



ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION

of the

SUPREME COURT OF ILLINOIS

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Chicago
November 29, 2022

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

RE: Proposed Amendments to Rules 761 and 763,
and other related rules

Dear Rules Committee,

Pursuant to Supreme Court Chief Justice Theis' direction, the Attorney Registration and Disciplinary Commission submits a proposal for the Rules Committee's consideration that would amend certain of the Illinois Supreme Court rules and of the Illinois Rules of Professional Conduct related to disciplinary cases resulting from a finding of guilt in a criminal case and related to reciprocal disciplinary matters. The proposed amendments, a redlined version of which is attached as Exhibit A, would:

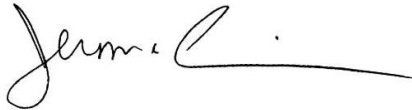
- 1) Clarify in which circumstances an attorney is required to report a conviction under Supreme Court Rule 761 (Conviction of Crime), and set forth certain procedures in that rule limiting the delay of proceedings before the Hearing Board;
- 2) Authorize the Administrator to file a petition for reciprocal discipline pursuant to Supreme Court Rule 763 (Reciprocal Discipline) based upon an order of discipline entered by a federal court, the United States Patent and Trademark Office (USPTO), the Board of Immigration Appeals (BIA), or the Executive Office for Immigration Review (EOIR);
- 3) Remove the provision of Supreme Court Rule 763 that prohibits the Administrator from bringing a reciprocal disciplinary action against an attorney who is not licensed in the other jurisdiction that imposed the original discipline;
- 4) Expand the applicability of Rule 763 and the reporting obligation to those attorneys who have been placed on disability inactive status in another jurisdiction, including a federal court or the above three agencies; and
- 5) Grant preclusive effect to another jurisdiction's findings in independent disciplinary proceedings brought under Supreme Court Rule 753.

A brief discussion of the rationale behind the proposed amendments follows. These proposed amendments are not an expansion of the Administrator's authority to take disciplinary action; rather, they are more of a modification or extension of existing practices, consistent with the Illinois Supreme Court's precedent, and informed by the experiences of disciplinary agencies in other jurisdictions.

After developing this proposal, the ARDC sought comments from attorneys who regularly represent lawyers in ARDC proceedings. While there was agreement with many aspects of the proposed amendments, there were also some objections, primarily focused on expanding the scope of reciprocal discipline to federal courts and the three agencies and giving preclusive effect to the other jurisdiction's findings in independent proceedings brought pursuant to Rule 753. After a discussion of the proposal and objections, the Commission unanimously voted to approve the proposed amendments for consideration by the Court.

The ARDC respectfully asks the Rules Committee to consider, and to recommend to the Court for adoption, this proposal, amending Supreme Court Rule 753 (Inquiry, Hearing and Review Boards), Rule 759 (Restoration to Active Status), Rule 761 (Conviction of Crime), and Rule 763 (Reciprocal Discipline), and amending Rule of Professional Conduct 8.3 (Reporting Professional Misconduct), as recommended in the proposal. Should the Rules Committee recommend that the Court adopt these amendments, the ARDC suggests that the amended rules become effective 30 days after their adoption.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. M. C.", with a long horizontal flourish extending to the right.

Administrator
The Attorney Registration and Disciplinary Commission
of the Supreme Court of Illinois

