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Professional Responsibility

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Professional Responsibility

Michael J. Howlett and Patricia S. Spratt***

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I. INTRODUCTION

The Illinois Supreme Court has made clear that Illinois practitioners are obliged to be aware of, and abide by, the rules of professional ethics.¹ These rules, set out in the Code of Professional

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1. *In re Cheronis*, 114 Ill. 2d 527, 535, 502 N.E.2d 722, 726 (1986). The supreme court requires that an applicant for admission to the bar pass an examination on professional responsibility. ILL. S. CT. R. 701(a), ILL. REV. STAT. ch. 110A, para. 701(a) (1987). Nonetheless, "[s]ome attorneys say they are unsure about Illinois Supreme Court rules governing attorney behavior and discipline." Gill, *Rules, Ethics and The Real World*, Chi. Daily L. Bull., Mar. 24, 1989, at 1, col. 5. For the convenience of the bench,

Responsibility ("the Code" or "the Rules"),² "state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action."³ During the *Survey* year, the Illinois Supreme Court decided important cases involving attorneys whose conduct failed to meet that minimum level.⁴ This Article will trace the developments that arose from the twenty-four opinions⁵ of the Illinois Supreme Court relating to the conduct of twenty-six attorneys. Among the matters the court considered were failure of an attorney to report the misconduct of another attorney,⁶ an attorney's statement on his letterhead of trial board certification⁷, and the appropriate analysis when an attorney claims a gift or loan to a judge was a campaign contribution.⁸

II. SUBSTANTIVE DECISIONS

In order to discipline with predictability and fairness, the Illinois Supreme Court strives for uniformity of sanctions imposed on members of the bar.⁹ The cases that follow¹⁰ demonstrate the fac-

the bar, and the general public, the Attorney Registration and Disciplinary Commission ("ARDC" or "Commission") publishes a booklet that contains all the rules governing admission, registration, conduct, and attorney discipline, as well as judicial ethics. Copies may be obtained upon request from the Commission at either 203 North Wabash, Suite 1900, Chicago, Illinois 60601, (312) 346-0690, or One North Old Capitol Plaza, Springfield, Illinois 62701, (217) 522-6838.

2. CODE OF PROFESSIONAL RESPONSIBILITY Rules 1-101 to 9-102, ILL. REV. STAT. ch. 110A, CANONS 1-9 (1987). Members of the judiciary must abide by the Rules contained in the Code of Judicial Conduct. CODE OF JUDICIAL CONDUCT Rules 61-95, ILL. REV. STAT. ch. 110A, CANONS 1-7 (1987).

3. *Id.* (Preface to Committee Commentary (quoting ABA CODE OF PROFESSIONAL RESPONSIBILITY (1977))).

4. The Illinois Supreme Court has original jurisdiction over matters of attorney discipline. *In re Ettinger*, 128 Ill. 2d 351, 365, 538 N.E.2d 1152, 1158 (1989) (quoting *Ettinger v. Rolewick*, 140 Ill. App. 3d 295, 298, 488 N.E.2d 598, 601 (1986)). For an overview of the Illinois attorney registration and disciplinary process, and governing bodies, see Grogan & Gregory, *Professional Responsibility*, 20 LOY. U. CHI. L.J. 565, 566-67 (1989).

5. The number of opinions released by the supreme court does not reflect the number of attorney misconduct complaints filed. The ARDC is charged with investigating allegations of attorney misconduct and conducting appropriate disciplinary proceedings. ILL. S. CT. R. 751(a), ILL. REV. STAT. ch. 110A, para. 751(a) (1987). In 1988, for example, the ARDC docketed 4,945 investigations. 1988 ARDC ANN. REP. at 7. During this same time period, the Administrator of the ARDC closed 4,369 matters, the Inquiry Board closed 1,167, and complaints were voted in 214 matters. *Id.*

6. *See infra* notes 13-45 and accompanying text.

7. *See infra* notes 103-17 and accompanying text.

8. *See infra* notes 177-88 and accompanying text.

9. *In re Ettinger*, 128 Ill. 2d 351, 371, 538 N.E.2d 1152, 1161 (1989).

10. In each of the cases examined herein, the complaint charged the respondent with multiple violations of the Code. For convenience, they are organized under the principal charge that provoked the complaint.

tors the court considers to achieve this goal.

A. Canon 1

Canon 1 requires attorneys to maintain the integrity and competence of the legal profession.¹¹ The court decided five cases involving Rules under Canon 1. In one, the court for the first time sanctioned an attorney for failure to report the misconduct of another attorney.¹² In the others, the court addressed dishonest, fraudulent, or deceitful conduct of the subject attorney.

1. Duty to Report Misconduct of Another Attorney

The most important and controversial opinion of the court relating to attorney professional conduct during the *Survey* year was *In re Himmel*.¹³ Rule 1-103 of the Code of Professional Responsibility requires an attorney to disclose unprivileged information regarding another attorney's serious misconduct.¹⁴ Himmel was the first attorney in the United States sanctioned for failure to comply with this Rule's dictates.¹⁵

James Himmel, the respondent, represented a client who sought to recover from her former attorney, John Casey, \$23,233.34. On the client's behalf, Casey had received and negotiated a check in that amount for settling an earlier action.¹⁶ After investigating the

11. CODE OF PROFESSIONAL RESPONSIBILITY Rules 1-101 to 1-103, ILL. REV. STAT. ch. 110A, CANON 1 (1987).

12. *In re Himmel*, 125 Ill. 2d 531, 533 N.E.2d 790 (1988). See *infra* notes 13-45 and accompanying text.

13. 125 Ill. 2d 531, 533 N.E.2d 790 (1988).

14. Rule 1-103 states:

(a) A lawyer possessing unprivileged knowledge of a violation of Rule 1-102(a)(3) or (4) shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(b) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-103, ILL. REV. STAT. ch. 110A, CANON 1 (1987). Rule 1-102(a)(3) prohibits an attorney from engaging in illegal conduct involving moral turpitude. CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-102(a)(3), ILL. REV. STAT. ch. 110A, CANON 1 (1987). Rule 1-102(a)(4) prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. *Id.* at Rule 1-102(a)(4).

15. Petition for Rehearing at 1, *In re Himmel*, 125 Ill. 2d 531, 533 N.E.2d 790 (No. 65946) (1988).

16. *Himmel*, 125 Ill. 2d at 535, 533 N.E.2d at 791. For a detailed recitation of the facts and thorough discussion of the arguments presented in the case, see Mulroy & Dedinas, *Attorney's Duty to Report Misconduct After In re Himmel; or Stool Pigeons and Dead Ducks*, CBA RECORD, Nov. 1989, at 20.

matter, Himmel concluded that Casey misappropriated the client's funds.¹⁷ The client instructed Himmel to recover her money but specifically told him to take no other action.¹⁸ Initially, Himmel negotiated a settlement whereby Casey agreed to pay the client \$75,000 and in return the client agreed not to file a criminal, civil, or disciplinary complaint against Casey. Had Casey honored this agreement, Himmel would have received one-third of the settlement as his fee. Casey, however, never paid the settlement. Thus, Himmel filed a civil action and obtained a \$100,000 judgment against Casey.¹⁹ Ultimately Himmel recovered \$10,400 for the client and took no fee for himself.²⁰ In accordance with the client's instructions, Himmel did not report Casey's misconduct to the ARDC.²¹

The Administrator filed a complaint with the Hearing Board alleging that Himmel violated Rule 1-103 of the Code when he failed to disclose his unprivileged knowledge of Casey's misconduct.²² The Hearing Board found that Himmel violated the Rule but recommended only a private reprimand because Himmel had not been the subject of a complaint during his eleven years of practice and because he obtained a partial recovery for his client without taking a fee.²³ The Administrator filed exceptions with the Review Board²⁴ which recommended dismissal of the complaint against Himmel.²⁵ The supreme court granted the Administrator's peti-

17. *Himmel*, 125 Ill. 2d at 535, 533 N.E.2d at 791. During the course of the investigation, the client discussed the matter with Himmel on several occasions with her mother and fiancé present and consented to Himmel discussing the case with the insurance company for the defendant in the earlier action, its lawyer, and Casey. *Id.* at 542, 533 N.E.2d at 794.

18. *Id.* at 536, 533 N.E.2d at 792. Himmel advised the client of her option to report Casey to the ARDC, but she decided against that: "I figured, if I took away [Casey's] license to practice then he wouldn't make any money and then I, for sure, wouldn't get any money." Petition for Rehearing at 3, *In re Himmel*, 125 Ill. 2d 531, 533 N.E.2d 790 (No. 65946) (1988). In fact, before hiring Himmel, the client had requested a complaint form from the ARDC. According to the record, however, the client never revealed Casey's name, nor did she file the complaint with the ARDC. 125 Ill. 2d at 537-38, 533 N.E.2d at 792.

19. *Id.* at 536, 533 N.E.2d at 791.

20. *Id.* at 536-37, 533 N.E.2d at 792.

21. *Id.* at 535, 533 N.E.2d at 791. The ARDC discovered Himmel's failure to report Casey during an investigation of charges against Casey for misconduct toward another client. *Id.* at 536, 533 N.E.2d at 791. As a result of that investigation, Casey was disbarred on consent. *Id.*

22. *Id.* at 534, 533 N.E.2d at 790-91. For the text of Rule 1-103, see *supra* note 15.

23. *Himmel*, 125 Ill. 2d at 537, 533 N.E.2d at 792.

24. *Id.*

25. *Id.* at 537-38, 533 N.E.2d at 792. The Board reasoned that the complaint should be dismissed because the Commission was advised of Casey's misconduct when the client

tion for leave to file exceptions to the Review Board's recommendation.²⁶

Himmel argued that he did not violate the Code because the attorney-client privilege protected the information regarding Casey's misconduct from disclosure.²⁷ The Administrator countered that the information of Casey's misconduct did not fall within the court's definition of attorney-client privileged information.²⁸

Deciding the issues presented, the court noted that a client's complaint of attorney misconduct to the ARDC does not provide an attorney with a defense for failure to report the misconduct.²⁹ The court asserted that a client's action does not relieve an attorney of his duty under the Code; thus, the only relevant inquiry is whether the attorney violated the Code.³⁰ The court stated that if Himmel violated this Rule, discipline was warranted.³¹

In addressing Himmel's privilege argument, the court noted that communications between a client and an attorney are not privileged when made in the presence of third persons,³² or when the

went to the ARDC about Casey before she hired Himmel. *See supra* note 18 and accompanying text for a discussion of the ARDC's previous knowledge of Casey's conduct. Additionally, the Board noted that Himmel acted in accordance with his client's instructions. 125 Ill. 2d at 537-38, 533 N.E.2d at 792.

26. *Id.* at 535, 533 N.E.2d at 791.

27. *Id.* at 539, 533 N.E.2d at 793.

28. *Id.* (citing *People v. Adam*, 51 Ill. 2d 46, 48, 280 N.E.2d 205, 207, *cert. denied*, 409 U.S. 948 (1972)). In *Adam*, the court stated that

'(1) [w]here legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal advisor, (8) except the protection be waived.'

51 Ill. 2d at 48, 280 N.E.2d at 207 (quoting 8 J. WIGMORE, EVIDENCE § 2292 (McNaughton rev. ed. 1961)). For further discussion of the attorney-client privilege issue in *Himmel*, see Rotunda, *The Lawyer's Duty to Report Another Lawyer's Unethical Violations in the Wake of Himmel*, 1988 U. ILL. L. REV. (1988).

29. 125 Ill. 2d at 538, 533 N.E.2d at 792.

30. *Id.*

31. *Id.* at 540, 533 N.E.2d at 793-94 (citing *In re Anglin*, 122 Ill. 2d 531, 524 N.E.2d 550 (1988)). The attorney in *Anglin* was denied reinstatement to the bar for failure to name others involved in the misconduct for which he was disciplined. *Id.* The court made clear in *Anglin* that:

[u]nder Disciplinary Rule 1-103 a lawyer has the duty to report the misconduct of other lawyers. (107 Ill. 2d Rules 1-103, 1-102(a)(3), (a)(4).) Petitioner's belief in a code of silence indicates to us that he is not at present fully rehabilitated or fit to practice law. . . . [P]etitioner's past and present statements cause us to believe that he would fail to report the misconduct of other attorneys if he, too, were involved in it.

