

LAW OFFICES
KOMIE AND ASSOCIATES

One North LaSalle Street - Suite 4200

Chicago, Illinois 60602-4011

Telephone (312) 263-2800

www.komie-and-associates.com

Stephen M. Komie
Darius R. Dirmantas
Brian E. King
Sarah E. Toney

of counsel
Marc D. Wolfe
Douglas E. Zeit

INVESTIGATOR
Paul J. Ciolino

March 21, 2023

James A. Hansen, Chair
Illinois Supreme Court Rules Committee
222 N. LaSalle Street, 13th Floor
Chicago, IL 60601
RulesCommittee@illinoiscourts.gov

Re: Rules Committee Hearing March 29, 2023

Dear Mr. Chairman:

I am writing to request the opportunity to appear before the Rules Committee to speak on Proposal 22-10 amending Supreme Court Rule 761, 763, 753, et seq.

I intend to oppose the adoption of amendment of Supreme Court Rule 761 for the reasons which follow:

1. Rule 761 imposes upon all lawyers an obligation to report a conviction of a crime within 30 days of entry. A conviction is defined by the IL Criminal Court as:

A judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, 720 ILCS 5/2-5

Upon a criminal conviction a court imposes a sentence for violation of a law, ordinance, or a combination of violating rules which are criminalized by statute. Clearly, the ARDC has an interest in the enforcement of the rules of professional conduct, touching upon one's fitness to be a member of the Bar. But not all infractions of the criminal law are touch upon a lawyer's fitness to practice law.

2. The last 40 years of law practice have been marked by the increasing overcriminalization of routine minor violations of law. The definition of overcriminalization is:

The overuse and abuse of criminal law to address every societal problem and punish every mistake.

It is a most unfortunate trend spurred by political zeal to be reelected to office. The criminal law should only be used to redress blame worthy conduct, actions that truly deserve the greatest punishment, and moral sanctions. What were once petty offenses, fine only, offenses have become major misdemeanors. For example, a lawyers speeding from courthouse to courthouse, anxious to be on time before a judge, could be found guilty of a Class A misdemeanor called "speeding". The lawyer's conduct is not morally reprehensible. Judges like lawyers who appear on time. Is a conviction for speeding something which should be reported to the ARDC and should the ARDC's resources be used for its investigation?

3. As Shakespeare might suggest, the question is, "Is the ARDC to be the quasi-administrative tribunal to address lawyers' minor misdeeds such as 1) speeding, 2) ordinance violations; such as burning leaves in front yards, unable to wait to arrive at a bathroom after an Illinois or Notre Dame game, travelling back on I57? Does that touch upon the fitness of a lawyer to hold a law license?
4. If the ARDC is looking for work, it ought to spend its time cracking down on the internet unauthorized practice of law.
5. When assessing the appropriateness of this proposed rule, one must read all of 761 to understand that any of the violations to be added by the proposed amendment not involving moral turpitude, require the administrator to refer the matter to the Inquiry Board. So, in October you burn leaves in your backyard, the village constable gives you a ticket. The Village court finds you guilty of the terrible offense of burning leaves. A finding of guilty is entered, or an order entered of supervision, or deferred judgment; you would be required to turn yourself into the ARDC.

It is my opinion this is a gross overreach of the principles and the function of the ARDC. Its function is to police and remove lawyers who threaten the public by continued practice or lack the moral fitness to be an attorney. The majority of ordinances in Illinois, the various rules of government bodies and misdemeanors have nothing to do with moral

fitness of an attorney or the impairment of an attorney to perform an attorney's duties.

Just like the Congress and the General Assembly, the Supreme Court's ARDC is now guilty of attempting to regulate lawyers' conduct which has nothing to do with professional life. This proposed rule change implicates calling on the carpet both lawyers and judges for very minor misdeeds which would be a gross waste of time and resources of the ARDC.

Therefore, I oppose amendment of Paragraph A for any disposition involving conduct which is not charging impairment or moral turpitude affecting a person's ability to practice law.

Objections to amendment to Rule 761(f): Historically, there has been reciprocal discipline for conduct committed by an Illinois attorney in another state's courts or in the federal court where they are admitted. Clearly, the court of first instance is the best judge of the infraction and measure of discipline. The concept of comparable discipline has worked well throughout the more than 40 years that I've been a lawyer. However, I find the ARDC is attempting to expand their power to rediscipline or impose additional discipline upon a lawyer who has been sanctioned by a sister Supreme Court or trial court.

