



**ILLINOIS STATE
BAR ASSOCIATION**

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 Rule of Professional Conduct 3.5(b). 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. 92-21
March 26, 1993**

Topic: Communication with Judge

Digest: A judge may confer with his/ her spouse's attorney, providing the judge has no official relationship to the spouse's legal proceeding, but only a personal one. This also means there is no impropriety in the actions of the spouse's attorney, in conferring with the client's spouse.

Ref.: Illinois Code of Judicial Conduct, Rule 62A and B, Rule 65
Illinois Rules of Professional Conduct, Rule 3.5(i)

FACTS

A circuit court judge's wife brings a post-dissolution enforcement action against her former husband. The former husband, in turn, initiates a contempt proceeding against the judge's wife. While these matters are pending, the judge confers with his wife's attorney about her case. The case is pending in the county in which the judge presides. However, it is not pending before the judge, nor has the judge any official relationship to the case.

QUESTIONS

1. Is it improper for a judge to confer with his wife's attorney regarding his wife's case?

2. Is it improper for the judge's wife's attorney to confer with the judge regarding the judge's wife's case?

OPINION

1. It is clear that this question would never have been raised had the wife's spouse not been a judge; there is nothing unethical in the attorney for one member of a married couple conferring with the client's spouse, provided, of course, that the couple are not adversaries. How does this change if one member of the couple is a judge?

In the facts presented, the judge has no official relationship to the case. Therefore, his only relationship to the case is personal.

Rule 62A of the Illinois Code of Judicial Conduct states that the judge, "should...conduct himself at all times in a manner which promotes public confidence in the integrity and impartiality of the judiciary." However, this does not mean the judge is forced to be impartial in a personal or family matter. Such an interpretation of Rule 62 would be harsh indeed, and perhaps even invade the private life of a judge.

Part B of Rule 62 states that, "A judge should not allow his family...to influence his judicial conduct or judgment."

In addition, Rule 65 of the Code of Judicial Conduct provides that a judge should regulate his extrajudicial conduct to minimize the risk of conflict with his judicial duties. Again, the judge in this situation is not in conflict with his judicial duties.

2. As to the spouse's attorney's conduct in conferring with the judge, Rule 3.5(i) of the Illinois Rules of Professional Conduct prevents an attorney from communicating as to the merits of a cause with a judge before whom the proceeding is pending. As stated in the response to the first question, the judge in question in this fact situation has no official relationship to his spouse's case. Thus, the spouse's attorney is not violating Rule 3.5

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