122 Ill. 2d at 539, 524 N.E.2d at 554-55.

32. *Himmel*, 125 Ill. 2d at 542, 533 N.E.2d at 794 (citing *People v. Williams*, 97 Ill. 2d 252, 295, 454 N.E.2d 220, 240 (1983), *cert. denied*, 466 U.S. 981 (1984)).

client intends the attorney to disclose the communications to third persons.³³ The court reasoned that the communications between Himmel and the client were not confidential, and thus not protected by the attorney-client privilege, because they were made in the presence of others and because the client authorized disclosure to others for purposes of settlement.³⁴ The court therefore concluded that Himmel violated Rule 1-103 when he failed to report this unprivileged information to the ARDC.³⁵

After determining that Himmel violated the Code, the court considered the proper discipline to impose. In mitigation, the court noted Himmel's eleven years of practice without a complaint and his efforts that resulted in recovering \$10,400 for his client, from which he received no fee.³⁶ It concluded, however, that these factors did not outweigh the seriousness of his misconduct³⁷ and suspended Himmel from the practice of law for one year.³⁸ The court later denied Himmel's petition for rehearing without comment.³⁹

33. *Id.* (citing *People v. Werhollick*, 45 Ill. 2d 459, 462, 259 N.E.2d 265, 266 (1970)).

34. *Id.* See *supra* note 17 and accompanying text (description of Himmel's discussion in the presence of others).

35. 125 Ill. 2d. at 545, 533 N.E.2d at 796. The court disagreed with the Review Board's conclusion that Himmel's conduct was not injurious to the bar, the public, or the administration of justice, surmising that, had Himmel filed a report, Casey might not have been able to injure other clients. *Id.* See also *supra* note 21 and accompanying text (discussion of Casey's conversion of another client's funds). Therefore, the court rejected the recommendations of both the Review and Hearing Boards. 125 Ill. 2d at 545, 533 N.E.2d at 796. In strong language, the court stated that by settling with Casey rather than reporting his misconduct, "both respondent and his client ran afoul of the Criminal Code's prohibition against compounding a crime." *Id.* The court referred to section 32-1 of the Criminal Code: "(a) A person compounds a crime when he receives or offers to another any consideration for a promise not to prosecute or aid in the prosecution of an offender." *Id.* (citing ILL. REV. STAT. ch. 38, para. 32-1 (1987)).

36. *Id.* at 546, 533 N.E.2d at 796.

37. *Id.*

38. *Id.*

39. *In re Himmel*, 125 Ill. 2d 531, 533 N.E.2d 790 (1988), *reh'g denied* (Jan. 30, 1989). In his petition for rehearing, Himmel argued that despite his duty under Canon 1 to report Casey's misconduct, he also had a duty under Canon 4 not to reveal information acquired during the course of his representation. Petition for Rehearing at 4, *In re Himmel*, 125 Ill. 2d 531, 533 N.E.2d 790 (No. 65946) (1988). According to Himmel, these two duties created a conflict of interest for him: "[I]t was in the client's interest not to report Casey and get the money, and in Himmel's interest (as now defined in the opinion) to report Casey and save his law practice." *Id.* Relying on *In re Corboy*, 124 Ill. 2d 29, 528 N.E.2d 694 (1988), Himmel argued that because he did not have the benefit of precedent, he should not have been sanctioned. Petition for Rehearing at 4-5. In *Corboy*, although the respondents violated the Code, the court did not impose sanctions because they acted without precedent to guide them. *Id.* See also *infra* notes 155-159 and accompanying text (*Corboy* discussed).

In light of its oft-stated intention to achieve consistency when imposing sanctions on

Thus the court reaffirmed its black letter rule that an attorney must report another attorney's misconduct *unless* the attorney learns of that misconduct during a privileged confidential communication with a client, as the court has defined privilege.⁴⁰ The court recently resolved any confusion generated by this opinion concerning what communications are privileged⁴¹ when it adopted

attorneys, the court's refusal to treat Himmel as it did the *Corboy* respondents provoked a controversy among members of the bar. See generally Gill, *Critics Attack Inconsistency of Court's Disciplinary Decisions*, Chi. Daily L. Bull., Mar. 22, 1989, at 1. Jeffrey Gilbert, President of the Chicago Council of Lawyers, stated "I don't understand why a lawyer would need precedent to know that giving or lending [money] to a judge is wrong[.] . . . I have difficulty understanding how Mr. Himmel was to have known so certainly that what he was doing was a violation and they [Corboy, et al.] didn't." *Id.* at 1, col. 3-4. In support of the *Himmel* decision, and responding to its critics, Robert Cummins, former head of the Illinois Judicial Inquiry Board, former ARDC Review Board Member, and co-chair of the American Bar Association's Joint Committee on Professional Sanctions, said "We have overreacted to the fact that the court has finally said if we're going to sustain self-regulation, we'd better be responsible in our reporting obligation. . . . It just proves that Greylord still hasn't taught the message. *Himmel* is one of the most positive things that has happened." *Id.* at 16, col. 4. See *infra* note 174 and accompanying text (further description of the "Greylord" era).

40. *Himmel*, 125 Ill. 2d 531, 533 N.E.2d 790. Before the *Himmel* opinion, the ARDC did not include reports by attorneys of attorney misconduct among the categories of Code violations for which it maintains records. Since *Himmel*, however, it has added this category. Preliminary figures for 1989 disclose the ARDC received 922 charges of attorney misconduct by attorneys. Telephone interview with James J. Grogan, Chief Counsel, Illinois Attorney Registration and Disciplinary Commission (Jan. 11, 1990). By comparison, the greatest number of charges received by the ARDC in 1988 in a single category was for neglect of a client matter, for which the ARDC received 1,178 charges. 1988 ARDC ANN. REP. at 7.

41. The court granted the Illinois State Bar Association ("ISBA") and the Illinois Attorneys for Criminal Justice ("IACJ") leave to file only briefs on the petition for rehearing. Both argued that *Himmel* would have a deleterious impact on the attorney-client privilege. The ISBA wrote that the "opinion's misanalysis of the confidentiality issue is a Pandora's box thrown open wide." Amicus Curiae Brief of the Illinois State Bar Association at 13, *In re Himmel*, 125 Ill. 2d 531, 533 N.E.2d 790 (No. 65946) (1988). It based this conclusion on three arguments. First, the court should have applied the ethical standard for the attorney-client privilege, which it argued is more appropriate to disciplinary proceedings, rather than the evidentiary standard applicable in criminal cases. *Id.* at 6-13. The substance of the ISBA's argument was that the evidentiary standard the court applied is too narrow because it protects only communications between an attorney and a client outside the presence of others. *Id.* at 9. Referring the court to the disciplinary rules under Canon 4, and ISBA and American Bar Association Ethical Opinions, the ISBA argued that under the ethical standard, an attorney may not reveal client "secrets," regardless of their nature, source, or whether others might share the information. *Id.* at 6. Next, it argued that failure to extend the privilege to communications made in the presence of a client's spouse or parents would deny a client an important source of advice or solace during meetings with the attorney. *Id.* at 10-11. Finally, the ISBA conjectured that an attorney in possession of unprivileged information acquired in anticipation of litigation might be subject to deposition by the opposition. *Id.* at 13-14.

The IACJ similarly argued that because family members frequently accompany prospective clients to the initial meeting with a lawyer for advice and support, the attorney-

the new Illinois Rules of Professional Conduct ("new Rules").⁴² Under new Rule 8.3,

(a) A lawyer possessing knowledge not otherwise protected as a confidence by these Rules or by law that another lawyer has committed a violation of Rule 8.4(a)(3) or (a)(4) shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.⁴³

The new Rules define "confidence" as "information protected by the lawyer-client privilege under applicable law."⁴⁴ Thus, in what might be viewed as reference to the issues raised by its decision in *Himmel*, the court made clear in its new Rules that only client confidences are protected from disclosure. It appears that the court chose not to include a client's secrets within the protection of the privilege. When viewed in light of the new Rules, therefore, the dictates of *Himmel* have become even less forgiving of an attorney's use of the attorney-client privilege as a defense for failure to report the misconduct of another attorney.⁴⁵

client privilege should include communications made in their presence. Amicus Curiae Brief of Illinois Attorneys for Criminal Justice at 2 (unnumbered), *In re Himmel*, 125 Ill. 2d 531, 533 N.E.2d 790 (No. 65946) (1988). Like the ISBA, the IACJ also argued that *Himmel* could be construed to allow discovery of an attorney, and concluded that "[a]ttorney-client confidentiality as presently conceived in this State, cannot survive adoption of the broad exception which the Opinion would create." *Id.* at 3-4.

42. See *infra* note 290 (new Rules discussed).

43. ILLINOIS RULES OF PROFESSIONAL CONDUCT, ILL. REV. STAT. ch. 110A, Rule 8.3(a) (effective Aug. 1, 1990), reprinted in Chi. Daily L. Bull., Feb. 14, 1990, at 4-6. Rule 8.4(a)(3) prohibits a lawyer from "commit[ing] a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." *Id.* at Rule 8.4(a)(3). Rule 8.4(a)(4) prohibits an attorney from "engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation." *Id.* at Rule 8.4(a)(4)." Compare CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-103, ILL. REV. STAT. ch. 110A, CANON 1 (1987), *supra* note 14.

44. ILLINOIS RULES OF PROFESSIONAL CONDUCT, ILL. REV. STAT. ch. 110A, Rule 8.3(a) (effective Aug. 1, 1990), reprinted in Chi. Daily L. Bull., Feb. 14, 1990, Terminology, at 4.

45. The new Rules go further than the Code they replace in what they require attorneys to report. In addition to requiring attorneys to report attorney misconduct, the new Rules also require attorneys to report conduct of judges that violates the Code of Judicial Conduct, and they require an attorney to report to the ARDC any disciplinary action taken before any other tribunal. ILLINOIS RULES OF PROFESSIONAL CONDUCT, ILL. REV. STAT. ch. 110A, Rules 8.3(b) & (c) (effective Aug. 1, 1990), reprinted in Chi. Daily L. Bull., Feb. 14, 1990, at 4-6. The court underscored the importance of these requirements in the Preamble to the Rules:

Lawyers also must assist in the policing of lawyer misconduct. The vigilance of the bar in preventing and, where required, reporting misconduct can be a formidable deterrent to such misconduct, and a key to maintaining public confidence in the integrity of the profession as a whole in the face of the egregious misconduct of a few.

Id. Preamble, at 4.

2. Duty to Refrain from Illegal, Deceitful or Dishonest Conduct

The court made clear during the *Survey* year that attorneys who violate Rule 1-102⁴⁶ will be disciplined. Pursuant to its goal of achieving consistency, in each of the cases that follow, the more serious the misconduct, the more severe the sanction the court imposed.

In *In re Stern*,⁴⁷ the court disciplined an attorney for his conduct as a litigant rather than as an advocate. Both the Hearing and Review Boards concluded that Stern had engaged in deceitful conduct⁴⁸ when he helped to prepare a misleading letter that he intended to use to his advantage, at a hearing, to which he was a party.⁴⁹ Although Stern did not use the letter at the hearing, the supreme court noted that deceitful conduct need not be successful to result in discipline.⁵⁰ Thus, the court ruled that Stern violated the Code.⁵¹ In determining the appropriate sanction, the court noted that, despite Stern's deceitful conduct in preparing for the hearing, he did not intend to perpetrate a fraud in court because he did not introduce the letter at the hearing.⁵² Thus, the court censured Stern.⁵³

46. Rule 1-102 states:

(a) A lawyer shall not

- (1) violate a disciplinary rule;
- (2) circumvent a disciplinary rule through actions of another;
- (3) engage in illegal conduct involving moral turpitude;
- (4) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; or
- (5) engage in conduct that is prejudicial to the administration of justice.

CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-102, ILL. REV. STAT. ch. 110A, CANON 1 (1987).

47. 124 Ill. 2d 310, 529 N.E.2d 562 (1988).

