



ILLINOIS STATE
BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in January 2010. Please see the 2010 Illinois Rule of Professional Conduct 6.4. 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.

Opinion No. 91-27
April 3, 1992

Topic: Law reform activities affecting client interests

Digest: A state's attorney's duty to represent the county clerk in the latter's official capacity does not prevent an assistant state's attorney who is president of a non-profit organization from urging the legislature adopt an amendment to statute even though the county clerk is opposed to the amendment.

Ref.: 1990 Illinois Rules of Professional Conduct, Rule 6.4

FACTS

An assistant state's attorney inquires as to whether it is permissible for him, as president of a genealogical society, to advocate an amendment to the Vital Records Act when the local county clerk, whose office the state's attorney represents by statute, is opposed to the amendment.

The inquirer is president of a local genealogical society, an Illinois not-for-profit corporation, which assists its members in tracing their family histories. As president of the corporation, he is organizing an effort among its members and other genealogical societies to petition the state legislature to amend the present law to allow broader and easier access to birth records sought by individuals for bona fide genealogical research. He has advised the county clerk of his involvement

in this effort and the county clerk has expressed individual opposition to the suggested change.

QUESTION

Since the state's attorney's office is obligated by statute to represent the county clerk with regard to matters arising out of official duties, the question is whether the Rules of Professional Conduct would permit the inquirer as president of the genealogical society to advocate amending the law to relax the restrictions presently in force pertaining to access to birth records in Illinois.

OPINION

The duties of the state's attorney include commencing and prosecuting "all actions and proceedings brought by any county officer in his official capacity, and defending all actions brought against his county, or against any county or state officer, in his official capacity, within his county." Ill.Rev.Stat., ch. 34, sec. 3-9005.

The county clerk is by law the custodian of all records required to be filed in that office, including birth certificates. All such records are open to public inspection, except as otherwise provided in the Vital Records Act. Ill.Rev.Stat., ch. 34, sec. 3-2012.

With regard to birth certificates, the Vital Records Act (Ill.Rev.Stat., ch. 111 1/2, sec. 73-1, et seq.) ordinarily restricts disclosure to the individual whose birth record is sought or to his or her legal representative. Ill.Rev.Stat., ch. 111 1/2, sec. 73-25(4)(b). Such records may also be released to various governmental agencies (Id. at par. 73-24(4)(c)), but otherwise only upon issuance of a court order. (Id. at par. 73-25(4)(a)).

As presented to the Committee, the inquiry is based upon Rule 6.4 of the Illinois Rules of Professional Conduct, adopted August 1, 1990. (No comparable provision appeared in the former Code of Professional Responsibility.) The Rule reads:

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the actions of the organization may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall reveal that fact to the organization but need not identify the client.

The Committee sees no impediment under Rule 6.4 to the activities of the assistant state's attorney as a private individual. The reason for the county clerk's opposition to the proposed amendment is not given, but presumably it is based upon the effect that the proposed change may have on the operation of the office. But the duty of the state's attorney to represent the clerk in an official capacity does not require that he support the opposition to the proposed change; nor does it require that he refrain from his own activities as a private individual and a member of an organization seeking to effectuate such change. Rule 6.4 specifically permits such activities regardless of the possible effect that the "actions of the organization" may have on the client.

Even though the rule does not specifically include attorneys in public office, the Committee sees no reason to restrict permitted associational activities to attorneys in the private sector. Such a

construction would suggest that an attorney employed by a public body may be denied the freedoms of petition and association granted other attorneys as citizens. The discriminatory effect of such treatment is apparent.

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