Paragraph F of 763 is an expansion of the power to impose additional discipline for the conduct which has already been punished. Clearly, our founding fathers would consider this suggestion to be a violation of the English common law concept of Double Jeopardy. Double Jeopardy is enshrined in our Constitutions as a bar to retrying people for the same conduct. In the last century, the IL Bar Association had opposed the ARDC in double sanctioning lawyers when they had already been punished in the first instance with a contempt finding or court imposed sanctions. It is amazing how with the passage of time everyone forgets the opposition to two shots at the same target. Our nation was founded on avoiding trying people for the same conduct twice. Yet the ARDC seeks to expand their powers to be unlimited to discipline. There has not been a suggestion that IL Reciprocal Discipline has failed the public. And as Yogi Berra once said, "If it ain't broke why does it need to be fixed?"

I object to the proposed amendment to Rule 753(c)(7). The proposed amendment to subsection 753(c)(7) provides that an adjudication in another jurisdiction shall conclusively establish an attorney's misconduct. There would be no need for this section under the concept of Reciprocal Discipline which has been the longstanding rule. The danger of this amendment is conclusively establishing some form of misconduct which may not be misconduct in Illinois. There is no

exception under the amendment's carve outs for misconduct in a sister jurisdiction which is not a violation of the Illinois rules.

Also, an attorney should not be faced with a mandatory presumptions. Our courts recognize there are two kinds of presumptions: mandatory and permissive. Subsection 7 should have rebuttable presumptions such as the conduct was not a violation of the Illinois Rules and that all of the exceptions are affirmative defenses to the claim of misconduct.

Of course, Section 7 Amendment in its entirety would not be needed if discipline remains reciprocal. The reasons being the same sanction would be imposed in both Illinois and the reporting state.

Adding Executive Branch Agencies

In Rule 763 I oppose adding agencies to the list for Reciprocal Discipline. It has been my experience that agencies are short on providing due process of law, opportunities to be heard, acceptance of explanations as to why things were done. An agency of the Executive Branch of our government should not be the source of reciprocal discipline for the lack of safeguards provided practitioners before the agencies when accused of infractions of agencies' rules, policies and practices.

In summary, I believe that the current set of rules in place work reasonably well to protect the public from attorneys committing crimes of moral turpitude, or suffering from impairment or unable to function in their role as attorneys and counselors at law.

Where we need to strengthen the rules is in the area of unauthorized practice of law occurring throughout the internet and increase enforcement against carpet bagger attorneys from coming into our state without being admitted to practice in Illinois.

Respectfully submitted,



Stephen M. Komie

Attached is Curriculum Vitae
for inclusion in the record

STEPHEN M. KOMIE
One North LaSalle Street, Suite 4200
Chicago, Illinois 60602-4011
Telephone: (312)263-2800

PROFESSIONAL

Principal of KOMIE AND ASSOCIATES specializing in Federal and State Trial and Appellate practice since 1976; Intern, Federal Defender Program for the Northern District of Illinois, 1974-1976; admitted to U.S. Supreme Court; U.S. Court of Appeals, 5th, 6th, 7th, and 8th Circuits; U.S. District Court for Central, Northern, and Southern Illinois, the Northern District of Indiana, the Eastern and Western Districts of Michigan, Eastern District of Missouri, and Eastern District of Wisconsin; U.S. Tax Court; and the Illinois Supreme Court; Faculty: Illinois State Bar Association Continuing Legal Education Seminars and local Bar sponsored programs, American Bar Association CLE, International Bar Association CLE; Commentator: American Bar Association Criminal Justice Moot Court competition; Panel attorney, Federal Defender Program, Northern District of Illinois;

EDUCATION

University of Arizona (B.A., M.A.); DePaul College of Law, (J.D. 1976); National College of Criminal Defense Lawyers and Public Defenders, (1977). National College of DUI Defense Harvard Summer Session (2016).