48. *Id.* at 311, 529 N.E.2d at 563. The Administrator's complaint charged Stern with a violation of Rule 1-102(a)(4) for engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation . . ." *Id.* See CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-102(a)(4), ILL. REV. STAT. ch. 110A, CANON 1 (1987).

49. *Stern*, 124 Ill. 2d at 315, 529 N.E.2d at 565. A court order in a marriage dissolution proceeding required Stern to carry health insurance for his former wife and their children. Stern allowed his initial insurance policy to lapse, mistakenly believing that a newly purchased policy was in force. In the meantime, his former wife submitted a claim to the first carrier, which was denied. She then petitioned the circuit court for a rule to show cause why Stern should not be held in contempt. In preparation for the hearing, Stern prepared a letter on the insurance agent's letterhead backdated to the date of purchase, showing that Stern had coverage. *Id.* at 312-13, 563 N.E.2d at 563-64.

50. *Id.*

51. *Id.* at 315, 529 N.E.2d at 565.

52. *Id.* at 316, 529 N.E.2d at 565.

53. *Id.*

The respondent in *In re Lunardi*,⁵⁴ was charged with violating Rule 1-102, based on his conviction for unlawful possession of cocaine.⁵⁵ On appeal from adverse Hearing and Review Board recommendations,⁵⁶ Lunardi argued to the court that his conviction for possession of cocaine did not constitute moral turpitude as proscribed by the Rules.⁵⁷ The court, however, did not address Lunardi's argument, concluding that an attorney's conviction for a crime that does not involve moral turpitude may nonetheless subject the attorney to discipline.⁵⁸ In mitigation, the court considered Lunardi's post-conviction conduct, noting that his "response to this incident has been nothing short of remarkable."⁵⁹ Lunardi fulfilled all the terms of his sentence, which included naming the source of the cocaine. Additionally, he attended a drug rehabilitation program, participated in group support meetings for recovering substance abusers, and helped to develop a Lake County office of the Lawyers Assistance Program, Inc.⁶⁰ In view of these factors, the court imposed an eighteen-month suspension.⁶¹

The court's treatment of the respondents in *In re Altman*⁶² and *In re Behnke*⁶³ demonstrates how it strives for both fairness and uniformity in imposing sanctions. In both cases, the respondent attorneys lied to clients about the status of their cases.⁶⁴ Over a three month period, Altman lied repeatedly to one client about her

54. 127 Ill. 2d 413, 537 N.E.2d 767 (1989).

55. *Id.* at 416, 537 N.E.2d at 767. Lunardi was also charged with making loans to a judge in violation of Rule 7-110(a). *Id.* at 416-17, 537 N.E.2d at 767-68. See CODE OF PROFESSIONAL RESPONSIBILITY Rule 7-110(a), ILL. REV. STAT. ch. 110A, CANON 7 (1987). For a discussion of this aspect of the case, see *infra* notes 161-173 and accompanying text. The Hearing Board concluded that Lunardi violated both Rules and recommended a three-year suspension with all but the first sixty days to be stayed. *Lunardi*, 127 Ill. 2d at 417, 537 N.E.2d at 768. The Review Board adopted the Hearing Board's findings and conclusions but recommended a one-year suspension. *Id.*

56. See *supra* note 55 (Hearing Board and Review Board proceedings discussed).

57. 127 Ill. 2d at 418, 537 N.E.2d at 768.

58. *Id.* at 421, 537 N.E.2d at 769-70 (citing *In re Scarnavack*, 108 Ill. 2d 456, 460, 485 N.E.2d 1, 2 (1985)). In *Scarnavack*, the court stated that "[i]f an attorney is convicted of a crime that does not involve moral turpitude, he *still* may be disciplined." *Scarnavack*, 108 Ill. 2d at 460, 485 N.E.2d at 2 (emphasis in original).

59. *Lunardi*, 127 Ill. 2d at 420, 537 N.E.2d at 769.

60. *Id.* The Lawyers Assistance Program, Inc. is a group of trained lawyers and judges who have joined together to address the problems of substance abusing attorneys. Gill, *supra* note 1, at 1.

61. *Lunardi*, 127 Ill. 2d at 433, 537 N.E.2d at 775.

62. 128 Ill. 2d 206, 538 N.E.2d 1105 (1989).

63. 127 Ill. 2d 322, 537 N.E.2d 326 (1989).

64. *Altman*, 128 Ill. 2d at 208, 538 N.E.2d at 1105; *Behnke*, 127 Ill. 2d at 324-25, 537 N.E.2d at 327.

settlement check, telling her that he had not yet received it.⁶⁵ Behnke lied to three separate clients over a period of several years about the status of their actions.⁶⁶ In both cases the Hearing and Review Boards concluded that the respondents violated Rules 1-102(a)(4) and (5)⁶⁷ and agreed on the appropriate sanctions.⁶⁸

Both attorneys admitted the facts surrounding the charges against them but claimed that they suffered from personal problems during the relevant time period.⁶⁹ At the hearing, Altman claimed that he could not recall the events because his wife announced that she was divorcing him and moving out of the state with their children.⁷⁰ Before the Hearing Board, Behnke attributed his behavior to professional and personal stress and excessive use of alcohol. He also claimed that his clients probably would have lost their cases anyway.⁷¹ The Review Board remanded Behnke's case for further evidence relating to the emotional distress claim.⁷² On remand, Behnke requested, but was denied, a continuance to obtain a psychiatric evaluation and, if needed, treatment.⁷³

Before the supreme court, Behnke conceded that even if he had

65. *Altman*, 128 Ill. 2d at 208, 538 N.E.2d at 1105. In fact, he received, endorsed, and deposited the check to his client trust account and then drew against the funds. Although he ultimately sent the client a check for her share of the proceeds, when her own investigation uncovered his lies, she filed a complaint with the ARDC. Before Altman learned of the pending ARDC investigation, he returned his legal fees to her, plus interest. *Id.* at 208, 538 N.E.2d at 1106.

66. *Behnke*, 127 Ill. 2d at 324-25, 537 N.E.2d at 327. Behnke told one client that he filed a personal injury action on the client's behalf, when in fact he never filed the suit and allowed the statute of limitations to run. In six letters Behnke wrote to a second client, a school district, he lied about actions he took on the client's behalf to pursue an appeal. To the third client, a bank, Behnke wrote monthly status reports concerning a number of debt collection cases the bank hired him to resolve. These monthly reports, according to the hearing panel, "contained more lies and fabrications than truths." Two of the three clients sued Behnke for malpractice and settled with his insurance carrier. *Id.*

67. *Altman*, 128 Ill. 2d at 207, 538 N.E.2d at 1105; *Behnke*, 127 Ill. 2d at 326-27, 537 N.E.2d at 328-29. See *supra* note 46 for the text of Rule 1-102(a).

68. In *Altman*, the boards recommended a two-year suspension. 128 Ill. 2d at 207, 538 N.E.2d at 1105. In *Behnke*, the boards recommended disbarment. 127 Ill. 2d at 326, 328, 537 N.E.2d at 328, 329.

69. *Altman*, 128 Ill. 2d at 208-09, 538 N.E.2d at 1106; *Behnke*, 127 Ill. 2d at 328, 537 N.E.2d at 329.

70. *Altman*, 128 Ill. 2d at 209, 538 N.E.2d at 1106. He also claimed that other members of his wife's family caused him extreme emotional and mental distress. *Id.*

71. *Behnke*, 127 Ill. 2d at 326, 537 N.E.2d at 328.

72. *Id.*

73. *Id.* at 327, 537 N.E.2d at 328. The panel concluded that Behnke had adequate opportunity to present evidence at the first hearing. *Id.* The panel then concluded that Behnke did not present any evidence to support his claim of emotional disability. *Id.* at 327-28, 537 N.E.2d at 328-29.

undergone psychological evaluation, there would have been no determination of alcoholism or emotional distress at the time of his personal problems.⁷⁴ Consequently, he argued only that the court should not disbar him because he did not benefit financially and because his clients were not irreparably harmed.⁷⁵ The court accepted the boards' recommendations in both cases. It suspended Altman for two years⁷⁶ and disbarred Behnke.⁷⁷

Collectively, the supreme court's opinions in cases charging attorney misconduct under Rule 1-102 during the *Survey* year demonstrate how narrowly the court will construe this Rule. Attorneys now are subject to discipline for conduct outside the role of advocate as well as for any criminal convictions, not just those involving moral turpitude. Moreover, personal and professional problems provide no excuse.

B. Canon 2

Until the landmark decision of *Bates v. State Bar*,⁷⁸ attorneys were prohibited from advertising. In *Bates*, the United States Supreme Court held that the first amendment protects some attorney advertising.⁷⁹ During the *Survey* year the Illinois Supreme Court held that one attorney's solicitations⁸⁰ and another's public statement of specialty⁸¹ violated the Code.

1. Duty to Refrain From False or Misleading Solicitations

In *In re Komar*,⁸² the Administrator charged respondent with violating Rule 2-101.⁸³ Komar held a financial interest in a com-

74. *Id.* at 330, 537 N.E.2d at 330.

75. *Id.* at 331, 537 N.E.2d at 330.

76. *Altman*, 128 Ill. 2d at 210, 538 N.E.2d at 1106.

77. *Behnke*, 127 Ill. 2d at 332, 537 N.E.2d at 331.

78. 433 U.S. 350 (1977).

79. *Id.* at 384. The Court held constitutional "truthful advertisement concerning the availability and terms of routine legal services." *Id.* The Court noted, however, that "[a]dvertising that is false, deceptive, or misleading of course is subject to restraint." *Id.* at 383.

80. *In re Komar*, 125 Ill. 2d 427, 532 N.E.2d 801 (1988).

81. *In re Peel*, 126 Ill. 2d 397, 534 N.E.2d 980, *rev'd*, 110 S. Ct. 2281 (1990).

82. 125 Ill. 2d 427, 532 N.E.2d 801 (1988).

83. In pertinent part, Rule 2-101 provides:

A lawyer may publicize himself as a lawyer through any commercial publicity or other form of public communication . . . provided that . . . [s]uch communications shall contain all information necessary to make the communication not misleading and shall not contain any false or misleading statement or otherwise operate to deceive.

CODE OF PROFESSIONAL RESPONSIBILITY Rule 2-101, ILL. REV. STAT. ch. 110A, CANON 2 (1987).

pany that solicited legal business from persons facing foreclosure on their homes.⁸⁴ The company mailed letters to a group "composed of desperate, unemployed, minimally educated, unsophisticated persons, distraught by the threatened loss of their homes."⁸⁵ As a result of the solicitations, approximately 1000 clients entered into contracts with the company, which required the clients to pay the company a \$1000 fee if it prevented foreclosure.⁸⁶ Komar helped draft the contracts, interviewed clients, reviewed foreclosure petitions, and, in some cases, filed an appearance on the client's behalf. The company paid Komar \$200 from each \$1000 fee received.⁸⁷ The clients were not advised that Komar held a financial interest in the company, nor that the company compensated him for his legal services.⁸⁸

The Administrator's complaint charged that the letters contained false, misleading, and deceptive statements,⁸⁹ and urged that Komar be disbarred.⁹⁰ Komar admitted the facts contained in the Administrator's complaint.⁹¹ The only issue, therefore, was whether the facts established a violation.⁹²

The Hearing Board concluded that the solicitation letters were misleading⁹³ and recommended a six-month suspension.⁹⁴ The Review Board adopted the Hearing Board's report and recommendations.⁹⁵ The court allowed Komar's exceptions to the Hearing Board's report to stand as his exceptions to the Review Board's report; the Administrator filed exceptions to the recommended sanction.⁹⁶

The court reviewed the Hearing Board's findings and held that

84. *Komar*, 125 Ill. 2d at 428-29, 532 N.E.2d at 802-03.

85. *Id.* at 431, 532 N.E.2d at 804. The court adopted the Hearing Board's characterization of the group solicited. *Id.*

86. *Id.* at 432, 532 N.E.2d at 804.

87. *Id.* at 433, 532 N.E.2d at 804-05.

88. *Id.* at 433, 532 N.E.2d at 805.

