an appropriate remedy.
2. In the event the plaintiff and defendant come to an agreement regarding a remedy for a legal controversy, they may present it to the Council for judicial consideration and approval. Such presentation may take the form of briefs or a hearing, or any other forum the Council deems fit.

### 3.15 Official Means of Submission

1. The official means of submission or filing with the Council are restricted to e-mail or physical delivery.

2. E-mail deliveries should be made to the Council Chair, the Assistant Chair, and the Council Clerks.
3. Physical deliveries should be made to the Judicial Council drop-box on the 2<sup>nd</sup> floor of Eshleman Hall.
4. In the case that the document for filing is a Charge Sheet, the plaintiff is advised to submit with the Auxiliary on the 4<sup>th</sup> floor of Eshleman Hall, as a copy will be forwarded to the Council.

**ARTICLE 4.0 Hearing Procedure**

4.1 Default Judgment

If either party to a hearing fails to meet any of the requirements set forth in Article III of these rules of procedure, or fails to appear at the hearing, the Council may declare a Default Judgment against the delinquent party if a majority of the Council determines that the violation prevented the opposing party from receiving a fair hearing. In applying this rule, the Council shall first consider all other judicial remedies.

4.2 Order of Pre-Oral Arguments Motions

1. The defendant will have an opportunity to enter a plea.
  1. If the defendant pleads guilty, then argumentation will be restricted to any questions of interpretation and the appropriate remedy.
  2. If the defendant pleads no contest (either verbally or by not attending the trial), then the defendant will offer no defense and entrusts the Judicial Council to make a fair judgment.
2. Pre-Oral Argument motions must be made prior to Oral Arguments, and when possible shall be written and submitted to the Council before the Council convenes a hearing at which the motions will be ruled upon.
3. Pre-Oral Arguments motions may be made by any concerned party until the Council has recognized a Spokesperson for a party.
4. The order of Pre-Oral Arguments motions shall be as follows:
  1. Motion for the Council to recognize a Spokesperson for a Party in the hearing.
  2. Motion alleging conflict of interest for an individual Justice.
  3. Motion for Joinder of Party.
  4. Motion for Severance of Party.
  5. Motion to consider the Judicial Council's jurisdiction.
  6. Motion for a Default Judgment.
  7. Motion to dismiss charges.
  8. Motion to suppress evidence.
  9. Motion to suppress a witness.

10. Motion to sequester a witness.

4.3 Conflict of Interest

1. A charge of conflict of interest may be brought against a Justice participating in the hearing by a concerned party before the Oral Arguments. Any concerned party may enter arguments on the question of whether a Justice should be dismissed from the case for conflict of interest.
2. In order for a Justice to be dismissed from a case for conflict of interest, it must be demonstrated to the Council that the Justice has personal or financial interests that would lead to personal concern over the outcome of the case.
3. The Justice in question shall have an opportunity to speak to the allegations.
4. A motion for dismissal on the grounds of conflict of interest shall be decided by a majority vote of all Justices present, excluding the Justice in question. The charged Justice shall not sit as a member of the Council during consideration of the motion and shall not participate in the Council's deliberations concerning their alleged conflict of interest. The Council shall not be subject to quorum requirements in considering such a motion.

4.4 Joinder and Severance of Party

1. A motion for joinder of party must be made by the concerned parties before the beginning of oral arguments. The party seeking joinder must demonstrate to the Council that there is sufficient mutual interest with one of the existing parties to warrant the uniting of the parties into a single suit.
  1. Once a joinder of party has occurred, the spokesperson for the joined parties is considered their designated representative. More than one spokesperson may be allowed if the requirements of 4.7.3 are met.
2. A motion for severance of party must be made by the concerned parties before the beginning of oral arguments. The parties must demonstrate to the Council that there exists a sufficient difference in the alleged violations against each member of one party such that it would adversely affect the outcome if severance were not granted, or that the individual interests would not be substantially protected by the overall interests of the entire party.
3. Any recognized party or member of each may enter into arguments on the question of whether a joinder or severance of a party should be granted.
4. If severance of party is granted, a separate hearing shall be established by the Chairperson at a time convenient for all parties concerned, not to exceed the usual time limit for that type of hearing from the time severance is granted. Any separate hearing resulting from a severance of party must be predicated on the original charge sheet and evidence submitted to the Council.

