

The Rules of Professional Conduct and Trends in Disciplinary Law

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Goals of the Presentation

- Functions and structure of the ARDC
- Illinois Rules of Professional Conduct 2010
- Careful review of Rule 1.13
- Trends in the legal profession

Brief History of the ARDC

- Created in 1973 following ABA Report and Recommendation
- Separate source of funding via Registration Fee so that the ARDC is part of the Judicial Branch and not the Legislature

Clark Report 1970

- Most jurisdictions had only volunteers and Bar Associations conducting investigations and prosecuting serious actions of misconduct.
- Disciplinary enforcement was practically non-existent in many jurisdictions.
- Disbarred attorneys were able to practice in another location.

Illinois Supreme Court Creates ARDC 1973

- The Illinois Supreme Court created a secure source of funding by requiring all attorneys to pay a registration fee.
- This allowed the Judiciary to remain independent of the funding from the State Legislature.

Current Features of ARDC

- 7 Commissioners who act as a deliberative body to make policy decisions and direct the actions of the Administrator
- The Commission is made up of 4 attorneys and 3 laypersons

Current Features of ARDC

- The Administrator is selected by the Commissioners.
- Commissioners review and evaluate the work of the Administrator.
- The current Administrator is Jerome Larkin and he has served in that capacity since 2007.

Current Features of ARDC

- ARDC maintains the Master Roll of attorneys licensed to practice law in Illinois.
- Website has a lawyer search function that easily identifies persons on the Master Roll.

Current Features of ARDC

- The key function of the ARDC is to investigate and prosecute allegations of professional misconduct by attorneys licensed to practice law in Illinois.
- The Administrator may initiate an Investigation from any source.

Current Features of ARDC

- The Administrator will docket an investigation, give the item a number and assign the matter to an attorney on staff.
- Counsel for the ARDC will evaluate the matter, and usually ask the attorney to respond to the charge.

Current Features of ARDC

- We normally send on the reply to the person who submitted the charge unless there is a concern about trial strategy or other reasons.
- Counsel will then determine whether a SDT or if additional information is needed.

Inquiry Board

- If the investigation reveal serious misconduct, the matter would be referred to the Inquiry Board.
- The Inquiry Board acts as a Grand Jury in the Disciplinary System. The Administrator may not bring a formal charge to the Hearing Board without action by the Inquiry Board.

Inquiry Board

- The Inquiry Board is made up of 2 attorneys and 1 layperson.
- They evaluate the investigation and determine if there was a violation of the IRPC that warrants a formal prosecution.

Hearing Board of the ARDC

- Once the Inquiry Board votes to pursue the matter, the item goes before the Hearing Board.
- The Hearing Board serves as a Trial Court of Original Jurisdiction.
- The Hearing Board presides over discovery disputes and schedules a hearing.

Hearing Board of the ARDC

- The Hearing Board is made up of 2 attorneys and 1 layperson.
- The Hearing Board presides over contested trials and most rule upon evidentiary objections.
- The Hearing Board then must issue a Report making findings of fact and law.

Review Board of the ARDC

- Either the Administrator or the Respondent-Attorney in the disciplinary matter may seek an appeal from the Hearing Board.
- The Review Board acts as an intermediary appellate court in the disciplinary system.

Review Board of the ARDC

- The Review Board is made up of attorneys only because the function is a technical one that involves the actions of an appellate court.
- The Review Board will schedule briefs and Oral Arguments and then issue a Report and Recommendation.

Review Board of the ARDC

- From that Report, either the Administrator or the Respondent-attorney may seek review by the IL Supreme Court.
- The Supreme Court has the final word on matters involving discipline.

2021 Annual Report-Investigations

- 3,836 grievances docketed against 3,027 lawyers representing 3% of all registered lawyers.
- 66% of grievances stem from a breakdown in attorney-client relations.
- 140 charges involved Workers Compensation matters -- about 4% of all investigations.

2021 Annual Report Alleged Misconduct- Investigations

- Neglect of a Client's Matter 33%
- Failure to Communicate 14%
- Billing and Fee Issues 10%
- Failure to Provide Competent Representation 9%

2021 Annual Report Alleged Misconduct- Investigations

Top four practice areas for charges

- Criminal Law 32%
- Domestic Relations 12%
- Tort 12%
- Real Estate 10%

2021 Annual Report-Hearing matters

- 37 Complaints filed before the Hearing Board.
- The top three areas were Criminal Conviction, Real Estate and Probate.
- 2 Hearings alleged violations arising out of Workers Compensation matters for about 5% of the matters filed before the Hearing Board

2021 Annual Report-Hearing matters

- 22% of formal disciplinary complaints involved a lawyer's criminal conduct or conviction.
- 50% of disciplinary cases before the Hearing Board were concluded by the filing of discipline on consent.

2021 Annual Report-Sanctions by Supreme Court

- 81 sanctions entered by the Illinois Supreme Court
- Disbarment - 23
- Suspension and Until Further Order -17
- Suspension for a Specified Period -13
- Suspension for a Specified Period & Conditions - 5

2021 Annual Report-Education

- A significant part of the ARDC's mission is the development of quality education programs.
- ARDC gives hundreds of speeches and continuing education to practicing attorneys.

2021 Annual Report-Education

- ARDC ON-DEMAND CLE WEBCASTS
- The ARDC offers 30 free, on-demand, MCLE-accredited webinars available 24/7 on the ARDC website.
- 23.75 hours of professional responsibility IL MCLE credit available.

