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Update urged for state's professional conduct rules

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SPRINGFIELD — [Gerald E. Nora](#), a Cook County assistant state's attorney and [Richard A. Devine](#)'s executive assistant for policy, expressed concern about a rule that would govern grand jury subpoenas seeking client information from lawyers.

Rule 3.8(e) would state that prosecutors could not subpoena lawyers for client information unless three conditions are met: the information is not protected by privilege, the evidence is essential to completion of an ongoing investigation and there are no other feasible alternatives for getting the information.

Nora noted that the Illinois Constitution says grand juries are creatures of the legislature, and that regulation of their conduct through court rules could run afoul of the separation of powers. Article I, section 7.

"This is not only a theoretical conflict between the two branches of government, it will be an immediate conflict for the prosecutor who's attending upon the grand jury," Nora said.

More information may be found on the Illinois Supreme Court's Web site at www.state.il.us/court/SupremeCourt/Public_Hearings.

The states recognize that regulation of grand juries through court rules is a usurpation of legislative authority. The federal judiciary refuses to recognize this fact.

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