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AG opposes Kline role in abortion case before Supreme Court

By JOHN HANNA
Associated Press Writer

Attorney General Steve Six is arguing that it's improper for a district court judge to be called as a witness in a criminal case against a suburban Kansas City abortion clinic.

Six is suing Judge Richard Anderson, of Shawnee County, over his possession of copies of patients' medical records from two abortion clinics. Six hopes to force Anderson to return the documents, and the case is before the Kansas Supreme Court.

Anderson has the records because he supervised an earlier investigation of the two clinics. One, operated by Planned Parenthood in Overland Park, faces 107 criminal charges.

The criminal case was filed in Johnson County by District Attorney Phill Kline, who alleges the clinic falsified documents and performed illegal late-term abortions. The clinic denies wrongdoing, but Kline considers Anderson an important witness.

In April, Six protested a subpoena to Anderson from Kline and the Supreme Court blocked Anderson from testifying or producing his copies of the medical records. Two weeks ago, Kline asked for permission to intervene in Six's lawsuit against Anderson.

Six filed a response to that request late Tuesday, saying Kline "brings nothing" to the lawsuit against Anderson. Six also argued that appellate courts generally have frowned upon having lower court judges be witnesses so that they can perform their duties more "vigorously."

"He can offer no testimony that could not be provided by another witness," Deputy Attorney General Mike Leitch wrote in the filing.

Both Kline and anti-abortion groups have said the attorney general's office is trying to shield Planned Parenthood from prosecution.

"Where in the law does it support the state's top law enforcement official working to silence a witness to criminal activity in a criminal case without even notifying the prosecutor that he's engaged in that effort?" Kline said Wednesday.

Six spokeswoman Ashley Anstaett said the dispute isn't about whether Anderson testifies but protecting the privacy of patients whose medical records are in the judge's possession.

"It had everything to do with the records being moved or copied again," Anstaett said.

Kline scoffed at the argument, pointing out that the records were edited to remove identifying information. Also, he noted, Six has since offered a compromise to the Supreme Court under which Anderson would keep the records, but only until all lawsuits and criminal cases are finished.

"There's only one consistency in all of this: They don't want any case to go forward," Kline said.

Anderson has said in filings with the Supreme Court that he has questions about whether some of the documents provided to him by Planned Parenthood were authentic. He testified in a pretrial hearing in Johnson County in January that he was concerned enough to consult a Topeka police handwriting expert.

The clinic has acknowledged discrepancies between what Anderson has and copies of the same documents on file with the state health department, but it has said no wrongdoing occurred. The attorney general's office also has said it was aware of the issue but didn't see evidence of wrongdoing.

Kline, an anti-abortion Republican, began investigating the two abortion clinics in 2003, while serving as attorney general himself. Anderson's supervision of those efforts allowed witnesses and documents to be subpoenaed.

Kline eventually obtained - through Anderson - copies of records from 29 patients' files at the Planned Parenthood clinic.

In 2006, Kline lost his race for re-election, with abortion rights advocates active against him. But Republicans in Johnson County picked Kline to fill a vacancy in the district attorney's office there.

Days before leaving the state job, Kline arranged to have the Planned Parenthood records copied and forwarded to Johnson County, so they'd be waiting for him.

The attorney general's office reviewed evidence Kline had gathered and declared publicly that he'd found no wrongdoing. The attorney general also said the investigations of the clinics by his office were closed and filed the lawsuit against Anderson with the Supreme Court.

In October, Kline filed charges against the Planned Parenthood clinic.

The case before the Supreme Court is Stephen N. Six, attorney general, v. The Honorable Richard Anderson, No. 99,050.

On the Net:

Kansas Supreme Court: <http://www.kscourts.org>

Attorney general's office: <http://www.ksag.org>

Johnson County District Attorney: <http://da.jocogov.org>

Planned Parenthood: <http://www.ppkm.org>

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