

Proposal 26-08

Offered by the Attorney Registration and Disciplinary Commission Review Board

Rule 753. Inquiry, Hearing and Review Boards

(a) Inquiry Board

(1) There shall be an Inquiry Board. It shall consist of members of the bar of Illinois and nonlawyers appointed by the Commission to serve annual terms as commissioners of the court. Nonlawyer members shall be appointed to the Board in a ratio of two lawyers for each nonlawyer. The Commission may appoint as many members of the Board as it deems necessary to carry on the work of the Board.

(2) The Board shall inquire into and investigate matters referred to it by the Administrator. The Board may also initiate investigations on its own motion and may refer matters to the Administrator for investigation.

(3) After investigation and consideration, the Board shall dispose of matters before it by voting to dismiss the charge, to close an investigation, to file a complaint with the Hearing Board, or to institute unauthorized practice of law proceedings.

(4) The Board may act in panels. Each panel shall consist of two lawyers and one nonlawyer as designated by the Commission. The Commission shall designate one of the members of each panel as chairman. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision.

(b) Filing a Complaint. A disciplinary complaint voted by the Inquiry Board shall be prepared by the Administrator and filed with the Hearing Board. The complaint shall reasonably inform the attorney of the acts of misconduct he is alleged to have committed.

(c) Hearing Board

(1) There shall be a Hearing Board. It shall consist of members of the bar of Illinois and nonlawyers appointed by the Commission to serve annual terms as commissioners of the court. Members shall be appointed to the Board in a ratio of two lawyers for each nonlawyer.

(2) The Hearing Board may act in panels of not less than three members each, as designated by the Commission. The Commission shall also designate one of the lawyer members of each panel as chairperson. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision. In the absence of the chairperson of a panel at a hearing, the lawyer member present shall serve as acting chairperson.

(3) The hearing panels shall conduct hearings on complaints filed with the Board and on petitions referred to the Board. The panel shall make findings of fact and conclusions of fact and law, together with a recommendation for discipline, dismissal of the complaint or petition, or nondisciplinary disposition. The Hearing Board may order that it will administer a reprimand to the respondent in lieu of recommending disciplinary action by the court.

(4) The scheduling of matters before the Board shall be in accordance with Commission rules.

(5) Proceedings before the Board, including discovery practice, shall be in accordance with the Code of Civil Procedure and the rules of the supreme court as modified by rules promulgated by the Commission pursuant to Supreme Court Rule 751(a). Information regarding prior discipline of a respondent will not be divulged to a hearing panel until after there has been a finding of misconduct, unless that information would be admissible for reasons other than to show a propensity to commit the misconduct in question.

(6) Except as otherwise expressly provided in these rules, the standard of proof in all hearings shall be clear and convincing evidence.

(7) In any hearing conducted pursuant to this rule, a final adjudication by another jurisdiction as defined in Rule 763(b) that the attorney has been disciplined (including resignation in lieu of discipline or the equivalent) shall conclusively establish the attorney's misconduct, unless the attorney establishes in the proceeding that:

(a) the order of the other jurisdiction was not entered;

(b) the order of the other jurisdiction does not apply to the attorney;

(c) the order of the other jurisdiction does not remain in full force and effect;

(d) the procedure resulting in the order of the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process of law; or

(e) the investigative process in the other jurisdiction was not comparable to the investigative process that would have been conducted in Illinois.

(d) Review of Hearing Board Reports

(1) *Review Board.* There shall be a nine-member Review Board which shall be appointed by the court. Appointments shall be for a term of three years or until a successor is appointed. Appointments to the Review Board shall be staggered, so that the terms of three members are scheduled to expire each year. No member shall be appointed for more than three consecutive three-year terms. One member shall be designated by the court as chairperson and one member may be designated by the court as vice-chairperson. The Review Board shall function in panels of three, presided over by the most senior member of the panel. The concurrence of two members of a panel shall be necessary to a decision.

