

Committee Opinion
March 24, 1992

LEGAL ETHICS OPINION 1453

UNIVERSITY PREPAID LEGAL
SERVICES — REPRESENTATION
WHEN COMPLAINING
WITNESS/VICTIM IS STUDENT.

You have presented a situation in which an office, located at a university, offers prepaid legal services for students who have paid the student activity fee. You advise that most students pay this fee, which is distributed under the direction of Student Council. For organizational purposes, the office is viewed as a part of Student Council, although Council does not oversee day-to-day operations and has delegated responsibility for oversight of the office to a Board of Advisors, consisting of students, faculty members, administrators and a member of the local bar. This Board sets policy guidelines and is responsible for handling budget and personnel matters, but does not review day-to-day operations either.

You indicate that the Board has set a policy whereby, according to the by-laws:

The office shall represent students charged criminally, where the complaining witness or victim is a student, only with the consent of the complaining witness/victim.

You indicate that the office determines whether or not the victim consents by sending a letter. Only an actual affirmative response constitutes consent whereas a lack of response is treated as no consent.

Finally, you advise that, typically, the student-defendant will come to the office for an initial consultation, during which the student status of the victim is discovered. At that point, the office tells the defendant that it cannot commit to representation and says that it will give notice when it makes a determination. You have represented that the office takes care not to prejudice the defendant's case and that the office is careful to give notice as to whether or not it will provide representation of the defendant well ahead of any court proceeding.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:4-101(B) which precludes a lawyer from knowingly revealing a secret or confidence of his client; and DR:7-103, which prohibits direct communication between an attorney and an opposing party, except under specified circumstances.

You have asked the Committee to opine (1) as to the ethical propriety of the policy generally, (2) as to any ethical impropriety regarding the policy on victim consent requirements and its procedural implementation, (3) as to whether the office has accepted representation of the defendant on the basis of the initial consultation, and (4) as to any obligation the office has to the defendant to explain the basis for its refusal to provide representation.

Committee Opinion

March 24, 1992

1. With regard to the general ethical propriety of the policy, the Committee opines that the Virginia Code of Professional Responsibility does not preclude the Board from adopting the policy you have articulated.

2. Since the student victim is not a party to the criminal proceedings, serving only as a witness for the Commonwealth, the Committee opines that sending a letter requesting that the witness consent to the service's representation of the student defendant would not constitute improper communication. Similarly, the use of that consent as the determining factor in the lawyer's decision as to whether to represent the student/defendant would not be improper. However, the Committee cautions that the sending of such a letter might, in certain situations, impinge on the protection of the defendant student's secrets and confidences in violation of DR:4-101.

3. As to your inquiry regarding whether the office has taken on the defendant as a client, on the basis of the initial consultation, the Committee is of the opinion that, although no attorney/client relationship has arisen in other respects, the potential client's initial interview created an expectation of confidentiality which must be protected by the attorney.

4. Finally, as to whether the office has any obligation to explain the reason for its refusal of representation to the defendant, the Committee directs you to EC:2-28 which states that a lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client. The Committee opines, then, that since the office has no obligation to accept representation of the defendant, the office also has no obligation to explain the refusal of representation.

Committee Opinion

March 24, 1992