I. Revising Supreme Court Rule 761 to Clarify Reporting Duties and Procedures

Supreme Court Rule 761 requires Illinois attorneys who are “convicted in any court of a felony or misdemeanor to notify the Administrator of the conviction in writing within 30 days of the entry of the judgment of conviction.” In the past, there has been some question over whether an order of supervision or the entry of a deferred judgment is a “conviction” and therefore reportable to the Administrator. Proposed language to Rule 761(a) (Notification) would clarify that an attorney is required to report a criminal adjudication of guilt even when the sentence is an order of supervision or a deferred judgment. The amendments clarifying what constitutes a conviction are consistent with the Supreme Court’s precedent. Disciplinary case law has established that the purpose of criminal prosecution is different from the purpose of disciplinary law: the purpose of the former is to punish the wrongdoer, but the purpose of the latter is to determine whether an individual is a proper person to be permitted to practice law. Because it is the “conduct which gives rise to the need for discipline,” *In re Patt*, 81 Ill. 2d 447, 452 (1980), “the appropriate discipline of an attorney following a conviction will not be contingent upon the technicalities of the sentencing procedure.” *In re Vavrik*, 117 Ill. 2d 408, 414 (1987). Accordingly, a conviction that is later vacated and the charge dismissed pursuant to a statutory provision pertaining to probation does not preclude disciplining an attorney on basis of that conviction. *Patt*, 81 Ill. 2d at 452-453; *see also In re Rolley*, 121 Ill. 2d 222, 231-233 (1988) (Court rejecting respondent’s argument that termination of criminal charge by order of discharge and dismissal at the successful conclusion of a period of supervision was neither a judgment of conviction nor the basis for the imposition of discipline). In short, the amendments are consistent with the Court’s precedent.

Other proposed amendments to Rule 761 would modify or formally establish certain procedures related to delaying or commencing hearings. For instance, under current Rule 761(d)(2), if an attorney, who has been convicted of a crime involving fraud or moral turpitude, has appealed the conviction, the disciplinary hearing is “delayed until the completion of the appellate process unless the attorney requests otherwise.” In some cases, the appellate process may last for many years, possibly unduly delaying the hearing and final adjunction of the disciplinary matter. Thus, a proposed amendment to paragraph (d)(2) would allow the Administrator to proceed with a hearing if the attorney’s conviction is affirmed on direct appeal.

Further, a proposed amendment to paragraph (e) would require the hearing to “commence as soon as reasonably practical after the complaint is filed,” instead of the current requirement that a hearing be held within 60 days after the complaint has been filed. The ARDC does not anticipate any undue delay as a result of this proposed change.

II. Extending the Definition of “Other Jurisdiction” to Federal Authorities

Current Supreme Court Rule 763 does not apply to attorneys who are disciplined by federal courts or agencies. Proposed amendments to that Rule would, therefore, permit the Administrator to bring a reciprocal matter before the Supreme Court when a federal court (or its executive committee), the United States Patent and Trademark Office, the Board of Immigration Appeals, or the Executive Office for Immigration Review, disciplines a member of its bar or disciplines a member of the Illinois bar who may not be licensed or authorized to practice before that federal court or agency.

Expanding the definition of “other jurisdiction” to include federal courts and the three federal agencies would limit inconsistent outcomes between Illinois and the jurisdiction imposing original discipline. It would also avoid unnecessary delay and expense in re-litigating cases decided in another forum, as well as circumstances that draw significantly on Commission resources and diminish public confidence in the profession.

For instance, attorney Mark A. Hamill was excluded from the practice of patent, trademark, and non-patent law before the USPTO in December 2019, without eligibility to file reinstatement until at least five years from the effective date of his exclusion. The USPTO matter proceeded as a default proceeding, as Mr. Hamill did not answer the USPTO’s complaint. Thereafter, the ARDC filed a disciplinary complaint against Mr. Hamill in March 2021. As with his USPTO matter, his Illinois disciplinary matter proceeded before the ARDC’s Hearing Board as a default proceeding, because Mr. Hamill did not answer the disciplinary complaint or appear at the hearing. *In re Hamill*, 2021PR00016 (Hearing Bd., Oct. 25, 2021), *approved and confirmed*, No. M.R. 31064 (Jan. 20, 2022). The Illinois Supreme Court eventually suspended Mr. Hamill for three years and until further order of the Court and until he makes restitution to a client. Had Rule 763 permitted the Administrator to seek reciprocal discipline based on the USPTO’s discipline, the ARDC would likely not have needed to spend additional time and resources attempting to serve Mr. Hamill with the disciplinary complaint and holding a default hearing.