(2) *Exceptions; Agreed Matters.* Reports of the Hearing Board shall be docketed with the Review Board upon the filing of a notice of exceptions by either party. The respondent or the Administrator may file exceptions to the report of the Hearing Board with the Review Board within 21 days of the filing of the report in the Commission. If neither the respondent nor the Administrator files a notice of exceptions to the Hearing Board report, and the report recommends action by the court, the clerk of the Attorney Registration and Disciplinary Commission shall submit the report of the Hearing Board to the court as an agreed matter. Upon the submission of any matter as an agreed matter, the clerk of the Commission shall give notice to the parties of that submission. Within 21 days after submission of the report to the court, the Administrator shall file a motion to approve and confirm the report of the Hearing Board. No response to this motion shall be filed unless ordered by the court on its own motion or pursuant to a motion for leave to respond. Upon receipt of the motion to

approve and confirm, the court may enter a final order as recommended by the Hearing Board or as otherwise determined by the court, order briefs or oral argument or both, or remand the matter with directions to the Hearing Board or the Review Board.

(3) *Action by the Review Board.* The Review Board may approve the findings of the Hearing Board, may reject or modify such findings as it determines are against the manifest weight of the evidence, may make such additional findings as are established by clear and convincing evidence, may approve, reject or modify the recommendations, may remand the proceeding for further action or may dismiss the proceeding. The Review Board may order that it will administer a reprimand to the respondent in lieu of recommending disciplinary action by the court. A copy of the report or order of the Review Board shall be served on the respondent and the Administrator.

(4) *Correcting a Review Board Report.* Either party may file a motion to correct the report of the Review Board, in order to correct any material mistake in the report, such as inaccurate citations to the record, statutes, rules, cases, or facts. A mistake is material if it is factually and indisputably incorrect, and constitutes an error that is significant enough that it has the capacity to influence the decision-making process or the ultimate outcome of the proceeding. The parties may not relitigate the issues on appeal or move for reconsideration in the motion.

The motion shall not exceed three pages in length and shall be filed with the Review Board within seven days of the filing of the report in the Commission. Any response to the motion shall be due within three days and shall not exceed three pages in length. If an order is entered allowing the motion, a corrected report will be filed, and a copy will be served on the respondent and the Administrator. If a motion to correct the report of the Review Board is filed, the time to file any Petition for Leave to File Exceptions shall be tolled until 35 days after the Review Board's filing of the corrected report in the Commission, or the denial of the motion to correct the report, consistent with Rule 753(e)(1). Motions to correct the Review Board report are not favored and will be allowed only in the most compelling circumstances.

Arguments concerning alleged mistakes in the Review Board report that are not identified in a motion to correct shall be forfeited and shall not be raised in a petition for leave to file exceptions or other briefs relating to the petition. The Review Board, on its own motion, may file a corrected report if it becomes aware of a mistake in the report after a Petition for Leave to File Exceptions has been filed. Any party may file, within five days after the corrected report has been filed, a motion with the Supreme Court seeking leave to respond to the corrected report.

(e) Review of Review Board Reports

(1) *Petition for Leave to File Exceptions.* Reports or orders of the Review Board shall be reviewed by the court only upon leave granted by the court or upon the court's own motion. Either party may petition the court for leave to file exceptions to the order or report of the Review Board. The petition shall be filed within 35 days of the filing of the order or report in the Commission. The supreme court, or a justice thereof, on motion supported by affidavit or verification by certification under section 1-109 of the Code of Civil Procedure may extend

the time for petitioning for leave to file exceptions, but such motions are not favored and will be allowed only in the most extreme and compelling circumstances. (See Rule 361.)

(2) *Grounds for Petition for Leave to File Exceptions.* Whether a petition for leave to file exceptions will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered; the general importance of the question presented; the existence of a conflict between the report of the Review Board and prior decisions of the court; and the existence of a substantial disparity between the discipline recommended and discipline imposed in similar cases.

(3) *Contents of Petition for Leave to File Exceptions.* The petition for leave to file exceptions shall contain, in the following order:

- (a) a request for leave to file exceptions;
- (b) a statement of the date upon which the report of the Review Board was filed;
- (c) a statement of the points relied upon for rejection of the report of the Review Board;
- (d) a fair and accurate statement of the facts, which shall contain the facts necessary to an understanding of the case, without argument or comment, with appropriate references to the record by transcript page and exhibit number;
- (e) a short argument (including appropriate authorities) stating why review by the supreme court is warranted and why the decision of the Review Board should be rejected; and
- (f) a copy of the reports of the Hearing and Review Boards and proposed exceptions shall be appended to the petition. The petition shall otherwise be prepared, served, and filed in accordance with requirements for briefs as set forth in Rule 341.