4.5 Motion for a Default Judgment

1. A motion for a Default Judgment, in accordance with Article IV Section 1 of the Judicial Rules of Procedure, may be made if it can be shown before the Council that any judicial procedure was not followed as articulated in Article III of these Judicial Rules of Procedure.

4.6 Motion to Dismiss Charges

1. A motion to dismiss charges may be made if at any time material witnesses or evidence that was proffered in the Charge Sheet, Witness List, or brief cannot be produced.
2. A motion to dismiss charges may be made if it can be shown that at least one of the conditions for accepting a case no longer qualifies.
3. A motion to dismiss charges may be made if it can be shown that the effective outcome of the case is moot.
  1. If the case involves a matter of interpretation that may be applied later to similar circumstances, the Council may choose to deny the motion.

#### 4.7 Spokesperson for Each Party

1. The official spokesperson for each party must be designated and duly recognized by the Council before the opening of oral arguments.
2. Only those designated and recognized spokespersons may address the Council during oral arguments to make arguments, present evidence, examine witnesses, and raise objections.
3. Each party shall have one spokesperson, unless the requesting party can demonstrate to the Council a compelling need for more than one spokesperson. The Chairperson of the Council shall rule on the request.
4. Spokespersons for the various parties in a hearing will be registered students of the University of California, Berkeley.

#### 4.8 Motion to Suppress Evidence

1. A motion to suppress evidence may be made to bar the submission of evidence to the Council if it can be shown that such evidence is objectionable according to JRP 4.12.

#### 4.9 Motion to Suppress a Witness

1. A motion to suppress a witness may be made to bar the submission of testimony before the Council if it can be shown that such testimony is objectionable according to the rules of objections or JRP 4.13.
2. Witnesses that are found before the Council to have committed perjury are automatically suppressed unless all parties in a proceeding agree to allow the witness' testimony.

#### 4.10 Motion to Sequester a Witness

1. A motion to sequester a witness for the duration of the hearing may be made if it can be reasonably shown that the witness's testimony may be influenced by listening to other witness testimony or by the hearing's proceedings. This motion can be made by spokespersons or by Council members.

#### 4.11 Order of Oral Arguments and Presentation of Evidence

##### 1. General Hearings

1. The plaintiff will present oral arguments, testimony of witnesses,

and other evidence.

1. The time allotted is twelve (12) minutes.
  2. Cross examination of a plaintiff's witnesses by defendant.
    1. The time allotted is ten (10) minutes.
  3. Examination of plaintiff and plaintiff's witnesses by the Council.
  4. The Defendant will present oral arguments, testimony of witnesses, and other evidence.
    1. The time allotted is twelve (12) minutes.
  5. Cross examination of defendant's witnesses by plaintiff.
    1. The time allotted is ten (10) minutes.
  6. Examination of defendant and defendant's witnesses by the Council.
  7. Closing arguments by the plaintiff followed by the defendant.
    1. The time allotted is five (5) minutes for the plaintiff and five (5) minutes for the defendant.
  8. Final examination of all parties and witnesses by the Council
  9. With the approval of the Chairperson, presentations may be modified in any way that allows the plaintiff and the defendant equal time to present their arguments
2. Questions of Interpretation
    1. The plaintiff shall be given thirty (30) minutes to present oral arguments on the matter before the Council.
    2. The defendant shall be given thirty (30) minutes to present oral arguments on the matter before the Council.
    3. The Attorney General shall be given thirty (30) minutes to present the position of the Association in the matter when the Association is not otherwise involved.
    4. The Justices may ask questions of the speakers at any time.

#### 4.12 Rules of Evidence

1. Evidence is anything offered to the Council to prove or disprove an alleged fact
2. All evidence presented to the Council must be relevant to the proceedings. Relevant evidence is that which tends to prove or to disprove the factual issue in the complaint.
3. Evidence shall be submitted forty-eight hours prior to the time briefs are due, or at any time prior to the brief's due date. Any evidence not submitted by deadline for brief submission may be suppressed by the Council if the opposing party has not had sufficient time to prepare cross examination or counter evidence.

