

Rule 754. Subpoena Power

(a) Power to Take Evidence. The Administrator, the Inquiry Board and the Hearing Board are empowered to take evidence of respondents, petitioners and any other attorneys or persons who may have knowledge of the pertinent facts concerning any matter which is the subject of an investigation or hearing.

(b) Issuance of Subpoenas. The clerk of the court shall issue a subpoena *ad testificandum* or a subpoena *duces tecum* as provided below:

(1) upon request of the Administrator related to an investigation conducted pursuant to Rules 752, 753, 759, 767, 779, or 780 or related to a deposition or hearing before the Hearing Board; the Administrator may use a subpoena in an investigation conducted pursuant to Rule 753 until such time as a complaint is filed with the Hearing Board;

(2) upon request of the Inquiry or Hearing Board related to a proceeding pending before the Board;

(3) upon request of the respondent or the petitioner related to a deposition or hearing before the Hearing Board;

(4) upon request of the Administrator related to the investigation or review of a Client Protection Claim; or

(5) upon the request of the Administrator in aid of a person or entity authorized to compel a witness to appear by the laws governing lawyer discipline or disability investigations and proceedings in another jurisdiction, for that person or entity to compel a witness to appear in the county in Illinois in which the witness resided, is employed, or is served with the subpoena and to give testimony and/or produce documents, to the same extent authorized in the discipline or disability investigation and/or proceeding of the other jurisdiction. The person or entity seeking the issuance of a subpoena shall provide to the Administrator proof of authority to compel the attendance of the witness under the laws of the other jurisdiction.

(c) Service. Any witness shall respond to any lawful subpoena of which he or she has actual knowledge. Service of a subpoena upon the witness or his or her authorized agent may be proved *prima facie*:

(1) By written acknowledgement signed by the person served;

(2) In case of service by mail or by delivery to a third-party commercial carrier to the address which appeared on the envelope or package, by proof of delivery showing the name of the person served. For such service upon an attorney, "address" is defined as (i) the attorney's last known business or residence address or (ii) the address listed on the Master Roll or, if the attorney is not listed on the Master Roll, the address last designated by the attorney on the Master Roll or in the equivalent of the Master Roll in any jurisdiction, as defined in Supreme Court Rule 763, in which the attorney is or was licensed to practice law;

(3) In case of an otherwise agreed-upon method of service, including by electronic means, by an affidavit of service attesting to the agreed-upon method and stating the time, place, and destination of the delivery or transmission and written or electronic acknowledgement by the person served of the agreed-upon method of service.

(d) Fees and Costs. Respondents and petitioners shall not be entitled to a witness fee or

reimbursement for costs to comply with any subpoena issued pursuant to this rule. All other persons shall be entitled to payment for fees, mileage and other costs as provided by law. Such payments shall be made by the Commission for a subpoena issued at the instance of the Administrator, the Inquiry Board or the Hearing Board. Such payments shall be made by the respondent or the petitioner for a subpoena issued at his instance.

(e) Judicial Review. A motion to quash a subpoena issued pursuant to this rule shall be filed with the court. Any person who fails or refuses to comply with a subpoena may be held in contempt of the court.

(f) Enforcement. A petition for rule to show cause why a person should not be held in contempt for failure or refusal to comply with a subpoena issued pursuant to this rule shall be filed with the court. Service of the petition shall be made in any manner in which service of process is authorized by Rule 765(a). Unless the court orders otherwise, the petition shall be referred to the chief judge of the circuit court of Cook County or Sangamon County or any other judge of those circuits designated by the chief judge. The designated judge shall be empowered to entertain petitions, hear evidence, and enter orders compelling compliance with subpoenas issued pursuant to this rule. When a petition is referred to the circuit court, the following procedures should be followed:

(1) The Clerk of the Supreme Court shall forward a copy of the petition for rule to show cause to the designated judge of the circuit court and, at the same time, shall send notice to the party who filed the petition and all persons upon whom the petition was served that the matter has been referred to the circuit court. The notice shall name the judge to whom the matter has been referred and state the courthouse at which proceedings pertaining to the petition will be heard.

(2) Any answer to the petition or other responsive pleading shall be filed with the Clerk of the Supreme Court and a copy of such answer or other pleading shall be delivered to the judge to whom the matter has been referred by mailing or hand delivering the copy to the chambers of the designated judge. The proof of service for such answer or other responsive pleading shall state that delivery to the designated judge was made in accordance with this rule.

(3) Proceedings on the petition before the designated judge, including scheduling of hearings and time for serving notices of hearing, shall be governed by the rules of the circuit court in which the designated judge sits, unless otherwise ordered by the judge.

(4) The designated judge may enter any order available to the circuit court in the exercise of its authority to enforce subpoenas, including orders for confinement or fines. If the judge finds an attorney in contempt for failure to comply with a subpoena issued pursuant to this rule, in addition to entertaining any other order, the judge may also recommend that the court suspend the attorney from the practice of law in this State until the attorney complies with the subpoena. Upon issuance of such a recommendation by the designated judge, the Administrator shall file with the Clerk of the Supreme Court a petition seeking implementation of the recommendation of suspension.

Adopted January 25, 1973, effective February 1, 1973; amended May 21, 1975; amended June 12, 1987, effective August 1, 1987; amended November 29, 1990, effective December 1, 1990; amended March 28, 1994, effective immediately; amended April 1, 1994, effective immediately; amended December 7, 2011, effective immediately; amended Apr. 8, 2013, eff. immediately; amended Dec. 28, 2017, eff. Feb. 1, 2018.