Also, in *In re Gibbons*, 2019PR00081, *petition to impose reciprocal discipline allowed*, No. M.R. 30042 (Nov. 19, 2019), the USPTO suspended the attorney from practicing before the agency on April 29, 2016. Thereafter, on July 10, 2017, the Supreme Judicial Court for the Commonwealth of Massachusetts entered an ordering suspending the attorney from the practice of law in Massachusetts for 18 months, retroactive to April 29, 2016. Thereafter, on September 18, 2019, the ARDC filed its Rule 763 petition with the Illinois Supreme Court. On November 19, 2019, more than three years after the USPTO had disciplined Mr. Gibbons, the Court allowed the petition, imposed reciprocal discipline, and suspended him for 18 months and until his reinstatement in Massachusetts. *See also In re Bracamonte*, 2021PR00001, *petition to impose reciprocal discipline allowed*, No. M.R. 30646 (March 16, 2021) (respondent suspended in Arizona based on his suspension before Immigration Courts, Board of Immigration of Appeals and Department of Homeland Security, and Administrator filed petition to impose discipline on consent with Illinois Supreme Court based upon Arizona’s discipline); *In re Husain*, 2017PR00125, *petition to impose discipline on consent allowed*, No. M.R. 30262 (March 13, 2020) (respondent, who was permanently suspended from the United States Bankruptcy Court for the Northern District of Illinois for systematically altering documents, reusing debtors’ signatures, signing documents on behalf of his clients, and causing clients to sign incomplete or inaccurate documents, and who engaged in additional conduct not part of Bankruptcy Court’s proceedings, consented to a one-year suspension).

Moreover, expanding the definition of “other jurisdiction” would avoid the need for testimony from witnesses who have already spent time and resources addressing and reporting a respondent’s conduct to the appropriate federal disciplinary body. *See e.g., In re Craddock*, 2017PR00115 (Hearing Bd., Oct. 22, 2019), *approved and confirmed*, No. M.R. 30266 (March 13, 2020) (Executive Committee for the Northern District of Illinois suspended respondent from the General Bar for 12 months in January 2017, for directing insults to his opposing counsel on two separate occasions, and at Illinois disciplinary hearing on Administrator’s two-count complaint,

opposing counsel testified as to the first count how respondent's conduct affected her, despite already having spent time and resources by reporting it to the Executive Committee).

Similarly, expanding the definition of "other jurisdiction" is consistent with the approaches of other states. Thirty-six jurisdictions¹ apply their reciprocal discipline rules to a federal court, of which nine apply their rule to bankruptcy courts and four apply their rule to the United States Tax Court. Additionally, 14 jurisdictions can bring a reciprocal discipline action based upon an order entered by the USPTO, and seven jurisdictions can bring such an action based upon an order by the BIA or EOIR. The rules in nine other jurisdictions appear to be quite broad and could apply to those agencies.

III. Removing the Requirement that the Attorney Be Licensed In the Other Jurisdiction

Current Rule 763 also prohibits the Administrator from bringing a reciprocal action against an attorney who is not licensed in both Illinois and the other jurisdiction. An amendment to Rule 763 would, therefore, remove language in that rule that requires the attorney to be licensed in the other jurisdiction. This amendment would conform Rule 763 to the current practice of disciplining lawyers who are not licensed in the state in which they engaged in misconduct, much like the Court has done.

IV. Permitting Reciprocal Disability Inactive Status

Other amendments to Rule 763 would provide for a form of reciprocal transfer to disability inactive status, which is also consistent with what other states are currently doing, such as Massachusetts, Pennsylvania, North Carolina, and Washington. Proceedings and records relating to transfers to and from disability inactive status are typically confidential, except for the orders of transfer. Thus, proposed language to Rule 763 would, in effect, only require a final order in the other jurisdiction transferring the attorney to, or placing the attorney on, disability inactive status. Related amendments to Rule of Professional Conduct 8.3 and to Rule 759 would require attorneys to report to the Administrator their transfer to disability inactive status in the other jurisdiction and would permit those attorneys to file for restoration to active status, respectively.

