

M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered March 29, 2024.

(Deleted material is struck through, and new material is underscored.)

Effective April 1, 2024, Illinois Supreme Court Rules 753, 759, and 763 are amended, and Rule 8.3 of the Illinois Rules of Professional Conduct of 2010 is amended, as follows.

Amended Rule 753

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

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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.

(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.

Adopted January 25, 1973, effective February 1, 1973; amended effective May 17, 1973, April 1, 1974, and May 21, 1975; amended October 1, 1976, effective November 15, 1976; amended August 9, 1983, effective October 1, 1983; amended July 1, 1985, effective August 1, 1985; amended October 13, 1989, effective immediately; amended October 16, 1990, effective November 1, 1990; amended May 26, 1993, effective immediately, amended October 15, 1993, effective immediately; amended December 30, 1993, effective January 1, 1994; amended February 2, 1994, effective immediately; amended December 1, 1995, effective immediately; amended June 29, 2006, effective September 1, 2006; amended December 7, 2011, effective immediately; amended Mar. 18, 2016, eff. immediately; amended Mar. 29, 2024, eff. Apr. 1, 2024.

Amended Rule 759

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.

Adopted March 30, 1973, effective April 1, 1973; amended September 8, 1975, effective October 1, 1975; amended June 1, 1984, effective July 1, 1984; amended October 16, 1990, effective November 1, 1990; amended June 29, 1999, effective November 1, 1999; amended September 29, 2005, effective immediately; amended February 9, 2015, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended Mar. 29, 2024, eff. Apr. 1, 2024.

Amended Rule 763

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

(a) If an attorney licensed to practice law in Illinois has been

(1) Disciplined (including resignation in lieu of discipline or the equivalent) in another jurisdiction, and another jurisdiction is disciplined in the other 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;

(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, for final regulatory actions entered on or after April 1, 2024.

(c)(b) 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).

(d)(e) Within 21 days after service of a copy of the petition upon him the attorney may file a request for 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; (5) whether the procedure in the other jurisdiction resulting in the order was conducted pursuant to an investigative process comparable to the investigative process that would have been conducted in Illinois; and (6)~~(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.

~~(e)(d)~~ 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.

~~(f)(e)~~ Nothing in this rule shall prohibit the institution of independent disciplinary proceedings in this State under Rule 753 or Rule 758 against any attorney based upon 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 recommendation or order entered in this State shall not be limited by the order entered by the other jurisdiction. discipline imposed in this State shall not be limited to the discipline ordered by the other jurisdiction.

Adopted March 30, 1973, effective April 1, 1973; amended September 21, 1994, effective October 1, 1994; amended February 9, 2015, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended Dec. 28, 2017, eff. Feb. 1, 2018; amended Mar. 29, 2024, eff. Apr. 1, 2024.

Amended Rule 8.3

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.

Adopted July 1, 2009, effective January 1, 2010; amended Mar. 29, 2024, eff. Apr. 1, 2024.

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. See *In re Himmel*, 125 Ill. 2d 531 (1988). Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve disclosure of information protected by the attorney-client privilege or by law. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. A report should be made to the Illinois Attorney Registration and Disciplinary Commission unless some other agency is more appropriate in the circumstances. See *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214 (2000). Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question or to a lawyer consulted in a professional capacity by another lawyer on whether the inquiring lawyer has a duty to report a third party lawyer's professional misconduct. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers' or judges' assistance program or an approved intermediary program. In these circumstances, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment or assistance through such programs. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. See also Comment [19] to Rule 1.6.

[6] Rule 8.3(d) requires a lawyer to bring to the attention of the Illinois Attorney Registration and Disciplinary Commission any disciplinary sanction imposed by any other body against that lawyer. The Rule must be read in conjunction with Illinois Supreme Court Rule 763.

Adopted July 1, 2009, effective January 1, 2010.