ILLINOIS STATE BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 8.4(f). See also Illinois Code of Judicial Conduct 67(B)(2) (1990) and ISBA Ethics Advisory Opinion 90-25. 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 Number 866
April 27, 1984

Topic: Relationship with officials; contributing to and participating in judicial election campaigns.

Digest: An attorney who has contributed to and/or participated in a judge's election campaign is not precluded from appearing before that judge in subsequent judicial proceedings.

Ref: Canon 7;
Rule 7-110(a);
EC 7-34
ISBA Opinion 566

FACTS

The inquiring attorney is a partner in a firm with a criminal defense practice. The attorney also, apparently, acts as a traffic and ordinance prosecutor for a local community.

The attorney proposes to serve on election committees for candidates for Circuit Judge positions, and to act as co-chairman of the election committee for one of them.

QUESTION

The attorney inquires whether he may appear in criminal prosecution or defense proceedings before the judges whose campaigns he has assisted, and, if so, what disclosures are required to his clients and to opposing counsel.

OPINION

Attorneys are not prohibited from making contributions to judicial campaign funds. Rule 7-110(a); EC 7-34. Also, this Committee has held that it is not unethical for an attorney to act as campaign chairman or otherwise to solicit contributions to the campaign of one seeking election to or retention in judicial office. ISBA Opinion 566.

There appears to be no direct authority on the issue of whether an attorney who has so acted in connection with a judge's election campaign may appear before that judge in proceedings concurrent with, or subsequent to, the campaign. However, it may be assumed that when the aforesaid ethical determinations were made, it was in contemplation of the possibility, if not the likelihood, that attorneys would eventually appear in proceedings before judges whose campaigns they had assisted. The rulings thus give at least an implied sanction to such appearances, since they do not expressly restrict them.

Further, because there is no theoretical limit to the number of judicial election campaigns in which an attorney may so participate, the judicial system would be unduly encumbered were all attorneys engaging in campaign activities precluded from appearing in litigation before judges in whose campaigns they had participated. Finally, such a restriction would undoubtedly discourage such participation by attorneys, contrary to the apparent policies behind Rule 7-110(a) and EC 7-34; ie., the implicit value of such participation by attorneys, and the need that attorneys not be considered "second-class citizens" in connection with political activities. (Committee Commentary to Canon 7.)

Accordingly, this Committee is of the opinion that attorneys contributing to, or otherwise participating in, judicial election campaigns are not thereby precluded from appearing in legal proceedings before the judges whose campaigns they have assisted.

Disclosure by the attorney to his client of the attorney's campaign activities would not appear necessary since such activities are not inherently adverse to the client's interest. Disclosure to opposing counsel also appears unnecessary in view of the conclusion that there is nothing inherently unethical in such conduct, nor anything which would require the consent of the Court or of opposing counsel.