(4) *Answer.* The opposing party need not but may file an answer, with proof of service, within 14 days after the expiration of the time for the filing of the petition. The supreme court, or a justice thereof, on motion supported by affidavit or verification by certification under section 1-109 of the Code of Civil Procedure may extend the time for filing an answer, but such motions are not favored and will be allowed only in the most extreme and compelling circumstances. (See Rule 361.) An answer shall set forth reasons why the petition should not be granted, and shall conform, to the extent appropriate, to the form specified in this rule for the petition, omitting the first four items set forth in paragraph (3) except to the extent that correction of the petition is considered necessary. The answer shall otherwise be prepared, served, and filed in accordance with the requirements for briefs as set forth in Rule 341. No reply to the answer shall be filed.

(5) *Ruling on Petition.*

- (a) If the court allows exceptions to an order or report of the Review Board, it may:
 - (i) enter a final order as recommended by the Review Board or as otherwise determined by the court;

(ii) enter an order remanding the matter with directions to the Hearing Board or the Review Board; or

(iii) accept the matter for further consideration.

If the case is accepted for further consideration, the clerk of the Attorney Registration and Disciplinary Commission shall transmit the record of the case to the court. Either party may assert error in any ruling, action, conclusion or recommendation of the Review Board without regard to whether the party filed exceptions. The petition for leave to file exceptions allowed by the court shall stand as the brief of the appellant. Remaining briefs shall be prepared, filed, and served in compliance with Rules 341 and 343. The parties shall not be entitled to oral argument before the court as of right. Oral argument may be requested in accordance with Rule 352.

(b) If the court denies leave to file exceptions, it may:

(i) enter a final order as recommended by the Review Board or as otherwise determined by the court; or

(ii) enter an order remanding the matter with directions to the Hearing Board or the Review Board.

(6) *Agreed Matters.* If a petition for leave to file exceptions is not timely filed and if the report of the Review Board recommends action by the court, the clerk of the Attorney Registration and Disciplinary Commission shall submit the report of the Review Board together with a copy of the report of the Hearing Board to the court as an agreed matter. Upon the submission of any matter as an agreed matter, the clerk of the Commission shall give notice to the parties of that submission. Within 21 days after submission of the report to the court, the Administrator shall file a motion to approve and confirm the report of the Review Board. No response to this motion shall be filed unless ordered by the court on its own motion or pursuant to a motion for leave to respond. Upon receipt of the motion to approve and confirm, the court may enter a final order of discipline as recommended or as otherwise determined by the court, order briefs or oral argument or both, or remand the matter with directions to the Hearing Board or the Review Board.

(7) *Finality of Review Board Decision.* If exceptions are not filed and the order or report of the Review Board does not recommend disciplinary action by the court, the order or report of the Review Board shall be final.

(f) Duty of Respondent or Petitioner. It shall be the duty of the respondent or petitioner who is the subject of any investigation or proceeding contemplated by these rules to appear at any hearing at which his presence is required or requested. Failure to comply, without good cause shown, may be considered as a separate ground for the imposition of discipline or denial of a petition.

Comment

Paragraph (d) is added to allow the parties to file a motion with the Review Board, following the issuance of a Review Board Report (“Report”), to correct any material mistakes in the Report such as inaccurate citations to the record, rules, cases, or facts, and to allow the Review Board, on its own motion, to file a corrected report to correct any material mistakes. As set forth in Paragraph (d), a mistake is material if it is factually and indisputably incorrect, and constitutes an error that is significant enough that it has the capacity to influence the decision-making process or the ultimate outcome of the proceeding. Motions filed pursuant to Paragraph (d), shall not relitigate the issues on appeal, or include arguments requesting reconsideration, a rehearing, a remand, or dismissal.

Examples of material mistakes include the following: The Report included an incorrect case citation, or misstated the holding of a case, or the sanction imposed; the Report misstated the record concerning a ruling by the Chairperson of the Hearing Board Panel, such as stating that a motion had been granted, when it had been denied, or stating that an exhibit had been admitted, when it had not been admitted; the Report misstated a finding by the Hearing Board, such as stating that the Hearing Board found the respondent had engaged in all of the charged misconduct, when, in fact, the Hearing Board found that the respondent had engaged in some, but not all, of the charged misconduct; the Report misstated a fact, such as stating that the respondent was admitted to practice in 1990, when the respondent was actually admitted in 1980; or the Report failed to address a portion of the Hearing Board’s sanction recommendation that was challenged on appeal, such as the Hearing Board’s recommendation concerning the payment of restitution.