



# **ISBA Advisory Opinion on Professional Conduct**

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**This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.7 and 5.4(c). This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.**

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**Opinion Number 88-16  
May 10, 1989**

Topic: Conflict of Interest

Digest: A lawyer director of Student Legal Services at a university whose office is funded by a portion of student activity fees paid by all students at the university may defend a student against criminal charges of battery against another student and may represent one student in a civil case against another student, provided that such lawyer has not consulted with or represented the other student involved.

Ref: Rules 5-105, 5-107(a)  
ISBA Opinion No. 732

## FACTS

The office of Student Legal Services at a university is funded through payment of student activity fees paid by all students at the university. Any student who has paid the activities fee and is currently enrolled is eligible for services. The attorney director is asked, from time to time, to represent a student in defense of a criminal charge of battery against another student also eligible for his services where the attorney director has never represented or consulted with the victim as attorney and client. The attorney director is also asked, from time to time, to represent a student eligible for services in a civil matter where the opposing party is also a student eligible for his

services. The attorney director has the discretion to turn down a case.

### QUESTIONS

May the attorney director of Student Legal Services represent a student in defense of a criminal charge of battery against another student also eligible for his services where the attorney has never represented nor consulted with the victim as attorney and client?

May the attorney director of Student Legal Services represent a student eligible for services in a civil matter where the opposing party is also a student eligible for his services?

### OPINION

Unless some agreement with the students at the University provides otherwise, the mere payment of a student activity fee, a portion of which is used to fund Student Legal Services, does not create an attorney and client relationship between each student and the attorney director of the Student Legal Services. Therefore, unless some agreement with the students provides otherwise, the attorney director of Student Legal Services is free to represent a student in defense of a criminal charge of battery against another student also eligible for his services where the attorney has never represented nor consulted with the victim as attorney and client.

Such attorney director may represent a student eligible for services in a civil matter where the opposing party is also a student eligible for his services where the attorney has never represented nor consulted with the other student as attorney and client. Under the facts stated above, an attorney and client relationship does not exist between the attorney director and a student eligible for his services who has not consulted him as attorney and client. Therefore, Rule 5-105 and Rule 5-107(a) are not applicable.

The opinion supercedes Opinion 732 to the extent that opinion is inconsistent with the views expressed herein.