89. *Id.* at 437, 532 N.E.2d at 806. The statements "created an unrealistic sense of urgency and assurances that [the company] would save [those solicited] from foreclosure." *Id.* at 438-39, 532 N.E.2d at 807.

90. *Id.* at 447, 532 N.E.2d at 811. The Administrator urged disbarment because Komar "exploited society's most weak and vulnerable through the use of false, deceptive and misleading solicitations." *Id.*

91. *Id.* at 437, 532 N.E.2d at 806.

92. *Id.*

93. The Hearing Board stated that the letters misled the clients because they did not disclose that, in most cases, the matter would be referred to a bankruptcy attorney, who would charge an additional fee. *Id.* at 439, 532 N.E.2d at 808.

94. *Id.* at 431, 532 N.E.2d at 804.

95. *Id.*

96. *Id.*

they established Komar violated Rule 2-101 by clear and convincing evidence.⁹⁷ In its analysis, the court distinguished *Shapero v. Kentucky Bar Association*.⁹⁸ In *Shapero*, the United States Supreme Court struck down an attorney disciplinary rule prohibiting solicitations to persons facing foreclosure on the ground that the statements at issue were not deceptive or misleading.⁹⁹ In *Komar*, however, the court found the statements to be misleading and emphasized that “[t]he first amendment does not protect commercial speech which is ‘potentially or demonstrably’ misleading.”¹⁰⁰

In considering the appropriate sanction, the court agreed with the Administrator that Komar’s conduct warranted substantial discipline¹⁰¹ and imposed a three-year suspension.¹⁰² This case thus underscores the Supreme Court’s rule that attorney commercial speech that is deceptive, false, or misleading is subject to restraint, and will result in attorney discipline.

2. Duty to Refrain From Public Statements of Specialty

In *In re Peel*,¹⁰³ the Administrator claimed that Peel’s statement of certification violated Rule 2-105,¹⁰⁴ which prohibits statements of specialty or certification. Peel’s letterhead stated “Certified Civil Trial Specialist By the National Board of Trial Advocacy.”¹⁰⁵ The Administrator argued that this statement misled the reader

97. *Id.* at 440, 432 N.E.2d at 808.

98. 486 U.S. 466 (1988).

99. *Komar*, 125 Ill. 2d at 443, 532 N.E.2d at 809.

100. *Id.* (citing *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985) (states and federal government free to restrain false, deceptive, or misleading commercial speech); *In re R.M.J.*, 455 U.S. 191 (1982) (same)).

101. *Komar*, 125 Ill. 2d at 448, 532 N.E.2d at 811.

102. *Id.* at 448, 532 N.E.2d at 812. Additionally, the court concluded that respondent violated Rule 2-103, improper solicitation of employment; Rule 2-104, accepting employment in violation of Rule 2-103; Rule 2-106, charging an excessive fee; Rule 2-110(a)(3), refusing to make a requested refund; Rule 3-101(a), aiding another in unauthorized practice of law; Rule 3-102(a), sharing legal fees with a nonlawyer; Rule 3-103, forming a partnership with a nonlawyer; and Rule 5-105(a), conflict of interest. *Komar*, 125 Ill. 2d at 441-46, 532 N.E.2d at 808-11 (citing CODE OF PROFESSIONAL RESPONSIBILITY Rules 2-103, 2-104, 2-106, 2-110(a)(3), 3-101(a), 3-102(a), 3-103, & 5-101, ILL. REV. STAT. ch. 110A, CANONS 2, 3, & 5 (1987)).

103. 126 Ill. 2d 397, 534 N.E.2d 980, *rev'd*, 110 S. Ct. 2281 (1990). On June 4, 1990, the United States Supreme Court reversed the Illinois Supreme Court’s *Peel* decision. Justice Stevens authored the decision in which Justices Brennan, Blackmun and Kennedy joined; Justice Marshall concurred in judgment.

104. CODE OF PROFESSIONAL RESPONSIBILITY Rule 2-105, ILL. REV. STAT. ch. 110A, CANON 2 (1987). The Rule allows only admiralty, trademark, and patent attorneys to hold themselves out as specialists. *Id.*

105. *Peel*, 126 Ill.2d at 398, 534 N.E.2d at 981.

because it implied that Peel was specially qualified.¹⁰⁶ Both the Hearing and Review Boards agreed and recommended censure.¹⁰⁷

Before the court, Peel argued that the statement was not misleading¹⁰⁸ and urged the court to follow the Alabama and Minnesota Supreme Courts' holdings that the first amendment protects an attorney's statement of certification.¹⁰⁹ In addition, the National Board of Trial Advocacy ("NBTA") filed an *amicus curiae* brief that urged the court to allow attorneys to use NBTA certification statements on their letterhead.¹¹⁰ The NBTA asserted that the states that allow these statements have done so because the certifying organization "is a reputable organization with rigorous and comprehensive certification standards."¹¹¹ The court ruled, however, that the NBTA certification statement was misleading because neither Peel, nor the NBTA, nor the Association of Trial Lawyers who also filed an *amicus*,¹¹² could agree precisely on the standards required for certification.¹¹³ Thus, the court censured Peel.¹¹⁴

On June 4, 1990 the United States Supreme Court ruled that a state's total ban "against the dissemination of accurate factual information to the public" is unconstitutional, even if a lawyer's letterhead is "potentially misleading to some consumers"; therefore, it reversed the Illinois Supreme Court's decision.¹¹⁵ The Court ac-

106. *Id.* at 399, 534 N.E.2d at 981.

107. *Id.* at 398, 534 N.E.2d at 980.

108. *Id.* at 400, 534 N.E.2d at 981.

109. *Id.* at 400-01, 534 N.E.2d at 982. See *Ex parte Howell*, 487 So. 2d 848 (Ala. 1986). In *Howell*, the Alabama court held that an attorney's statement of certification by the National Board of Trial Advocacy would not mislead the public and directed the bar association to prepare a rule and method for approving similar certifying organizations. *Id.* at 851. See also *In re Johnson*, 341 N.W.2d 282 (Minn. 1983). As a result of *Johnson*, the Minnesota State Bar Association amended its rules to provide for the certification of such organizations. *Peel*, 126 Ill. 2d at 401, 534 N.E.2d at 982.

110. *Id.* at 402, 534 N.E.2d at 982.

111. *Id.*

112. *Id.* at 407, 534 N.E.2d at 984.

113. *Id.* at 407, 534 N.E.2d at 985. Specifically, the court stated

[i]f certification conveys such a varied and uncertain understanding as to its meaning to the attorneys who are in this case contending for the cause of certification, and who should be knowledgeable as to its meaning, how much more confusing is the statement that an attorney is certified as a trial specialist likely to be to the general public?

Id.

114. *Id.* at 411, 534 N.E.2d at 986.

115. *Peel v. ARDC*, 110 S. Ct. 2281, 2292 (1990). The Court asserted that statements of "certification as a specialist by bona fide organizations such as NBTA" are not "actually or inherently misleading." *Id.* at 2292-93. Thus, such statements cannot be completely prohibited. *Id.*

knowledge that states can regulate such speech by using less restrictive measures such as "screening certifying organizations or requiring a disclaimer about the certifying organization or the standards of a specialty."¹¹⁶ In light of this comment, Illinois lawyers should anticipate some refinement of newly adopted Illinois Rule of Professional Conduct 7.4(b) which is the current counterpart to Rule 2-105. Like its predecessor, Rule 7.4(b) would have prohibited the statements at issue in *Peel* but for the Supreme Court's ruling.¹¹⁷

C. Canon 5: Duty to Avoid Conflict of Interest

Under Canon 5's Disciplinary Rules, an attorney must "exercise independent professional judgment on behalf of a client."¹¹⁸ During the *Survey* year, the court, in *In re Demuth*,¹¹⁹ sanctioned an attorney who failed to abide by Rule 5-105.¹²⁰

In response to a client's request for financial assistance for a business venture, Demuth arranged that another client make a loan.¹²¹ Demuth agreed to prepare the documents to secure the loan¹²² and arranged for the funds to be deposited with him for disbursement to the borrower,¹²³ from which he took a fee.¹²⁴

116. 110 S. Ct. at 2292 (citing *In re RMJ*, 455 U.S. 191, 201-03 (1982)).

117. ILLINOIS RULE OF PROFESSIONAL CONDUCT 7.4(b), ILL. REV. STAT. ch. 110A, para. 7.4(b) (effective Aug. 1, 1990).

118. CODE OF PROFESSIONAL RESPONSIBILITY Rule 5-101 to 5-107, ILL. REV. STAT. ch. 110A, CANON 5 (1987).

119. 126 Ill. 2d 1, 533 N.E.2d 867 (1988).

120. In pertinent part, Rule 5-105 provides:

(a) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under Rule 5-105(c).

(c) In the situations covered by Rules 5-105(a) and (b), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

CODE OF PROFESSIONAL RESPONSIBILITY Rules 5-105(a) & (c), ILL. REV. STAT. ch 110A, CANON 5 (1987).

121. *Demuth*, 126 Ill. 2d at 5, 533 N.E.2d at 868.

122. *Id.* at 6, 533 N.E.2d at 868. Demuth never did file the papers to secure this loan. *Id.* at 7, 533 N.E.2d at 868-69. Before the court, Demuth admitted he was subject to discipline for neglect of a client matter. *Id.* at 9, 533 N.E.2d at 870.

123. *Id.* at 6, 533 N.E.2d at 868. While the loan proceeds were in his possession, Demuth withdrew an amount from his escrow account in excess of these funds. *Id.* at 8, 533 N.E.2d at 869. The Hearing Board found that Demuth converted clients funds and the court agreed. *Id.* at 11-12, 533 N.E.2d at 871.

124. *Id.* at 6, 533 N.E.2d at 869.

Each client believed that Demuth acted as his attorney in this transaction.¹²⁵ The borrower never repaid the lender, who ultimately obtained a judgment that he was unable to satisfy.¹²⁶

Both the Hearing and Review Boards found that Demuth violated the Code.¹²⁷ Before the court, Demuth argued that his participation in the loan between the two clients did not create a conflict of interest because he had no direct interest in the transaction and preferred neither client's interest over the other.¹²⁸ The court, however, stated that an attorney violates Rule 5-105 when his professional judgment is likely to be affected by representation of multiple clients.¹²⁹ According to the court, Demuth's independent professional judgment was adversely affected when he disbursed the funds and failed to secure the loan sufficiently.¹³⁰

In determining the appropriate sanction, the court considered Demuth's refusal to acknowledge his misconduct and the lender's loss of money.¹³¹ In mitigation, the court noted Demuth's otherwise good professional and personal reputation, his community activities and his restitution.¹³² After weighing these factors, the court imposed a one-year suspension.¹³³ By this decision, the court made clear that the duty of an attorney to exercise independent professional judgment on behalf of a client cannot be compromised by arranging transactions between clients.

D. Canon 6: Duty to Represent a Client Competently

Rule 6-101 requires an attorney to act competently.¹³⁴ During

125. *Id.* In two separate transactions, Demuth also borrowed money from the client, without disclosing his unstable financial condition or suggesting that the client seek independent counsel. *Id.* at 8, 533 N.E.2d at 869. The client ultimately filed suit to obtain repayment from Demuth, who did make restitution. *Id.* The court found that this conduct violated Rule 5-104(a). *Id.* at 12, 533 N.E.2d at 872. Rule 5-104(a) provides:

(a) A lawyer shall not enter into a business transaction with a client if they have conflicting interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

CODE OF PROFESSIONAL RESPONSIBILITY Rule 5-104(a), ILL. REV. STAT. ch. 110A, CANON 5, (1987).

126. *Demuth*, 126 Ill. 2d at 6, 533 N.E.2d at 869.

127. *Id.* at 4, 533 N.E.2d at 868.

128. *Id.* at 9, 533 N.E.2d at 870.

129. *Id.* at 10, 533 N.E.2d at 871.

130. *Id.* at 11, 533 N.E.2d at 871.

131. *Id.* at 13, 533 N.E.2d at 872.

132. *Id.* at 14, 533 N.E.2d at 872.

133. *Id.* at 15, 533 N.E.2d at 873.

