

Community Rights & Responsibilities at Illinois State University

DISCIPLINARY GUIDE FOR ATTORNEYS

Q: I have been asked to represent a student facing student conduct review. How do I establish this with the University?

Students are expected to represent themselves in all student conduct matters, whether or not the student is also facing concurrent criminal charges for the same set of circumstances. Students facing criminal charges may have an attorney present during all student conduct proceedings, but the attorney is restricted from any participation in the proceedings. In addition, **CR&R** will correspond at all times directly with the student, and not through any third party. A third party, such as an attorney, may receive copies of correspondence if the student signs a waiver to this affect.

Q: My client is charged with a crime off-campus. Can I get the proceedings delayed until the criminal matter is resolved?

The student disciplinary process at Illinois State University is not attempting to determine whether or not a student has violated the law; the University is trying to determine whether or not a student violated University rules and regulations. As such, the goals and the means of the criminal justice process and the student conduct process are dissimilar. No delays are given to students to accommodate their interests in the criminal process. Delays may only be granted when it is established to the satisfaction of the **CR&R** Director that such a delay is in the interest of the University.

Q: Isn't the student disciplinary process double-jeopardy for someone also facing criminal charges?

No. "Double-jeopardy" is a concept that applies solely to criminal proceedings. Criminal proceedings do not in any way offer exemptions from civil or administrative proceedings.

Q: Why isn't my client being afforded the same protections that he or she would receive in the criminal process?

The courts have long recognized the differing interests of the University community from that of the criminal justice process. Since 1961, a significant body of case law has been established that outlines basic expectations of fairness in any student disciplinary process. Illinois State University due process protections meet or exceed any required by the courts.

Q: What will happen if my client refuses to participate in the student conduct process?

The process will continue with or without the student's involvement, and a decision will be reached based on the information that is provided to the hearing panel or administrator. The student may not use his or her refusal to participate as a later ground for appealing a decision.

Q: What if my client chooses to participate in the process? Is he or she granted any immunity in the criminal process?

No. All student conduct matters are subject to lawful subpoena. This includes tape recordings, written statements and records, and personal recollections. In fact, the University will contact the appropriate law enforcement agency anytime violations of the law become evident through the student conduct process.

Q: The incident took place off campus. What interest does the University have?

Illinois State University reserves the right to discipline students for acts that take place off campus. The University will determine on a case by case basis whether or not an individual's alleged conduct is of interest to the University community.

Q: What is the "burden of proof" in the student conduct process?

Decisions with respect to student responsibility for alleged actions are made based on a preponderance of the evidence; that is, the hearing panel or administrator will determine what is "more likely than not" to have taken place.

Q: What motivation do I have as an attorney to comply with the University's rules and procedures?

As an attorney for the student, it is your responsibility to cooperate fully with the student disciplinary process and to abide by all expectations established by the Illinois State Bar Association with respect to the autonomy of administrative processes. Specifically, the Illinois Rules of Professional Conduct state that, "...in a legislative, executive, administrative, municipal or other nonadjudicative proceeding...(t)he advocate's duties are instead defined by the rules of the tribunal." (1999 Rules) This indicates that attorneys are to abide by all rules of University disciplinary proceedings. Any attorney violating these standards will be reported to the State Bar Association.

Q: Are there resources available for me to learn more about the law as it relates to campus disciplinary proceedings?

We recommend the following resources for attorneys:

- 1. The Law of Higher Education (3rd ed.) by William A. Kaplin and Barbara A. Lee, published by Jossey-Bass Publications, (1995).**
- 2. Year 2000 Cumulative Supplement to The Law of Higher Education, Third Edition by William A. Kaplin and Barbara A. Lee, published by the National Association of College and University Attorneys (NACUA), (2000).**
- 3. The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life? by Robert D. Bickel and Peter F. Lake, published by Carolina Academic Press, (1999).**
- 4. "Harnessing the 'Spirit of Insubordination': A Model Student Disciplinary Code," by E. Stoner and K. Cerminara, 17 J. Coll. & Univ. Law 89 (1990).**

In addition, a review of the following significant cases is also useful:

- Dixon v. Alabama State Board of Education (1961, 5th Circuit)**
- Esteban v. Central Missouri State College (1969, 8th Circuit)**
- Soglin v. Kauffman (1969, 7th Circuit)**
- Paine v. Board of Regents of the University of Texas System (1973, 5th Circuit)**
- Goss v. Lopez (1975, U.S. Supreme Court)**
- Krasnow v. Virginia Polytechnic Institute (1977, 4th Circuit)**
- Gabrilowitz v. Newman (1978, 5th Circuit)**
- Osteen v. Henley (1993, 7th Circuit)**

An Important Quote:

"...The attempted analogy of student discipline to criminal proceedings against juveniles and adults is not sound. The nature and proceedings of the (campus) disciplinary process...should not be required to conform to federal processes of criminal law, which are far from perfect, and designed for circumstances and ends unrelated to the academic community. By a judicial mandate to impose on the academic community and student discipline the intricate, time-consuming, sophisticated procedures, rules, and safeguards of criminal law would frustrate the teaching process and render the institutional control impotent..."

44 F.R.D. (142) (W.D. Mo.)

**General Order on Judicial Standards of Procedures and
Substance of Student Discipline in Tax-Supported
Institutions of Education**