V. Affording Preclusive Effect to Another Jurisdiction's Findings in Rule 753 Proceedings

Finally, in the event that the Supreme Court does not impose a reciprocal disposition and the Administrator brings charges before the Hearing Board, proposed changes to Rule 753 would grant preclusive effect to the other jurisdiction's findings of misconduct in independent discipline proceedings brought pursuant to that rule, absent an adverse ruling from the Hearing Board. In effect, the proposed changes to Rule 753 would give full faith and credit to the disciplinary orders entered by the other jurisdiction.

¹ Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, Virginia, Washington, West Virginia, and Wisconsin.

This approach is consistent with the Supreme Court's precedent, including *In re Owens*, 125 Ill. 2d 390 (1988), and with the procedures of other states, such as Massachusetts. The Court has already accorded preclusive effect to findings made in other state discipline proceedings and in criminal proceedings. In the *Owens* case, though, the Court elected not to extend this preclusive effect to findings in civil proceedings, because, when the issue is a monetary sanction in a civil proceeding, respondent-attorneys are not likely to have a significant reason to contest the monetary judgment or to recognize the risk to their licenses. In contrast to *Owens*, the proposal deals with discipline matters before other states, federal courts, the USPTO, the BIA, and the EOIR. Additionally, the proposal recognizes the Court's responsibility in determining what conduct is disciplinable and in determining the severity of discipline in a particular case. The amendments to Rule 753, therefore, would still permit the Court to have the final say in terms of an attorney's level of sanction. Accordingly, the proposal is not inconsistent with the *Owens* case.

This approach would avoid the potential for inconsistent findings between jurisdictions and the potential lack of sufficient evidence to establish misconduct. For instance, in the case of *In re Messina*, 2014PR00002 (Review Bd., Sept. 23, 2016), *petitions for leave to file exceptions allowed and suspension increased*, No. M.R. 28368 (Jan. 13, 2017), the Administrator alleged that the attorney filed frivolous pleadings in federal court. In relevant part, the Seventh Circuit determined that the attorney's appeal from a district court ruling was frivolous, and it had stricken him from the roll of attorneys admitted to practice before that Court. However, the Hearing Board determined that the court's ruling was not binding on the Board. The Board then engaged in its own analysis of the appeal. The Board "sifted through the many extraneous pages in Respondent's briefs that discussed the [the underlying] litigation in order to find Respondent's actual arguments for overturning" the lower court's ruling, and it "took into account Respondent's testimony about why he believed he had a good-faith basis for his appeals." The Hearing Board concluded that the attorney's appeal was not frivolous. On review, the Review Board rejected the ARDC's challenge to the Hearing Board's finding. Had the federal court's decisions been given preclusive effect, the issue before the Hearing Board likely would have been only the level of sanction for the attorney's misconduct.

Notably, the proposed amendments to Rule 753 would afford attorneys a full and fair opportunity to respond. New Rule 753(c)(7) would provide attorneys with the right and opportunity to participate in the hearing and to present evidence challenging the other jurisdiction's order, by addressing: (1) whether or not the order of the other jurisdiction was entered; (2) whether it applies to the attorney; (3) whether it remains in full force and effect; or (4) whether the procedure in the other jurisdiction resulting in the order was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process of law. Moreover, even if the other jurisdiction's findings are afforded preclusive effect, an attorney would have the opportunity to present evidence on the level of sanction, in the same manner as in proceedings brought under Rule 761 (Conviction of Crime).

Exhibit A

Rule 761. Conviction of Crime

(a) Notification. It is the duty of an attorney admitted in this State who is convicted in any court of a felony or misdemeanor to notify the Administrator in writing within 30 days of the ~~entry of the judgment of~~ conviction. For purposes of this rule, a conviction is any disposition including a finding of guilty, an order of court supervision or a deferred judgment. The notification is required:

- (1) whether the conviction results from a plea of guilty or of *nolo contendere* or from a judgment after trial; and
- (2) regardless of the pendency of an appeal or other post-conviction proceeding.

(b) Conviction of Crime Involving Moral Turpitude. If an attorney is convicted of a crime involving fraud or moral turpitude, the Administrator shall file a petition with the court alleging the fact of such conviction and praying that the attorney be suspended from the practice of law until further order of the court. A certified copy of the judgment of conviction shall be attached to the petition and shall be *prima facie* evidence of the fact that the attorney was convicted of the crime charged.