2021 Annual Report-Education

- 80,041 CLE certificates issued in 2021, earning Illinois lawyers 58,771 hours of IL MCLE professional responsibility Credit.

2021 Annual Report-Education

- PUBLICATIONS
- Alerts, e-blasts, newsletters and articles on a wide range of legal ethics topics and emerging trends for publication including articles for the Illinois Supreme Court's monthly newsletter, Illinois Courts Connect, available on the ARDC website at www.iardc.org.
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Information from the Annual Report-Outreach

- ARDC WEBSITE
- 1.4 million visits to the ARDC website including the Lawyer Search function, which provides ready access to the public, the profession, and the judiciary to lawyers' credentials and contact information on the Master Roll.

2021 Annual Report-Remedial Action

- The ARDC advocates for restitution through our Client Protection Program and utilizes other remedial actions in disciplinary matters.
- Through its Probation Department, the ARDC seeks to address some of the causes of lawyer misconduct including lawyer impairment.

Client Protection Program

- The ARDC Client Protection Program reimburses clients who lost money as the result of the dishonest conduct of an Illinois lawyer who has been disciplined or is deceased.
- \$1,094,454 paid on 81 approved claims against 18 lawyers.

Client Protection Program

- 46 of approved claims involved the misconduct of one deceased lawyer;
- Tort, BK and Domestic Relations were the top three areas of CPP claims paid.

Probation Department

- The ARDC Probation Department monitors lawyers with conditions imposed as the result of discipline.
- Conditions monitored are substance abuse, mental illness impairments, law office management issues, and restitution.

Probation Department

- 165 lawyers were monitored in 2021 with conditions imposed as follows:
- 87 probations with monitored conditions such as substance abuse, mental illness impairments, law office management issues, and restitution.
- 42 suspension pending restitution.
- 15 diversion under Commission Rule 56.

Lawyers' Assistance Program Referrals

- The ARDC may make referrals to Lawyers' Assistance Program (LAP) per Rule 766 if the lawyer may be impaired by substance abuse or mental illness.
- 52 lawyers were referred to the LAP in 2021, accounting for 11% of LAP's referrals.

Receiverships

- In the event of a lawyer's death, disability or disappearance, the Court may appoint a Receiver to inventory the law firm files and fulfill the duties necessary to close the practice per Rule 776.
- The ARDC has aided the family, friends, and professional colleagues who have undertaken to close a lawyer's practice.

Receiverships

- In some instances, the ARDC will seek to be appointed receiver to take all actions necessary to close the law office.
- In 2021, the ARDC was appointed receiver of a lawyer's law practice in two matters and conducted 28 investigations to determine if a receivership was necessary.

Illinois Rules of Professional Conduct

- Patterned after ABA Model Rules
- 3 Parts:
 - . Preamble
 - . Scope
 - . Rules and Comments

Illinois Rules of Professional Conduct

- Preamble states that Rules provide a mechanism for an attorney to evaluate an Ethical issue.
- The Scope states the Rules set forth Mandatory Duties and Discretionary Acts.
- Formal Discipline will only follow after a careful review of Rules violated.

Applying the Rules

- 1. Review IRPC
- 2. Identify Rules involved
- 3. Review Rule carefully
- 4. Check Terminology Section for Definition
- 5. Review Committee Comments

RULE 1.13: ORGANIZATION AS CLIENT

- (a) A lawyer employed or retained by an organization **represents the organization acting through its duly authorized constituents.**
- (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization . . . **the lawyer shall proceed as is reasonably necessary in the best interest of the organization.**

RULE 1.13: ORGANIZATION AS CLIENT

- (c) Except as provided in paragraph (d), if despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, . . . **then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure.**

RULE 1.13: ORGANIZATION AS CLIENT

- (d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization **to investigate an alleged crime**, fraud or other violation of law, **or to defend the organization** or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged crime, fraud or other violation of law.

RULE 1.13: ORGANIZATION AS CLIENT

- (e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, **shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.**

Rule 1.13: Continued

- (f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, **a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.**

Rule 1.13: Continued

- (g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, **subject to the provisions of Rule 1.7.** (Conflict of Interest Rule.)

PMBR Proactive Management Based Regulation

- ▶ In January 2017, Illinois became the first State in the nation to implement a PMBR program based upon the Rule issued by the IL Sup Court.
- ▶ The Rule requires each lawyer who is engaged in the PRIVATE PRACTICE of law who does not have Malpractice Insurance to complete a self-assessment of the operation of the law practice.
- ▶ This Self-assessment shall consist of INTERACTIVE ONLINE educational program provided by the Administrator.

PMBR

- All information about the Self-Assessment shall be confidential except for the fact that the Attorney completed the program.
- Neither the Attorney nor the Administrator may offer info about the Self-Assessment into evidence in a disciplinary proceeding.

Final Thoughts

- There are Several Webinars on the WEBSITE that offer FREE MCLE.
- One webinar reviews the recordkeeping requirements of Rule 1.15 and has great information about how to maintain such records.

Final Thoughts

- The ARDC operates a Website that has a great deal of useful information such as FAQ and other features that you might find helpful.
- The *Illinois Rules of Professional Conduct of 2010* are available online with a TOPICAL INDEX and a search feature.
- The address is WWW.IARDC.ORG.