AUTHOR

ATTORNEY'S BILL OF RIGHTS providing for expungement of unfounded inquiry letters and charges. Further, placing time limitations for charging upon the Administration of the Attorneys Registration and Disciplinary Commission (Adopted by the Illinois Supreme Court)

BAR ASSOCIATION ACTIVITIES

Member ILLINOIS STATE BAR ASSOCIATION, 1973. Ambassador to Rededication of *Magna Carta* on 800th anniversary; Elected Secretary 1996-1997; Treasurer 1995-1996; elected Board of Governors 1992-2005, 2011-2017, 2020-2023; elected member of the Assembly 1985-2020; served as chairman of Committee on Credentials, and member of By-Laws Committee, of the Assembly; member of the following committees: Mandatory Continuing Legal Education, A.R.D.C. Committee; Chairman, Criminal Justice Section; Chairman, Committee on Professionalism; Civil Practice Section; General Practice Solo &

Small Firm Section; Family Law Committee; Mental Health Committee; Corrections and Sentencing Committee; and Committee on Traffic Courts and the Law; appearances on legislative issues for ISBA at the General Assembly and United States Congress; former member ISBA Young Lawyers Section, and participant in annual local Outreach Meetings sponsored by Young Lawyers Section. Director, ILLINOIS BAR FOUNDATION and elected IBF Pillar of the Profession.

OTHER BAR MEMBERSHIPS

Illinois Trial Lawyers Association; Appellate Lawyers Association; Dupage County Bar Association, Justinian Society, Peoria County Bar Association; Will County Bar Association; Women's Bar Association of Illinois; Chicago Bar Association (CBA) Liaison to ABA Criminal Justice Section; past Chairperson of Criminal Law, and Defense of Prisoners Committees of the CBA; Member Decalogue Society of Lawyers; Member American Bar Association, 1976, Elected Member of the ABA Criminal Justice Section Council, Served on the Defense Function Committee of the Criminal Justice Section, and as Chair of the Small Firm and Solo Practitioner Committee, 1993-1995; Founding Member Illinois Attorney's for Criminal Justice: Served on the Board of Directors and as the Parliamentarian of the National Association of Criminal Defense Lawyers (NACDL), Member NACDL CFAA Reform White Collar Crime Subcommittee 2014; Member National Organization for the Reform of Marijuana Laws (NORML) Legal Committee; Member Chicago Lincoln American Inn of Court; and International Bar Association (IBA) and Chairperson Family Law Section IBA 2005-2007.

Delegate: Ambassador: Rededication of *Magna Carta* (800th anniversary) for ISBA, 2015; Delegate: Chicago Bar Association Conference on Cuban Law, 2010; The Hague Convention on Child Abduction, The Hague, Netherlands, NGO: International Bar Association 2006

HONORS & AWARDS

American Trial Lawyers Association National Public Service Award for Pro Bono Legal Representation of the Needle Exchange Program to Prevent the Spread of AIDS, July, 1994; ISBA Board of Governors Award for Advocating Individual Rights of Lawyers in Disciplinary Proceedings and for Services to the Bar, June, 1991; ISBA Certificate of Appreciation, 1986, 1990, 1991, 2001 and 2006; CBA Certificate of Appreciation, 1984 and 1987; Francis W. Parker School Alumni Service Award 2012; 2012 ATLA Top 100 Trial Lawyers Award; 2013-2020 National Trial Lawyers Top 100 Award; Martindale Hubbell

"AV" rating; voted a Super Lawyer 2004-2020 and voted an Illinois Leading Lawyer 2014-2020.

PUBLICATIONS

The Magna Carta: 800 Years of the Rule of Law, Illinois Bar Journal, June 2015, Vol. 103., No. 6, Pg. 44; Allegations of Child Abuse in Custody Disputes and Visitation Battles, Illinois Institute for Continuing Legal Education, Illinois Family Law, 1998, 2008 & 2012; ISBA Legislation Proposed to Protect Attorney/Client Relationship, Chicago Daily Law Bulletin, March 1987; Little RICO Bill Should Not Be Passed, The Bar News, June, 1984; Little RICO in Illinois, The Case Against It, Chicago Daily Law Bulletin, April, 1984.

LECTURER

ISBA CLE; ABA; ATLA; CBA; Decalogue Society; NACDL; Northwest Suburban Bar; West Suburban Bar; The John Marshall Law School; IIT Chicago-Kent College of Law; Law Societies of: Ireland, Northern Ireland, Scotland, and England & Wales; International Bar Association; Louisiana Association of Criminal Defense Lawyers; and DePaul University College of Law.

TASK FORCE SERVICE

Chairman, Task Force on Attorneys for Children 1997-1999; ABA Small Firm and Solo Practitioners and ISBA Judicial Compensation, Governance for the New Century, and Protection of the Public From the Unauthorized Practice of Law.