(1) The petition shall be served upon the attorney in any manner in which service of process is authorized by Rule 765(a).

(2) Upon receipt of the petition the court shall issue a rule to show cause why the attorney should not be suspended from the practice of law until the further order of the court. The Administrator shall serve the rule upon the attorney:

- (i) by personal service;
- (ii) by any manner agreed upon by the parties;
- (iii) if, on due inquiry, the attorney cannot be found or is concealed so that the rule to show cause cannot be served upon him or her, by ordinary mail, postage fully prepaid, directed to the attorney (A) at the address listed on the Master Roll, as defined in Rule 756(b), and to any other last known business or residence address or, (B) if the attorney is not listed on the Master Roll, at any address last designated by the attorney on the Master Roll or in the equivalent of the Master Roll in any jurisdiction, as defined in Rule 763, in which the attorney is or was licensed to practice law, and at his or her last known business or residence address. The Administrator's certificate of mailing or delivery is sufficient proof of service; or
- (iv) by the attorney or counsel for the attorney filing with the court a statement accepting service of the rule to show cause, in which case no proof of service shall be required.

(3) After consideration of the petition and the answer to the rule to show cause, the court may enter an order, effective immediately, suspending the attorney from the practice of law until the further order of the court.

(c) Conviction of Crime Not Involving Moral Turpitude. If an attorney is convicted of a crime that does not involve fraud or moral turpitude, the Administrator shall refer the matter to the Inquiry Board.

(d) Hearing. Where an attorney has been convicted of a crime involving fraud or moral

turpitude, or where the Inquiry Board has authorized a complaint pursuant to section (c) above, a hearing shall be conducted before the Hearing Board to determine whether the crime warrants discipline, and, if so, the extent thereof.

(1) If the attorney has not appealed from the conviction, the Administrator shall file a complaint with the Hearing Board alleging the fact of the conviction.

(2) If the attorney has appealed from the conviction, the hearing shall be delayed until completion of the ~~appellate process~~ direct appeal process unless the attorney requests otherwise. If after the completion of the appellate process For purposes of this rule, the direct appeal process is the first appeal from the conviction and if sought, the denial of leave to appeal from the affirmance of the first appeal. If the conviction has not been reversed, the attorney shall notify the Administrator within 30 days of the mandate being filed in the trial court that the conviction was affirmed. Upon becoming aware that the conviction has been affirmed, the Administrator shall file a complaint with the Hearing Board as described in (1) above.

(e) Time of Hearing. Hearings pursuant to this rule shall commence ~~within 60 days~~ as soon as reasonably practical after the complaint is filed.

(f) Proof of Conviction. In any hearing conducted pursuant to this rule, proof of conviction is conclusive of the attorney's guilt of the crime.

(g) Hearing and Review Procedure. The hearing and review procedure shall be the same as provided in Rule 753 for disciplinary cases.

Rule 763. Reciprocal ~~Disciplinary Action and Disability Inactive Status~~

~~(a)~~ If an attorney licensed to practice law in Illinois ~~and another jurisdiction is disciplined in the other jurisdiction has been~~

(1) Disciplined (including resignation in lieu of discipline or the equivalent) in another jurisdiction, the attorney may be subjected to the same or comparable discipline in Illinois, upon proof of the order of the other jurisdiction imposing the discipline; or

(2) Transferred to disability inactive status in another jurisdiction, the attorney may be transferred to disability inactive status until further order of the court in Illinois, upon proof of the order of the other jurisdiction imposing disability inactive status.

~~(b)~~ For purposes of this rule;

(1) “other jurisdiction” is defined as the District of Columbia; a country other than the United States; a state, province, territory, or commonwealth of the United States or another country; or a federal court or federal agency;

(2) “federal court” is defined as the Supreme Court of the United States, the United States District Courts and Circuit Courts of Appeal, the United States Bankruptcy Courts, or the United States Tax Court; and

(3) “federal agency” is defined as the United States Patent and Trademark Office, the Board of Immigration Appeals, or the Executive Office of Immigration Review.