134. CODE OF PROFESSIONAL RESPONSIBILITY Rule 6-101, ILL. REV. STAT. ch. 110A, CANON 6 (1987).

the *Survey* year, the court considered two cases involving Rule 6-101(a)(3),¹³⁵ which prohibits an attorney from neglecting client matters.¹³⁶ In both cases the respondents were suspended.

In *In re Harth*¹³⁷ and *In re Samuels*,¹³⁸ the Administrator charged each respondent with neglect of multiple clients' matters.¹³⁹ Harth's neglect occurred over a two-year period;¹⁴⁰ Samuels's over a six-year period.¹⁴¹ In both cases, both the Hearing and Review Boards found both attorneys neglected client matters.¹⁴²

Before the court, Harth admitted the charges of neglect against him.¹⁴³ To determine the appropriate sanction, the court focused on the following facts: Harth practiced law for thirty-four years without client complaint; he participated in pro bono and civic activities; during the period covered by the complaint, both his handicapped child and his marriage suffered difficulties; he experienced tax problems resulting from volunteer work at a local Montessori school; none of the clients were irreparably harmed; and he had no corrupt motive nor did he pose a threat to the community.¹⁴⁴ Consequently, the court accepted the boards' recommendations and suspended Harth for three months.¹⁴⁵

Samuels, unlike Harth, never admitted that he neglected any client matter, and before the court he "belittle[d] his clients and their cases, and [blamed] those who worked for him for the neglect."¹⁴⁶ The court examined Samuels' arguments and found them all to be

135. Rule 6-101(a)(3) provides: "A lawyer shall not neglect a legal matter entrusted to him." CODE OF PROFESSIONAL RESPONSIBILITY Rule 6-101(a)(3), ILL. REV. STAT. ch. 110A, CANON 6 (1987). The most common allegation against an attorney that the ARDC receives is for neglect of a client matter. Of the 4,945 investigations docketed by the ARDC in 1988, 1,178 were for neglect. 1988 ARDC ANN. REP. at 7.

136. *In re Samuels*, 126 Ill. 2d 509, 535 N.E.2d 808 (1989); *In re Harth*, 125 Ill. 2d 281, 531 N.E.2d 361 (1988).

137. 125 Ill. 2d 281, 531 N.E.2d 361 (1988).

138. 126 Ill. 2d 509, 535 N.E.2d 808 (1989).

139. *Samuels*, 126 Ill. 2d at 514, 535 N.E.2d at 809; *Harth*, 125 Ill. 2d at 283, 531 N.E.2d at 362.

140. *Harth*, 125 Ill. 2d 283-86, 531 N.E.2d 362-63. In one case, Harth's neglect resulted in the dismissal of a client's appeal. *Id.* at 285, 531 N.E.2d at 363.

141. *Samuels*, 126 Ill. 2d 515-19, 535 N.E.2d 809-11. Two clients' lawsuits were dismissed because of Samuels's inattention. *Id.* at 515-16, 535 N.E.2d at 809-10. For two other clients, Samuels failed to file lawsuits. *Id.* at 517-19, 535 N.E.2d at 811.

142. *Samuels*, 126 Ill. 2d at 514, 535 N.E.2d at 809; *Harth*, 125 Ill. 2d at 283, 531 N.E.2d at 362. In *Harth*, both boards recommended a three-month suspension. 125 Ill. 2d at 283, 531 N.E.2d at 362. In *Samuels*, both boards recommended a one-year suspension. 126 Ill. 2d at 514, 535 N.E.2d at 809.

143. *Harth*, 125 Ill. 2d at 283, 531 N.E.2d at 362.

144. *Id.* at 290, 531 N.E.2d at 365.

145. *Id.* at 291, 531 N.E.2d at 366.

146. *Samuels*, 126 Ill. 2d at 531, 535 N.E.2d at 817.

without merit.¹⁴⁷ The court also rejected all of Samuels' arguments in mitigation,¹⁴⁸ except his argument that he participated in pro bono and professional activities.¹⁴⁹ In considering the aggravating factors, the court stated that a "pattern of neglect weighs heavily in favor of a period of suspension."¹⁵⁰ Further, the court considered Samuels' misrepresentations to his clients and his refusal to cooperate in the disciplinary proceedings.¹⁵¹ Accordingly, the court accepted the boards' recommendations and imposed a one-year suspension.¹⁵²

The court thus reaffirmed its rule that attorney neglect of a legal matter is a *per se* ground for suspension.¹⁵³ As *Harth* and *Samuels* demonstrate, the length of that suspension turns on aggravating and mitigating factors.

E. Canon 7: Duty to Refrain from Making Gifts or Loans to a Judge

During the 1987-88 *Survey* year, in *In re Corboy*,¹⁵⁴ the Illinois Supreme Court considered for the first time allegations of attorney misconduct under then-existing Rule 7-110(a).¹⁵⁵ In that case, the court announced that a proper interpretation of Rule 7-110(a) requires that it be read together with Rule 65(C)(4) of the Code of Judicial Conduct, which states the circumstances under which a

147. *Id.* at 523-28, 535 N.E.2d at 813-16.

148. To respondent's argument that none of his clients were injured, the court responded that one client's claim was time-barred, another is foreclosed from a potential source of recovery, a third lost the right to pursue an action against his employer and a fourth lost his right to pursue a Title VII claim. *Id.* at 529-30, 535 N.E.2d at 816. To respondent's argument that he neglected only four clients out of 14,000 cases he supervised during the relevant period, the court questioned the quality of representation those clients received inasmuch as Samuels' successor obtained a \$450,000 judgment for one of the clients Samuels neglected. *Id.* at 530, 535 N.E.2d at 816-17.

149. *Id.* at 530-31, 535 N.E.2d at 817.

150. *Id.* at 531, 535 N.E.2d at 817 (citing *In re Levin*, 101 Ill. 2d 535, 463 N.E.2d 715, *cert. denied*, 469 U.S. 933 (1984)).

151. *Id.*

152. *Id.*

153. See *In re Houdek*, 113 Ill. 2d 323, 327, 497 N.E.2d 1169, 1170 (1986) ("neglect of a legal matter is in itself sufficient ground for suspension").

154. 124 Ill. 2d 29, 528 N.E.2d 694 (1988) (*per curiam*).

155. See *Grogan & Gregory*, *supra* note 4, at 573-76. At the time, Rule 7-110(a) read:

(a) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal, except that a lawyer may make a contribution to the campaign fund of a candidate for such office.

CODE OF PROFESSIONAL RESPONSIBILITY Rule 7-110(a), ILL. REV. STAT. ch. 110A, CANON 7 (1987).

judge may accept gifts or loans.¹⁵⁶ Consideration of these Rules together produces four exceptions under which an attorney may make a gift or loan to a judge.¹⁵⁷ Although the court ruled that the *Corboy* respondents' conduct did not fall under one of those exceptions, it discharged them because "[t]hey acted without the guidance of precedent or settled opinion."¹⁵⁸

As a result of *Corboy*, the court amended Rule 7-110(a).¹⁵⁹ During the current *Survey* year, the supreme court considered several cases involving attorneys charged with violating Rule 7-110(a). Most of the cases¹⁶⁰ required the court to examine each respondent's conduct in light of *Corboy*. In all but one case, the Hearing Boards concluded that the respondents violated the Code. In all the cases, however, the Review Boards and the court determined that the respondents violated the Rule.

In *In re Lunardi*¹⁶¹ the court enunciated the factors it will consider to determine appropriate sanctions in Rule 7-110(a) cases. These factors are as follows:

- (1) the intent of the attorney making the gift or loan; (2) the number of loans and the number of judges to whom money was

156. *Corboy*, 124 Ill. 2d at 40, 528 N.E.2d at 699 (citing CODE OF JUDICIAL CONDUCT Rule 65(C)(4)(a)-(c), ILL. REV. STAT. ch. 110A, CANON 5 (1987)). See *infra* note 157.

157. 124 Ill. 2d at 41, 528 N.E.2d at 699. The exceptions are: (1) gifts incident to a public testimonial to the judge; books supplied by publishers for official use; invitations to a judge and the judge's spouse to attend bar-related functions or activities devoted to the improvement of the law, the legal system, or the administration of justice; (2) gifts which constitute "ordinary social hospitality;" (3) gifts from an attorney related to the judge; and (4) wedding or engagement gifts. *Id.* at 41, 528 N.E.2d at 699 (citing CODE OF JUDICIAL CONDUCT Rule 65(C)(4), ILL. REV. STAT. ch. 110A, CANON 5 (1987)).

158. *Id.* at 45, 528 N.E.2d 701 (citations omitted). The court explained that "there was, apparently, considerable belief among members of the bar that they acted properly. . . . It would be unfair to apply the limitation we have today for the first time defined to respondents' conduct in 1981." *Id.*

159. As amended, Rule 7-110(a) reads:

(a) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal, *except those gifts or loans which a judge or a member of his family may receive under Rule 65(C)(4) of the Code of Judicial Conduct*, except that a lawyer may make a contribution to the campaign fund of a candidate for such office.

CODE OF PROFESSIONAL RESPONSIBILITY Rule 7-110(a), ILL. REV. STAT. ch. 110A, CANON 7 (Supp. 1988) (amending language in italics).

160. *In re Lane*, 127 Ill. 2d 90, 535 N.E.2d 866 (1989) (per curiam); *In re Lunardi*, 127 Ill. 2d 413, 537 N.E.2d 767 (1989); *In re Heller*, 126 Ill. 2d 94, 533 N.E.2d 824 (1988), *cert. denied*, 110 S. Ct. 65 (1989); *In re D'Angelo*, 126 Ill. 2d 45, 533 N.E.2d 861 (1988), *cert. denied*, 110 S. Ct. 211 (1989); *In re Jones*, 125 Ill. 2d 371, 532 N.E.2d 239 (1988).

161. 127 Ill. 2d 413, 429, 537 N.E.2d 767, 773 (1989). See also *supra* notes 54-61 and accompanying text (*Lunardi's* misconduct under Rule 1-102 discussed).

loaned; (3) whether the attorney had cases pending before the judge to whom the loan was made; (4) whether or not the loan was repaid; (5) whether or not a promissory note was executed and whether interest was set or paid; (6) whether the attorney and judge had a social relationship; (7) whether the attorney was candid and cooperative towards the Administrator; and (8) whether the attorney's decision was made hastily or not.¹⁶²

The presence or absence of these factors distinguish the sanctions imposed in each case discussed herein.

The attorney in *Lunardi* made two "emergency" loans to a Lake County judge who was also a close personal friend.¹⁶³ The judge repaid both loans in full, one within two days, without interest or a promissory note.¹⁶⁴ During the repayment period of the second loan, Lunardi appeared before the judge in a bench trial; his client was acquitted.¹⁶⁵ Neither Lunardi nor the judge informed the prosecution of the loan.¹⁶⁶

Lunardi argued that under *In re Corboy*,¹⁶⁷ he should not be suspended from the practice of law because he did not know that his conduct violated the Code.¹⁶⁸ The court distinguished *Corboy*, however, because the *Corboy* respondents, unlike Lunardi, did not appear before the judge to whom they loaned money while the debts were outstanding.¹⁶⁹ To determine the appropriate sanction, the court considered that Lunardi made the loans out of friendship and without an improper motive.¹⁷⁰ The court also acknowledged that Lunardi was fully repaid.¹⁷¹ Additionally, the court noted Lunardi's candor and regret during the proceedings.¹⁷² After considering all these factors, the court imposed an eighteen-month suspension.¹⁷³

The following cases arose from the federal investigative authorities' Operation Greylord.¹⁷⁴ With one exception,¹⁷⁵ all of these

162. *Lunardi*, 127 Ill. 2d at 429, 537 N.E.2d at 773.

163. *Id.* at 424, 537 N.E.2d at 771.

164. *Id.* at 424-25, 537 N.E.2d at 771.

165. *Id.* at 425, 537 N.E.2d at 771.

166. *Id.*

167. *See supra* notes 154-58 and accompanying text (*Corboy* discussed).

168. *Lunardi*, 127 Ill. 2d at 426, 537 N.E.2d at 772.