4. Evidence that violates a defendant's rights (Art XI, ASUC Constitution) may not be submitted unless the defendant waives such rights.
  5. All parties have the right to examine all evidence once submitted to the Council.
  6. All evidence presented is admitted if there are no valid objections.
- 4.13 Rules of Witnesses
1. A witness is any individual other than a spokesperson who provides testimony before the Council in a hearing.
  2. Witnesses may be questioned by either spokespersons or Justices.
    1. If a witness is uncooperative or vague in response to questioning, the witness may be declared hostile. Upon such declaration by the Chair, the witness may be asked questions in such a manner that constrains their responses to specifically answer the question addressed to them by the questioner.
      1. Witnesses who violate any part of 4.14.5 and its subsection may also be declared hostile witnesses.
  3. Witnesses must, to the best of their ability, provide the Council with relevant and truthful testimony.
    1. Witnesses who knowingly provide untruthful testimony may be found to have committed perjury, and declared in contempt of Council. The Council may issue such a finding at any time.
  4. Witnesses who are testifying may not speak, or be spoken to, except to answer questions directed to them through direct examination, cross examination, or Council questioning.
    1. Witnesses must be physically separated from all other individuals at a hearing while they are testifying. It is up to the discretion of the Council to separate witnesses for the duration of the hearing.
  5. Hearsay Testimony
    1. Hearsay evidence is defined as evidence of a statement made by someone other than a witness testifying at the hearing that is offered to prove or to disprove the truth of the matter stated. The statement may be oral or written, and includes non-verbal conduct intended as a substitute for words.
    2. Hearsay evidence is not admissible unless: (1) the presenting party has made a sincere and conscious attempt to get more direct evidence and has failed, (2) the hearsay evidence is demonstrated to be sufficiently trustworthy and (3) the hearsay evidence is relevant to the proceedings.
  6. If a witness is unable to attend the hearing, they may submit an affidavit for the Council's consideration. Prior to the affidavit's submission to the Council, all parties in a hearing must be notified and have their questions addressed in the affidavit.
    1. If all parties in a hearing have not had their questions addressed by the witness' affidavit, they may request the affidavit be suppressed.

#### 4.14 Rules for Raising Objections

1. Objections may be raised at any time by any recognized spokesperson of either party or by a Justice.
2. Objections may be raised to challenge any of the following:
  1. The relevance of evidence presented.
  2. The evidence presented may be hearsay.
  3. A witness may be speculating.
  4. An allegation is not supported by the evidence presented.
  5. An examiner is leading a witness towards an answer.
  6. An examiner is badgering a witness.
  7. A question has already been asked of a witness, and that witness has already answered the question.
  8. The propriety of procedural deviation from these rules of procedure.
  9. A party has not had sufficient time to examine submitted evidence, or evidence submitted at a hearing
  10. A party has not had sufficient time to depose a witness, or otherwise prepare to examine the witness' testimony.
  11. A spokesperson is being argumentative.
3. The party that did not raise the objection may respond to the objection.
4. The Chairperson shall rule on all objections raised.

#### 4.15 Rulings of the Chairperson

1. The Chairperson may deviate from these rules to facilitate or ease the progress of a hearing.
2. The Chairperson may issue compelling orders to maintain hearing stability.
3. All rulings made by the Chairperson during a hearing shall be subject to review by the rest of the Council if an objection is raised. The Chairperson shall explain his/her ruling. A majority vote of the Justices present is necessary to overturn the Chairperson's ruling.

#### 4.16 Behavior of Participants

1. All participants in a Judicial Council hearing shall truthfully, accurately, and concisely answer any question addressed to them.
2. The participants must also conduct themselves in a courteous manner. Violation may result in the removal of the party from the hearing.
3. The Council may declare, either during or after a Council hearing, a participant to be held in contempt of Council for any of the following actions before the Judicial Council:

1. Interrupting Justices or participants in the hearing intentionally.
  2. Disrespectful behavior or disregard for the formality due the Council.
  3. Defying an order of the Council, either issued by the Council en banc or by an individual Justice.
  4. Disparaging a Justice.
  5. Malicious subpoenas.
  6. Knowingly providing false or misleading testimony or evidence to the Council.
4. Individuals found in contempt may be asked to leave the proceedings, may be forcibly removed from proceedings, may be disallowed from appearing again before the Council, and a Default Judgment may be issued against the party the participant sought to benefit.
1. If the Council has already issued a direct judgment on a case, a Default Judgment can only be issued through a re-hearing or an appeal.