~~(b)(c)~~ The Administrator shall initiate proceedings under this rule by filing a petition with the court, to which a certified copy of the order of the other jurisdiction is attached. The Administrator shall serve the petition upon the attorney in any manner in which service of process is authorized by Rule 765(a).

~~(e)(d)~~ Within 21 days after service of a copy of the petition upon him the attorney may request in writing a hearing on the petition. If the court allows the request for a hearing, the hearing shall be held before the Hearing Board no less than 14 days after notice thereof is given to the attorney respondent and the Administrator. At the hearing the attorney may be heard only on the issues as to (1) whether or not the order of the other jurisdiction was entered; (2) whether it applies to the attorney; (3) whether it remains in full force and effect; (4) whether the procedure in the other jurisdiction resulting in the order was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process of law; and (5) whether the conduct of the attorney warrants substantially less discipline in Illinois or the reason for the original transfer to disability inactive status no longer exists.

~~(d)(e)~~ If an attorney is suspended until further order of the Court or disbarred in Illinois pursuant to this rule, reinstatement in Illinois shall be governed by the provisions of Rule 767. If an attorney is transferred to disability inactive status pursuant to this rule, restoration to active status in Illinois shall be governed by the provisions of Rule 759.

~~(e)~~(f) Nothing in this rule shall prohibit the institution of independent ~~disciplinary~~ proceedings in this State under Supreme Court Rule 753 or Supreme Court Rule 758 against any attorney based upon his the attorney's conduct or the reason for the original transfer to disability inactive status in another jurisdiction, ~~and,~~ in the event the Administrator elects to proceed independently, ~~any discipline imposed in this State shall not be limited to the discipline ordered by the other jurisdiction~~ any recommendation or order entered in this State shall not be limited by the order entered by the other jurisdiction.

Rule 759. Restoration to Active Status

(a) Petition. An attorney transferred to disability inactive status under the provisions of Rules 757, 758, [763](#) or, prior to November 1, 1999, pursuant to Rule 770 may file a petition with the court for restoration to active status. The petition must be accompanied by verification from the Director of MCLE that the attorney has complied with MCLE requirements as set forth in Rule 790 *et seq.* and verification from the Administrator that the attorney has reimbursed the Client Protection Program for all payments arising from petitioner's conduct pursuant to Rule 780(e). The petition shall be served on the Administrator, who shall have 21 days to answer the petition. If the Administrator consents or fails to file exceptions in the answer to the petition, the court may order that the petitioner be restored to active status without a hearing. If the Administrator excepts to the petition in the answer, the petition and answer shall be referred to the Hearing Board, which shall hear the matter.

(b) Hearing and Review Procedure. The hearing and review procedure shall be the same as provided in Rule 753 for disciplinary cases.

(c) Disposition. The court may impose reasonable conditions upon an attorney's restoration to active status as may be warranted by the circumstances. A restoration ordered under this rule shall be effective seven days after entry of the court's order allowing the petition provided that the petitioner produces to the Administrator within the seven days verification from the Director of MCLE that the attorney has complied with MCLE requirements as set forth in Rule 790 *et seq.*

(d) Resumption of Disciplinary Proceedings. If an attorney is restored to active status, disciplinary proceedings pending against the attorney may be resumed.

RULE 8.3: REPORTING PROFESSIONAL MISCONDUCT AND TRANSFER TO DISABILITY INACTIVE STATUS

(a) A lawyer who knows that another lawyer has committed a violation of Rule 8.4(b) or Rule 8.4(c) shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by the attorney-client privilege or by law or information gained by a lawyer or judge while participating in an approved lawyers' assistance program or an intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred.

(d) A lawyer who has been disciplined (including resignation in lieu of discipline or the equivalent) or transferred to disability inactive status as a result of ~~a lawyer disciplinary an~~ action brought before any body other than the Illinois Attorney Registration and Disciplinary Commission shall report that fact to the Commission.

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:

(i) the order of the other jurisdiction was not entered,

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

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

(iv) 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.

(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.

(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.