169. *Id.* at 429, 537 N.E.2d at 773.

170. *Id.* at 431, 537 N.E.2d at 774.

171. *Id.* at 433, 537 N.E.2d at 775.

172. *Id.*

173. *Id.*

174. "Greylord is a term apparently coined by the government and widely used in the media to indicate a wide ranging federal investigation and prosecution for corruption in Cook County, Illinois, of certain state court judges, court personnel and attorneys."

cases involved improper loans made to Circuit Judge Reginald Holzer.¹⁷⁶

The attorney in *In re Lane*¹⁷⁷ claimed that he believed his loan to Judge Holzer constituted a permissible loan to the judge's campaign fund.¹⁷⁸ At Holzer's request, Lane agreed to make a \$2,500 loan to help the judge satisfy outstanding campaign debts. To that end, Lane arranged to deliver a cashier's check to Holzer, made payable to a bank Holzer named.¹⁷⁹ The cashier's check was purchased with a check for cash drawn against Lane's firm's account.¹⁸⁰ The court stated that, when an attorney claims to have made a loan to a judicial campaign fund, the relevant inquiry is whether the funds were given to a campaign committee, which is permitted under the Rules, or whether they were given to the judge, which is not permitted.¹⁸¹ The court concluded that the record established Lane made the loan to Holzer rather than to a campaign fund.¹⁸²

In considering the appropriate sanction, the court distinguished

United States v. Reynolds, 821 F.2d 427, 427 n.1 (7th Cir. 1987). A good factual summary of the operation in Cook County's Traffic Court can be found in United States v. Murphy, 768 F.2d 1518, 1524-27 (7th Cir. 1985), *cert. denied*, 475 U.S. 1012 (1986). A similar overview of prosecutions out of the Law and Chancery Divisions can be found in United States v. Holzer, 816 F.2d 304, 305-07 (7th Cir. 1987), *cert. denied*, 108 S. Ct. 2022 (1988).

175. *In re D'Angelo*, 126 Ill. 2d 45, 533 N.E.2d 861 (1988), *cert. denied*, 110 S. Ct. 211 (1989).

176. *In re Lidov*, 129 Ill. 2d 424, 544 N.E.2d 294 (1989); *In re Lane*, 127 Ill. 2d 90, 535 N.E.2d 866 (1989) (per curiam); *In re Rothenberg*, 127 Ill. 2d 139, 535 N.E.2d 849 (1989); *In re Heller*, 126 Ill. 2d 94, 533 N.E.2d 824 (1988), *cert. denied*, 110 S. Ct. 65 (1989); *In re Karzov*, 126 Ill. 2d 33, 533 N.E.2d 856 (1988), *cert. denied*, 109 S. Ct. 3189 (1989); *In re Powell*, 126 Ill. 2d 15, 533 N.E.2d 831 (1988), *cert. denied*, 109 S. Ct. 3191 (1989); *In re Jones*, 125 Ill. 2d 371, 532 N.E.2d 239 (1988).

177. 127 Ill. 2d 90, 535 N.E.2d 866 (1989) (per curiam).

178. *Id.* at 96, 535 N.E.2d at 869.

179. *Id.* at 94, 535 N.E.2d at 868.

180. *Id.*

181. *Id.* at 103, 535 N.E.2d at 872.

182. *Id.* at 105, 535 N.E.2d at 873. Evidence critical to the court's conclusion included Lane's firm's records that he made the loan directly to Holzer; testimony from Lane's secretary, his partner, and his attorney that he had told them that he made the loan to Holzer; and Lane's own statement that he expected Holzer to repay the debt. *Id.* at 104-05, 535 N.E.2d at 872-73. The court's finding paralleled that of the Review Board. *Id.* at 100-01, 535 N.E.2d at 871. The Hearing Board, however, concluded that Lane's conduct was not prohibited by the Code. *Id.* at 100, 535 N.E.2d at 871. Chief Justice Moran dissented, believing that the Administrator had failed to present clear and convincing evidence, as required under ILL. S. CT. R. 753(c)(6), ILL. REV. STAT. ch. 110A, para. 753(c)(6) (1987). In his view, the Administrator's case established only "suspicious circumstances" insufficient to warrant discipline. *Id.* at 110-11, 535 N.E.2d at 876 (Moran, C.J., dissenting).

*Corboy*¹⁸³ on several grounds. The court noted that unlike the *Corboy* respondents, Lane claimed that he complied with the Code.¹⁸⁴ The court also noted that nothing in the record suggested that members of the Illinois bar were confused about permissible contributions to judicial campaigns.¹⁸⁵ In aggravation, the court noted that Holzer presided over a case in which Lane was involved, Lane's firm practiced almost exclusively in Cook County Circuit Court, and Lane should have considered the likelihood that Holzer would preside over one of the firm's matters in the future.¹⁸⁶ In mitigation, the court noted the favorable testimony of Lane's character witnesses, his contributions to the profession, and his otherwise unblemished career.¹⁸⁷ The court then imposed an one-year suspension.¹⁸⁸

The attorney in *In re Lidov*¹⁸⁹ also claimed that he made a loan directly to Holzer believing that it went to the judge's campaign fund.¹⁹⁰ Applying the *Lane* analysis,¹⁹¹ the court concluded that Lidov violated the Rule when he made a direct cash loan to Holzer rather than to Holzer's campaign committee¹⁹² and imposed a six-month suspension.¹⁹³

In other cases decided during this *Survey* year, attorneys found to have made loans directly to a judge before whom they appeared were severely sanctioned.¹⁹⁴ In *In re Jones*,¹⁹⁵ however, the court

183. See *supra* notes 154-58 and accompanying text (*Corboy* discussed).

184. *Lane*, 127 Ill. 2d at 107-08, 535 N.E.2d at 874.

185. *Id.* at 107-08, 535 N.E.2d at 874. See *supra* note 159 (confusion of the bar in *Corboy* discussed).

186. *Id.* at 109, 535 N.E.2d at 875.

187. *Id.* at 110, 535 N.E.2d at 875. Mentioned specifically in the facts of the case, but not in mitigation, was that respondent's professional activities included that he was past president of several legal organizations, most notably the Illinois State Bar Association. *Id.* at 92, 535 N.E.2d at 867.

188. *Id.* at 92-93, 535 N.E.2d at 875.

189. 129 Ill. 2d 424, 544 N.E.2d 294 (1989).

190. *Id.* at 429, 533 N.E.2d at 295.

191. See *supra* note 181 and accompanying text.

192. *Lidov*, 129 Ill. 2d at 429, 544 N.E.2d at 296.

193. *Id.* at 431, 544 N.E.2d at 297. As in *Lane*, the court noted Lidov's otherwise excellent professional reputation. *Id.* The court, however, distinguished *Lane* on its facts. First, unlike Lane, Lidov obtained a promissory note and persisted to obtain full repayment whereas the evidence did not indicate that Lane sought repayment, and in fact, he never recouped any of the amount loaned. Second, Lidov rarely appeared before Holzer whereas Lane and others in his firm regularly appeared in Holzer's court. *Lidov*, 129 Ill. 2d at 431, 544 N.E.2d at 297. See *In re Lane*, 127 Ill. 2d 90, 535 N.E.2d 866 (1989) (per curiam).

194. See *In re Heller*, 126 Ill. 2d 94, 533 N.E.2d 824 (1988), cert. denied, 110 S. Ct. 65 (1989); *In re Karzov*, 126 Ill. 2d 33, 533 N.E.2d 856 (1988), cert. denied, 109 S. Ct.

declined to discipline an attorney for misconduct under Rule 7-110(a).

3189 (1989); *In re Powell*, 126 Ill. 2d 15, 533 N.E.2d 831 (1988), *cert. denied*, 109 S. Ct. 3191 (1989).

The court disbarred both respondents in *In re Heller*, 126 Ill. 2d 94, 533 N.E.2d 824 (1988), *cert. denied*, 110 S. Ct. 65 (1989). Between 1972 and 1979, Heller and his partner, Morris, arranged at least four loans for Judge Holzer. Two were personal loans for which Holzer signed notes but never repaid. *Id.* at 101, 533 N.E.2d at 826-27. Acting as guarantors, Heller and Morris arranged the other two loans through a bank. *Id.* at 100-03, 533 N.E.2d at 826-27. Additionally, respondent Heller gave Judge Holzer \$1000 to help Heller's son gain admission to law school. *Id.* at 103, 533 N.E.2d at 827. During the relevant period, respondents' firm appeared before Judge Holzer in approximately seventy-five cases. *Id.* at 104, 533 N.E.2d at 828. Neither Heller nor Morris informed any of the opposing parties or their lawyers of these loans. *Id.* The Hearing and Review Boards unanimously recommended disbarment for both Heller and Morris. *Id.* at 108, 533 N.E.2d at 830. The court agreed, finding the evidence of their charitable and pro bono activities insufficient to mitigate against "[s]uch flagrant and continuous disregard for the integrity of our legal system . . ." *Id.* at 108-09, 533 N.E.2d at 830.

The court also disbarred the attorney in *In re Powell*, 126 Ill. 2d 15, 533 N.E.2d 831 (1988), *cert. denied*, 109 S. Ct. 3191 (1989). Judge Holzer asked Powell to help him obtain a \$10,000 loan one week before a scheduled hearing on a matter for one of Powell's clients. *Id.* at 20, 533 N.E.2d at 832. Holzer told Powell that he was unable to post collateral for the loan. *Id.* After considering the judge's request, Powell asked the client to post the collateral. *Id.* at 20-21, 533 N.E.2d at 832. The client agreed, and Powell arranged the loan through a bank without informing Holzer who posted the collateral. *Id.* at 21, 533 N.E.2d at 832. At the hearing, Holzer ruled in favor of Powell's client. *Id.* Neither Powell nor Holzer informed the opposing party about the loan. *Id.* In defense, Powell claimed he had no corrupt intent, which he urged the court to require for a violation of Rule 7-110(a). *Id.* at 25, 533 N.E.2d at 834. The court did not reach the issue, however, because Powell's testimony at Holzer's trial regarding his intent contradicted his testimony before the Hearing Board. *Id.* at 26, 533 N.E.2d at 835. Based on those contradictions, the Hearing Board rejected Powell's claim that he had no intent to influence the judge, and the court accepted this finding. *Id.* Powell also raised the issue of his intent in mitigation, but the court again refused to consider it, stating that the record supported the finding of a corrupt motive. *Id.* at 30, 533 N.E.2d at 837. In aggravation, the court noted that Powell acted with deliberation while this client's case was pending before Judge Holzer. *Id.* at 31-32, 533 N.E.2d at 837-38.

As in *Powell*, the court found that the respondent in *In re Karzov*, 126 Ill. 2d 33, 533 N.E.2d 856 (1988), *cert. denied*, 109 S. Ct. 3189 (1989), violated Rule 7-110(a) for his involvement in a single loan transaction with Judge Holzer. *Id.* at 45, 533 N.E.2d at 861. Karzov admitted that he loaned the judge money because he feared adverse rulings in future cases if he refused. The court determined his motive was to influence the judge and therefore imposed an eighteen-month suspension. *Id.* at 45, 533 N.E.2d at 861.