4.17 Recesses

Any Justice may call for a recess at any time during the hearing. The Council must then immediately go into a closed session.

**ARTICLE 5.0 Post-Hearing Procedure**

5.1 Judgment

1. After a hearing, the Council shall discuss and consider the case in closed deliberation in order to arrive at a decision.
2. For the purposes of all proceedings, the defendant(s) shall be considered innocent until proven guilty. In order to find the defendant guilty, the Council shall decide that the following conditions have been met:
  1. The factual allegation(s) are supported by clear and convincing evidence.
  2. The conduct in question violates a stated provision in the ASUC Constitution or By-Laws.
  3. The remedy arrived at is proportionate to the severity of the offense and in full compliance with the ASUC Constitution and By-Laws.
3. A decision is formulated at any time the Council comes to a formal opinion on a matter before the Council. If a decision cannot be reached for lack of a majority opinion, the Council may request advice from the legal advisor.
  1. In the event that the Justices cannot reach a decision that satisfies a majority, the "Marks" rule shall apply when determining the binding decision. According to the "Marks" rule, "when a fragmented [Council] decides a case and no single rationale explaining the result enjoys the assent of [a majority of the Justices], 'the holding of the [Council] may be viewed as that position

taken by those Justices who concurred in the judgments on the narrowest grounds.”” In the final decision, the Council shall state the narrowest rationale for the decision.<sup>1</sup>

4. If the reason for which any hearing was held is not satisfied by that hearing, or if for any other reason the Council decides that the hearing should not have taken place, or cannot render a reasonable decision or remedy due to lack of evidence in the matter, the case may be dismissed with explanation. No consequence follows as a result.
5. The judgment of the Council shall be held in strict confidence until a formal written judgment can be approved and issued by the Council.
6. A copy of the Council’s decision will be given to plaintiff(s) and defendant(s) within a reasonable amount of time after a hearing.
7. Copies of the Council’s decision shall also be forwarded to the Attorney General, the Senate Secretary, the ASUC Webmaster, and the ASUC Auxiliary.
8. The Judicial Council shall provide a written decision to the Chair of the Senate. The written decision shall include a list of Justices who agreed with the majority opinion in a case and a separate list of those who agreed with each dissenting opinion in a case. This information shall be part of the written statement of conclusions released by the Council. Such information shall be furnished to the Chair of the Senate prior to the next Senate meeting after the verdict is released.
  1. Should the ASUC Senate repeal in whole or in part the provisions in Title XXI which protect Justices from impeachment based on their vote, the Justices shall not be required to release their individual decisions.
9. Decisions need not be signed at the time of their release, but must be signed before they are sent to the ASUC Auxiliary. Every Justice participating in the decision (either majority or dissenting) must read the decision and give their approval to the language for it to be released.

### 5.3 Rehearing

1. To request a rehearing, a petition for rehearing must be filed in writing with the Council. A copy of the petition for rehearing must also be filed with the Attorney General, and with the ASUC Auxiliary.
2. The Council will grant a rehearing for any of the following reasons:

---

<sup>1</sup> The Marks rule was applied to determine the holding of *Memoirs v. Massachusetts*, 383 U.S. 413, 16L. Ed 2d 1,86 S. Ct. 975 (1966), a pornography case in which the Supreme Court reversed a state court judgment finding a book obscene. In *Memoirs*, three Justices reversed on the grounds that the book had not been shown to be “utterly without redeeming social value”; two others reversed on the grounds that the First Amendment prohibits any action by governments to suppress obscenity; and one Justice reversed on the grounds that the book was not “hard core pornography.” In *Marks* the Court stated that the “governing standards” of *Memoirs* were those announced by the three-Justice plurality because the other Justices who concurred in the judgment did so “on broader grounds.” 430 U.S. at 193

The Court in *Marks* did not clearly explain what it meant by “narrow” and “broad” grounds. But in that particular case, the plurality’s opinion was the “narrowest” in the sense that it was the most conservative reason for reversing the finding of obscenity *and* it was a reason that was subsumed within the grounds articulated by the other justices who concurred in the judgment. In *Memoirs*, the six Justices concurring in the judgment expressed three viewpoints which could be placed on a continuum from narrow to broad. The narrowest would permit a finding of obscenity if the book in question is “utterly without redeeming social value.” A somewhat broader view would permit a finding of obscenity if the book is “hard core pornography.” An even broader view would not permit any book to be found obscene. On this continuum, the first view is clearly the narrowest and, therefore, articulates the finding legal standard constituting the Court’s holding.

