



March 22, 2023

Via electronic mail to: RulesCommittee@illinoiscourts.gov

Illinois Supreme Court Rules Committee
222 N. LaSalle St., 13th Floor
Chicago, IL 60601

Re: Proposal 22-10 (P.R. 0313);
Amends, *Inter Alia*, Supreme
Court Rule 761 (Conviction of a
Crime)

To the Honorable Illinois Supreme Court Rules Committee:

My name is Jonathan M. Brayman and I am a partner in the Chicago law firm of Breen & Pugh, a litigation firm focusing primarily in the areas of criminal defense, civil rights, and professional disciplinary proceedings. I currently serve as President of the Illinois Association of Criminal Defense Lawyers (“IACDL”) and on the Board of Directors for the National Association of Criminal Defense Lawyers (“NACDL”).

I write to you on a subject of deep concern to IACDL: the proposed drastic expansion of the term “conviction” and the attendant self-reporting requirements for attorneys who sustain criminal “convictions,” which the Illinois Attorney Registration and Disciplinary Commission (ARDC) puts forward in Proposal 22-10 (P.R. 0313).

If adopted, Proposal 22-10 (P.R. 0313) would amend Illinois Supreme Court Rule 761 to affirmatively require attorneys to self-report not only felony and misdemeanor *convictions*, but also dispositions that are categorically *not* criminal convictions under state law. Proposal 22-10 (P.R. 0313) seeks to expand the scope of Illinois Supreme Court Rule 761 and define, for the purposes of Rule 761, “a conviction” as “any disposition including a finding of guilty, an order of court supervision or a deferred judgment.” At its essence, Proposal 22-10 (P.R. 0313) improperly and unfairly

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conflates adverse adjudications of guilt (*i.e.*, criminal “convictions”) with dispositions that may be inconsistent with criminal liability or guilt.

For example, court supervision, if successfully completed, by its very nature under state law, is not a criminal conviction. *See* 730 ILCS 5/5-6-3.1(f) (emphasis added) (“Discharge and dismissal upon a successful conclusion of a disposition of supervision shall be deemed ***without adjudication of guilt*** and shall ***not be termed a conviction*** for purposes of disqualification or disabilities imposed by law upon conviction of a crime.”) Additionally, the term “deferred judgment,” as used in Proposal 22-10 (P.R. 0313), is extremely vague. Moreover, if the relevant court never in fact enters a *judgment of conviction* in the matter, there is no criminal “conviction” ever entered and no adverse inference can be imputed to the attorney.

The adoption of Proposal 22-10 (P.R. 0313) would place unfair burdens upon Illinois attorneys based upon allegations that are ultimately not substantiated in court or not pursued because they lack merit. If implemented, it is easy to envision a scenario where an Illinois attorney is cited for a relatively minor misdemeanor offense, such as speeding, trespassing, or disorderly conduct resulting from participation in a public protest, which results in a “deferred judgment” and an ultimate dismissal of the misdemeanor charge. This is relatively commonplace in the criminal legal system. For example, the prosecuting attorney may propose that, if the attorney remains arrest-free for 6 months, they will dismiss the case; or that, after reviewing the case, the prosecuting attorney believes that substance abuse treatment is a more equitable resolution than seeking to prosecute a relatively minor misdemeanor charge; or, that if the attorney performs some amount of public or community service, the case will be dismissed.

In all of these scenarios, the attorney, despite the Court entering no adverse finding or adjudication against them, would have an affirmative duty to report the matter to the ARDC and be referred to the Inquiry Board. That scenario is deeply unfair to Illinois attorneys and inconsistent with state law pertaining to court supervision and “deferred judgments.”

For all of these reasons, ***we urge you to decline adoption of Proposal 22-10 (P.R. 0313).***

Sincerely,

/s/ Jonathan M. Brayman
*President, Illinois Association of Criminal Defense
Lawyers (IACDL)*