Even though the attorney in *In re Rothenberg*, 127 Ill. 2d 139, 535 N.E.2d 849 (1989), made loans to Judge Holzer while he had cases pending before the judge, the court distinguished his case by the long personal relationship between Judge Holzer and Rothenberg and gave the attorney a one year suspension. *Id.* at 142, 535 N.E.2d at 851. During the 1950s Holzer and Rothenberg were law partners at the same firm. *Id.* at 141, 535 N.E.2d at 850. While a partner, Holzer frequently borrowed money from the firm, all of which he repaid. *Id.* Holzer continued to borrow money from Rothenberg personally after he left the firm in the mid-1950s and after he assumed the bench. *Id.* While loans to Holzer were outstanding, Rothenberg had one case pending before him, and Holzer appointed him guardian *ad litem* in eight others, seven of which resulted in Holzer awarding Rothenberg fees. *Id.* at 140, 535 N.E.2d at 850. The court held that this conduct violated the

Although the court made clear in *In re Corboy* that an improper motive is not a prerequisite for a Rule 7-110(a) violation,¹⁹⁶ the absence of an improper motive was pivotal to its discharge of the complaint against Jones.¹⁹⁷ Jones and Holzer served together as circuit judges for a period of time¹⁹⁸ and were casual friends.¹⁹⁹ After Jones left the bench, he joined a firm whose cases occasionally were heard in the chancery division where Holzer sat.²⁰⁰ He never appeared before Holzer for a client and neither did any attorney in his firm.²⁰¹

Four years after Jones resumed private practice, Holzer urgently requested that Jones loan him \$15,000.²⁰² Jones agreed, took out a loan, and gave Holzer a personal check for that amount.²⁰³ Although he did not sign a note, Holzer agreed to pay the interest to the bank.²⁰⁴ Holzer made only one interest payment, and ultimately Jones repaid the outstanding debt.²⁰⁵ Jones filed suit against Holzer and obtained a judgment that he was unable to satisfy.²⁰⁶

The court examined Jones's conduct under *Corboy*²⁰⁷ and ruled that none of the exceptions applied to Jones.²⁰⁸ It concluded that

Rules. *Id.* at 141, 535 N.E.2d at 850. In imposing sanctions, the court considered Rothenberg's advanced years, his limited practice, his battle with Parkinson's disease, and his impressive military and legal careers. *Id.* at 142, 535 N.E.2d at 851. Critical to its determination of the appropriate sanction, however, was that the pattern of loan-making began decades earlier while the two were law partners. The court reasoned that "[t]his is not simply a case of loans to a judge by a lawyer with matters before the court. It should be distinguished." *Id.* at 143, 535 N.E.2d at 851. The court suspended Rothenberg for one year. *Id.* Specially concurring, Justice Miller disagreed "with the implication in the majority opinion that advanced age and a diminishing law practice can serve to mitigate conduct which would otherwise warrant disbarment." *Id.* at 144, 535 N.E.2d at 852 (Miller, J., concurring). Nonetheless, he concurred in the result. *Id.* at 146, 535 N.E.2d at 853 (Miller, J., concurring).

195. 125 Ill. 2d 371, 532 N.E.2d 239 (1988).

196. *In re Corboy*, 124 Ill. 2d 29, 38, 528 N.E.2d 694, 698 (1988).

197. *In re Jones*, 125 Ill. 2d 371, 381, 532 N.E.2d 239, 244 (1988).

198. *Id.* at 374, 532 N.E.2d at 241.

199. *Id.* They attended the same social and professional functions, lived in the same neighborhood, and often walked to work together. *Id.*

200. *Id.* at 375, 532 N.E.2d at 241.

201. *Id.* Jones appeared before Holzer once on a matter representing himself. In that case, Holzer ruled against him. Holzer also sent Jones two prospective clients, one of whom hired Jones. *Id.*

202. *Id.*

203. *Id.* at 376, 532 N.E.2d at 241.

204. *Id.*

205. *Id.*

206. *Id.*

207. *See supra* notes 154-158 (*Corboy* discussed).

208. *Jones*, 125 Ill. 2d at 378-79, 532 N.E.2d at 242-43.

Jones violated the Rule because he and members of his firm "could reasonably expect" to appear in the future in chancery where Holzer sat.²⁰⁹ The court discharged the complaint, however, explaining that "[a]bsent evidence of a venal purpose, we do not believe discipline is warranted here." Citing *In re Corboy*, the court "decline[d] to sanction respondent for conduct that not only he, but other members of his profession, believed was proper at the time it occurred."²¹⁰

In *In re D'Angelo*,²¹¹ the court considered whether providing free rental cars to six circuit judges and fourteen public officials constituted misconduct under Rule 7-110(a) or whether it was "ordinary social hospitality" subject to exception under *Corboy*.²¹² D'Angelo had an arrangement with a client, a car rental agency, whereby he requested rental cars for judges and officials, and his law firm guaranteed the renter's payment.²¹³ If the renter failed to pay, which typically occurred, the firm paid the amount owed and charged it against D'Angelo's personal firm account.²¹⁴ The renters rarely repaid D'Angelo.²¹⁵ He and other members of his firm appeared regularly before the judges who received the free rentals.²¹⁶ Indeed, two of the judges presided over matters in which the rental agency was a party.²¹⁷

The court stated that the test to determine whether conduct falls under the *Corboy* "ordinary social hospitality" exception is "'objective, rather than subjective, and the touchstone is a careful consideration of social custom.'"²¹⁸ Reasoning that thousands of dollars worth of free car rentals to circuit judges "could not, under any circumstances, be 'ordinary social hospitality,'" ²¹⁹ the court held that D'Angelo's conduct violated Rule 7-110(a).²²⁰ In aggravation, the court noted in strong language that D'Angelo, through conduct carried on for more than a decade, intended to curry favor

209. *Id.* at 379, 532 N.E.2d at 243.

210. *Id.* at 381, 532 N.E.2d at 244 (citing *Corboy*, 124 Ill. 2d at 45, 528 N.E.2d at 701).

211. 126 Ill. 2d 45, 533 N.E.2d 861 (1988), *cert. denied*, 110 S. Ct. 211 (1989).

212. *Id.* at 54, 533 N.E.2d at 864-65. *See also supra* notes 154-58 and accompanying text (*Corboy* discussed).

213. 126 Ill. 2d at 48-49, 533 N.E.2d at 862.

214. *Id.*

215. *Id.*

216. *Id.* at 55, 533 N.E.2d at 863-64.

217. *Id.* at 49-50, 533 N.E.2d at 863.

218. *Id.* at 54, 533 N.E.2d at 865 (quoting *Corboy*, 124 Ill. 2d at 42-43, 528 N.E.2d at 700). *See also supra* notes 154-58 and accompanying text (*Corboy* discussed).

219. *D'Angelo*, 126 Ill. 2d at 55, 533 N.E.2d at 865.

220. *Id.* at 55, 533 N.E.2d at 866.

for himself and his law firm.²²¹ Moreover, his history of civic and pro bono activities was insufficient to mitigate his misconduct.²²² The court thus disbarred him.²²³

The common factor critical to the court's determination of whether the attorney violated the Code in each of the Rule 7-110(a) cases considered by the court during the *Survey* year was whether the attorney did or might appear before the judge to whom he loaned money or provided a thing of value. Although the court announced eight factors it will consider in Rule 7-110(a) cases in *In re Lunardi*,²²⁴ it is clear from the cases discussed herein that of prime importance is whether the attorney, or members of his firm, did or reasonably could expect to appear before the judge while the loan was outstanding.

F. Canon 9: Duty to Preserve Client Funds

During the *Survey* year the court considered three cases²²⁵ that charged respondents with commingling and converting client funds in violation of Rule 9-102.²²⁶ The court's actions in each of these cases reaffirmed its commitment to the strict rules that seek to preserve clients' funds.

In *In re Holz*,²²⁷ the court examined Holz's handling of two clients' funds that he failed to place in client trust accounts.²²⁸

221. *Id.* at 57, 533 N.E.2d at 866.

222. *Id.* at 58, 533 N.E.2d at 867.

223. *Id.*

224. *See supra* note 162 and accompanying text (factors discussed).

225. *In re Kitsos*, 127 Ill. 2d 1, 535 N.E.2d 792, *cert. denied*, 110 S. Ct. 138 (1989); *In re Uhler*, 126 Ill. 2d 532, 535 N.E.2d 825 (1989); *In re Holz*, 125 Ill. 2d 546, 533 N.E.2d 818 (1988).

226. In relevant part, the Rule requires that an attorney must deposit clients' funds in separate, identifiable trust accounts; that an attorney may withdraw such funds only after informing the client of an intent to do so; that the attorney must promptly notify the client when the attorney receives the client's funds; and that, as the client is entitled to receive the funds, the attorney must promptly pay them to the client when the client requests. CODE OF PROFESSIONAL RESPONSIBILITY Rules 9-102(a), (b), (c)(1) & (4), ILL. REV. STAT. ch. 110A, CANON 9 (1987).

227. 125 Ill. 2d 546, 533 N.E.2d 818 (1988).

228. *Id.* at 550, 533 N.E.2d at 819. Holz received the proceeds from the sale of the home for the first client in 1973, and deposited the money with a bank, but not into a client trust account. He held those funds for the next two years, notwithstanding the client's request that he send her money to her. During that time, Holz transferred the money through two other bank accounts, also not trust accounts. When he finally paid the client, he excluded the interest on the proceeds of the home sale, informing the client that he would send the interest as soon as he computed the amount. Thirteen years later, he sent a partial interest payment and promised to send more as funds became available. *Id.* at 550-52, 533 N.E.2d at 819-20. On behalf of a second client, Holz received a settlement check and deposited it to a non-trust account. During this time, the account bal-

Although Holz conceded that he commingled both clients' funds, he argued that the Administrator failed to prove that he converted the funds of either by clear and convincing evidence.²²⁹ The court disagreed, finding sufficient circumstantial and direct evidence to establish a violation.²³⁰

Both the Administrator and the Review Board recommended a three-year suspension.²³¹ In mitigation, Holz claimed that he was unaware of the Code's requirements regarding handling client funds.²³² The court, however, refused to consider ignorance of the Rules as a mitigating factor, and it imposed the recommended three-year suspension, with reinstatement conditioned upon Holz's making full restitution to his clients.²³³

The respondent in *In re Uhler*²³⁴ similarly received a three-year suspension.²³⁵ Unlike Holz, Uhler deposited his client's funds in a client trust account.²³⁶ Like Holz, however, Uhler converted client funds for business and personal use.²³⁷ Uhler did not dispute these facts and throughout the proceedings acknowledged his misconduct.²³⁸

The Hearing Board found that Uhler violated the Code, and recommended a one-year suspension.²³⁹ The Review Board concurred in the Hearing Board's finding but recommended disbarment.²⁴⁰ The Administrator also urged the court to disbar Uhler.²⁴¹ The court stated that, although the circumstances could warrant disbarment, Uhler's otherwise excellent reputation, his full restitution, and his admission of wrongdoing and cooperation in the disciplinary process mitigated his conduct.²⁴²

ance dropped below the amount of the client's deposit, and on one occasion the account was overdrawn. Later, Holz transferred all the money in the account to a different bank account, on which his parents were also signatories. *Id.* at 552-53, 533 N.E.2d at 820.

229. *Id.* at 554, 533 N.E.2d at 821.

230. *Id.* at 555-56, 533 N.E.2d at 821.

231. *Id.* at 557, 533 N.E.2d at 823.

232. *Id.* at 560, 533 N.E.2d at 824.

233. *Id.* at 560-61, 533 N.E.2d at 824.

234. 126 Ill. 2d 532, 535 N.E.2d 825 (1989).

235. *Id.* at 541, 535 N.E.2d at 829.

236. *Id.* at 535, 535 N.E.2d at 826.

237. *Id.* at 536, 535 N.E.2d at 826. Uhler eventually paid the client the full amount due, but not until the client hired another attorney who filed suit and obtained a judgment against him. *Id.* at 537, 535 N.E.2d at 827.

238. *Id.* at 534, 535 N.E.2d at 825.

239. *Id.* at 533, 535 N.E.2d at 825.

240. *Id.*

241. *Id.* at 539, 535 N.E.2d at 828.

242. *Id.* at 541, 535 N.E.2d at 828.

*In re Kitsos*²⁴³ required the court to resolve a credibility question regarding an attorney's authority to direct disbursement of client funds. Under the terms of a settlement resolving a real estate dispute for two clients, Kitsos established an escrow account with their money at a title company pending transfer of title to the clients.²⁴⁴ Over a period of five years, Kitsos directed the title company to make various disbursements from the account, claiming that the clients authorized these disbursements.²⁴⁵ The final time Kitsos instructed the company to disburse funds, however, the company did not comply because the clients had notified it that Kitsos was no longer their attorney.²⁴⁶ The clients alleged that they never gave Kitsos permission to withdraw any funds for himself from the account.²⁴⁷ Kitsos claimed that the clients agreed to this arrangement to pay his fee during a 1979 telephone conversation.²⁴⁸ He admitted, however, that the parties never reduced this fee arrangement to writing.²⁴⁹

Before the Hearing Board, the clients testified that, despite Kitsos's general authority to oversee the escrow account, they never specifically authorized him to take his fee from the accrued interest.²⁵⁰ The Hearing Board believed the clients' testimony and ruled against Kitsos.²⁵¹ It recommended a one-year suspension.²⁵² The

243. 127 Ill. 2d 1, 535 N.E.2d 792, *cert. denied*, 110 S. Ct. 138 (1989).