1. Introduction of newly discovered evidence of a significant nature which could not have been introduced before.
2. Demonstration that previously introduced evidence is false.
3. Demonstration that any participant in a hearing committed perjury.

#### 5.4 Appeal

1. When appealing, the burden of proof rests on the petitioner. Appeals may be granted for any of the following:
  1. Demonstration that a reversible error with regard to a conclusion of law may exist.
  2. Demonstration that judgment was significantly influenced by a

violation of due process, as set forth in these rules of procedure.

5.5 Appeal to the Legal Advisor

When the Council denies a petition for rehearing or appeal, the petitioner may then appeal the denial to the Legal Advisor, who may then make appropriate recommendations to the Council.

**ARTICLE 6.0 Council Administrative Rules**

6.1 Quorum

For the conduct of a proper hearing, or a proper meeting, a quorum shall consist the majority of the eligible Justices.

6.2 Orders

1. Orders issued by the Council as a whole may only be rescinded by the Council as a whole.
2. Orders issued under the authority of the Council by individual Justices are subject to review by the Council. Such orders may be rescinded by the Justice who issued the order or by the Council as a whole.
3. The Chair may stay an order issued by another Justice. Individual orders issued by the Chair may be stayed upon an agreement of the Assistant Chair and the senior Associate Justice.

6.3 Permanent Record of the Council

1. A written, audio, or video recording will be made at all official hearings for the future use of all Justices.
2. A Permanent Record of hearing material for all hearings shall be kept including the charge sheet, briefs, decisions, and all other relevant material.
  1. The Chair and Assistant Chair shall both maintain separate copies of the Permanent Record, beginning with the start of the academic year, and ending at the next academic year.
  2. When the Permanent Record for an academic year is complete, one copy will be held in the Association's archives (or succeeding organization), and one copy will be retained by the Chairperson of the Council such that the records will be immediately available to the Council.
3. The permanent record shall be available to all members and employees of the Association.

6.4 Decisions

1. Justices must have been participating during oral arguments and deliberations in order to participate in a judgment.
2. No decisions may be handed down without a written statement of the Council's conclusions.
3. Those participating Justices in disagreement are entitled to write a minority or dissenting opinion(s), which shall be included along with the majority decision for distribution.

#### 6.5 Chairperson

1. The Chairperson is responsible for calling all meetings, arranging all hearings of the Council, conducting all meetings, maintaining order at hearings, and is generally responsible for all administrative functions of the Council. These duties include maintaining attendance records of the Council, proposing the Council's budget to the Senate, reporting the Senate on the status of pending cases, and any other duties within these Rules of Procedure.
2. The Chairperson may delegate any of his/her responsibilities to any other Justices.
3. The Council shall elect a Chairperson by majority vote, to serve for one year, reckoned from the date of election in which he/she is elected.

#### 6.6 Assistant Chairperson

1. The Assistant Chairperson shall assume the responsibilities of the Chairperson in the absence of the Chairperson.
2. The Council shall elect an Assistant Chairperson by majority vote, to serve for one year, reckoned from the date of election in which he/she is elected.

#### 6.7 Mentoring

1. Sitting Justices who have served for at least one election cycle will be mentors to newly appointed Justices.
2. All Justices who have served more than one election cycle must be mentors before a Justice may act as a mentor to more than one newly appointed Justice.
3. The Chair will determine which sitting Justices will mentor each newly appointed Justice.
4. Mentors will be responsible for training their apprentices in the Association's Constitution, the By-laws, these Judicial Rules of Procedure, and overall jurisprudence.

#### 6.8 Legal Advisor

The Council shall select a Legal Advisor. The Legal Advisor shall be available for consultation to Council Justices. He/She shall also be available at his/her discretion for consultation with other members and employees of the Association.

#### 6.9 Resignation

A Justice is considered resigned from the Council when they provide verifiable documentation of their resignation to the Chair or the Council en banc.

#### 6.10 Judicial Council Clerks

1. Judicial Council Clerks shall assist the Justices with the functions of the Council. Such duties shall include any tasks delegated to the Clerks including, but not limited to: delivering subpoenas, contacting participants in Judicial Council proceedings, collecting briefs and charge sheets, and making copies of Judicial Council documents.
2. The Judicial Council shall have the option of selecting as many Clerks as the Council deems necessary.

3. Clerks will be accepted and released upon a majority vote of the Council.
4. Clerk's responsibilities will be expanded or limited at the discretion of the Council, by majority vote.

**ARTICLE 7.0 The Emergency Second Court of the Judicial Council**

**7.1 Purpose**

1. The purpose of the Emergency Second Court is to ensure due process to all parties when members of the Judicial Council are party to the controversy.
2. The Judicial Council shall delegate its constitutionally granted powers of judicial remedy upon the Emergency Second Court whenever the appropriate jurisdiction is established.
3. The Emergency Second Court is not a standing body. It shall only be formed when jurisdiction is established.

**7.2 Jurisdiction**

1. The Emergency Second Court shall only be called in regard to election disputes.
2. The Emergency Second Court may only hear and adjudicate cases in which members of the Judicial Council are plaintiff to the charge.
3. The Emergency Second Court shall not hear matters of judicial interpretation.
4. If jurisdiction for the Emergency Second Court cannot be clearly established, the Court will not be called.
5. The Judicial Council shall not hear appeals from the Second Court if the appeal materially affects the Judicial Council as a party to the dispute. In this case, the Second Court will be initiated again.

**7.3 Composition**

1. The Emergency Second Court shall consist of a jury of peers, all being members of the Association.
  1. The jury shall have seven jurists. If seven cannot be produced, then the jury will have five jurists.
  2. The jury will decide on the guilt or innocence of the defendant as a matter of fact.
  3. Upon a conviction, the jury will decide on the appropriate remedy according to the ASUC By-Laws as a matter of law.
2. The Attorney General shall preside as judge of this Court.
  1. While presiding, the Attorney General is vested with the responsibility of pre-hearing logistics and maintaining procedural order during the hearing.
  2. The Attorney General will brief the jury on the details of the case, but he/she shall make no findings of fact or law.
  3. The Attorney General may delegate any responsibilities to the Solicitor

General.

3. Attorney General Conflict of Interest

1. If the Attorney General or Solicitor General is named in the lawsuit, then he/she shall not carry out any of the assigned functions in the Emergency Second Court.
2. In the case of such conflict of interest, the Chair of the Senate shall be vested with all responsibilities assigned to the Attorney General.

7.4 Initiation of Action

1. The Emergency Second Court is a subsidiary of the Judicial Council. In order to request a hearing by the Second Court, an official charge sheet declaring such must be filed through the Judicial Council.
  1. The petitioner must establish the Second Court's jurisdiction.
2. The Judicial Council's pre-hearing procedures shall be followed in considering the case. If the case is accepted, the Council will consider the Second Court's jurisdiction. When jurisdiction is established, the Judicial Council shall call upon the Attorney General to initiate the Emergency Second Court.

7.5 Jury Selection

1. The Attorney General shall seek out potential jurists who are unconnected to the government.
2. The Senate Constitutional Review Committee may interview these potential jurists and approve five or seven.
3. If either party can show that a jurist has a conflict of interest, that jurist shall be dismissed and replaced. The Attorney General shall rule on such motions.
4. If either party is found guilty of tampering with any jurist(s), the Second Court shall issue a Default Judgment in the opposing party's favor. The Attorney General shall rule on such motions.
5. Each time the Emergency Second Court is called, the jury selection process starts anew.

7.6 Procedure

1. The Emergency Second Court shall use the Judicial Council's pre-hearing, hearing, and post-hearing procedures.
2. The Emergency Second Court shall use the Judicial Council's appeals process. In the case that the Judicial Council is materially affected by the dispute, the Attorney General shall decide on the appeal request.
3. In the case of ambiguities, the Emergency Second Court shall refer to these rules of procedure.

**ARTICLE 8.0 Amendments**

As proposed amendments to these Rules Of Procedure are brought by members of the Judicial Council, amendments are considered main motions, and as such are subject to the public posting requirements of the ASUC Constitution.

Revised 10/21/09 by Chair Kiira Johal and Assistant Chair Jason Koo