244. *Id.* at 4, 535 N.E.2d at 793.

245. *Id.* In 1979, three years after Kitsos established the account, he instructed the title company to transfer the funds to an interest bearing account and informed his clients of this action. *Id.* The facts do not indicate the reason for the delay in transferring title or the reason for the longevity of the escrow account. In 1982 Kitsos directed the title company to take \$1,055 out of the \$3,725.30 interest accrued as its investment fee, to pay Kitsos \$2,3079.09, and to retain the remaining \$291.21 in the account. *Id.* at 5, 535 N.E.2d at 793. Kitsos represented to the title company that his clients approved the disbursement. The title company complied with his disbursement request. Again in 1984, Kitsos sent the title company similar instructions; again the title company complied. *Id.* at 5, 535 N.E.2d at 793-94. On both occasions, Kitsos negotiated the checks and used the money for his own purposes. *Id.* at 5, 535 N.E.2d at 793, 794. A month after the second disbursement, the client wrote to Kitsos specifically inquiring about the interest in the account, but the letter was returned unopened. *Id.* at 6, 535 N.E.2d at 794. In a subsequent telephone conversation between the two, Kitsos said nothing about the interest. *Id.*

246. *Id.* at 5, 535 N.E.2d at 794.

247. *Id.* at 6, 535 N.E.2d at 794.

248. *Id.* at 7, 535 N.E.2d at 794.

249. *Id.*

250. *Id.* at 8, 535 N.E.2d at 795.

251. *Id.* at 9, 535 N.E.2d at 795. Particularly troubling to the panel was respondent's failure to send the clients any billing statements. *Id.* Kitsos admitted that the only bill he submitted to the clients was sent shortly after they hired him and that the clients paid him immediately upon receipt. *Id.* at 8-9, 533 N.E.2d at 794.

court accepted the board's findings,²⁵³ adding that, even though Kitsos may have been entitled to fees for his services, he had no right to "help himself."²⁵⁴ In mitigation, the court noted that Kitsos had never been disciplined before and that, although he denied the impropriety, he cooperated in the proceedings.²⁵⁵ The court then imposed a one-year suspension, as the Hearing Board recommended.²⁵⁶

As a result of the cases coming before the court involving Rule 9-102, it is clear that an attorney cannot commingle or convert client funds and must obtain express authority from the client to withdraw funds from an escrow account.

III. EVIDENTIARY AND PROCEDURAL DECISIONS

The following cases are more significant for the court's evidentiary and procedural rulings than the substantive disciplinary issues presented. They involved the admissibility in disciplinary proceedings of evidence obtained in violation of Illinois law, the offensive use of collateral estoppel and the service of process.

In *In re Ettinger*,²⁵⁷ the court considered for the first time whether evidence obtained in violation of the Illinois Eavesdropping Act²⁵⁸ is admissible in disciplinary proceedings. The Act provides that "[a]ny evidence obtained in violation of this Article is not admissible in any civil or criminal trial, or any administrative or legislative inquiry or proceeding, nor in any grand jury proceeding"²⁵⁹

In *Ettinger*, agents of the Cook County State's Attorney's Office recorded certain telephone conversations during which Ettinger arranged to bribe a police officer.²⁶⁰ After indictment, Ettinger successfully moved to suppress these recordings as illegally obtained.²⁶¹ The state thereafter informed the trial court that it

252. *Id.* at 7, 535 N.E.2d at 794. A majority of the Review Board concurred with the Hearing Board's findings but recommended a six-month suspension. *Id.*

253. *Id.* at 9-10, 535 N.E.2d at 796.

254. *Id.* at 11, 535 N.E.2d at 796.

255. *Id.* at 11-12, 535 N.E.2d at 797.

256. *Id.* at 12, 535 N.E.2d at 797.

257. 128 Ill. 2d 351, 538 N.E.2d 1152 (1989).

258. ILL. REV. STAT. ch. 38, para. 14-5 (1987). In relevant part, the Act provides: "Any evidence obtained in violation of this Article is not admissible in any civil or criminal trial, or any administrative proceeding or legislative inquiry or proceeding, nor in any grand jury proceeding" *Id.*

259. *Id.*

260. 128 Ill. 2d at 356, 538 N.E.2d at 1154.

261. *Id.*

would not further prosecute the case.²⁶² A federal indictment based on the same facts, however, proceeded to trial.²⁶³ The federal court received the recordings in evidence.²⁶⁴ Nonetheless, the jury acquitted Ettinger of the charge.²⁶⁵

In the disciplinary proceeding, Ettinger attacked the recordings, arguing that the state's eavesdropping law barred the evidence.²⁶⁶ Ettinger argued that the statutory language prohibited introduction of the illegally obtained evidence in disciplinary proceedings.²⁶⁷ The court, however, pointed out the "well-established principle that disciplinary proceedings are *sui generis* based on the supreme court's inherent power to regulate the practice of law," and the court noted it alone is vested with responsibility for admission and attorney discipline.²⁶⁸ It thus concluded that the legislature lacked authority to proscribe the admissibility of evidence in a disciplinary proceeding, and to so construe the language in the Eavesdropping Act would violate the separation of powers protected by the Illinois Constitution.²⁶⁹ Accordingly, the court ruled that the evidence obtained in violation of the Act, otherwise inadmissible in a criminal proceeding, was nonetheless admissible in a disciplinary proceeding.²⁷⁰

The only issue the court considered in *In re Owens*²⁷¹ was whether the Administrator could rely on factual findings in a civil action between former clients and their attorneys to establish a disciplinary code violation based on the same misconduct. In the civil

262. *Id.*

263. *Id.* at 357, 538 N.E.2d at 1154.

264. *Id.* at 366, 538 N.E.2d at 1159.

265. *Id.* at 357, 538 N.E.2d at 1154.

266. *Id.* at 363-64, 538 N.E.2d at 1158. The Act allows eavesdropping if one of two conditions has been met: (1) all parties have consented (ILL. REV. STAT. ch. 38, para. 14-2(a)(1) (1987)); or (2) only one party consents, and a state's attorney has applied for, and obtained, a court order authorizing the eavesdropping in accordance with ILL. REV. STAT. ch. 108A (ILL. REV. STAT. ch. 38, para. 14-2(a)(2) (1987)). Because Ettinger was unaware he was being recorded, presumably paragraph 14-2(a)(2) was violated. The facts are silent on this point. The Illinois Supreme Court affirmed the suppression of the recordings *sub nom.* *People v. Gervasi*, 89 Ill. 2d 522, 434 N.E.2d 1112 (1982).

267. 128 Ill. 2d at 364, 538 N.E.2d at 1158.

268. *Id.* at 365, 538 N.E.2d at 1158 (citing *In re Heller*, 126 Ill. 2d 94, 533 N.E.2d 824 (1988) and *In re Harris*, 93 Ill. 2d 285, 433 N.E.2d 557 (1982)).

269. *Id.* at 366, 538 N.E.2d at 1159 (citing ILL. CONST. art. II, § 1 (1970)).

270. *Id.* Ettinger also argued, among other things, that the Administrator's complaint was time barred because it was brought nine years after the misconduct occurred. *Id.* at 366-67, 538 N.E.2d at 1159. The court responded that there is no statute of limitations for disciplinary proceedings, and only a showing of prejudice to the respondent to defend against the charge will serve to bar the proceedings, which was not the case here. *Id.* at 367, 538 N.E.2d at 1159.

271. 125 Ill. 2d 390, 532 N.E.2d 248 (1988).

action, the former clients established by clear and convincing evidence that their attorneys defrauded them.²⁷²

In the disciplinary proceeding, the Administrator sought to estop Owens from relitigating the facts²⁷³ because the standard of proof in the disciplinary proceeding was the same as in the prior civil proceeding.²⁷⁴ The Administrator argued that the court should permit offensive use of collateral estoppel when the standard of proof in the prior action was the same or higher than in disciplinary proceedings.²⁷⁵ The court explained, however, that it permits conclusive use of a criminal conviction to establish a disciplinary violation because the burden of proof in criminal cases is higher than in a disciplinary action and because the accused faces loss of life, liberty, or property.²⁷⁶ The court held, therefore, that in disciplinary actions it will not permit offensive use of collateral estoppel based on factual findings made in a civil action for fraud.²⁷⁷ Consequently, the court remanded the case to the Hearing Board for findings of fact.²⁷⁸

The respondent in *In re Tepper*²⁷⁹ challenged, among other things, the validity of the ARDC rule regarding service of process. An ARDC staff investigator executed service on Tepper.²⁸⁰ Commission Rule 215 provides that a member of the Administrator's staff may serve process.²⁸¹ Yet, Supreme Court Rule 765 provides that service "may be made in any manner authorized by the Civil Practice Law or Rules of this court."²⁸² Tepper argued that, under the Code of Civil Procedure and the court's Rules, service could be accomplished only by "(1) sheriffs, (2) other authorized persons (e.g. coroners, private detectives), or (3) private persons appointed by the court upon motion."²⁸³ He argued that the ARDC rule

272. *Id.* at 394, 532 N.E.2d at 249. In that action the court awarded the clients compensatory and punitive damages. *Id.*

273. *Id.* at 395, 532 N.E.2d at 250. The Administrator relied on *In re Scott*, 98 Ill. 2d 9, 455 N.E.2d 81 (1983), in which the court ruled that an attorney's conviction of a crime involving moral turpitude was conclusive evidence of guilt in a disciplinary proceeding. *Id.* at 400, 532 N.E.2d at 252.

274. See ILL. S. CT. R. 753(c)(6), ILL. REV. STAT. ch. 110A, para. 753(c)(6) (1987).

275. *Owens*, 125 Ill. 2d at 400, 532 N.E.2d at 252.

276. *Id.* at 400-01, 532 N.E.2d at 252.

277. *Id.*

278. *Id.* at 402, 532 N.E.2d at 253.

279. 126 Ill. 2d 109, 533 N.E.2d 838 (1988).

280. *Id.* at 118, 533 N.E.2d at 841.

281. DIS. COM. R. 215, ILL. REV. STAT. ch. 110A foll., para. 774 (1987).

282. ILL. S. CT. R. 765, ILL. REV. STAT. ch. 110A, para. 765 (1987).

283. *Tepper*, 126 Ill. 2d at 118, 533 N.E.2d at 842 (citing ILL. S. CT. R. 102(a), ILL. REV. STAT. ch. 110A, paras. 102(a), 2-202(a) (1987)).

conflicted with the supreme court's rule because it allowed persons not authorized by the supreme court rules or the Code of Civil Procedure to serve process.²⁸⁴ Because Supreme Court Rule 751(e)(1)²⁸⁵ prohibits the ARDC from adopting any rule inconsistent with the court's Rules, he argued that the ARDC rule was invalid.²⁸⁶

The court disagreed.²⁸⁷ Rule 765 uses the permissive "may" rather than the mandatory "must," the court stated, and therefore is not intended to limit the ARDC's discretion in formulating its rules regarding service.²⁸⁸ The court further noted that allowing an ARDC staff member to execute service furthers the court's requirement for confidentiality in pending disciplinary matters.²⁸⁹

IV. AMENDMENTS TO THE RULES

During the *Survey* year, there were no amendments to nor deletions from the Code of Professional Responsibility.²⁹⁰ The court, however, took two actions during the *Survey* year that affected its Rules on Admission and Discipline of Attorneys. First, the court replaced formerly repealed Rule 705, Qualification on Foreign License.²⁹¹ Unlike the prior Rule, new Rule 705 does not require the

284. *Id.* at 118-19, 533 N.E.2d at 841.

285. ILL. S. CT. R. 751(e)(1), ILL. REV. STAT. ch. 110A, para. 751(e)(1) (1987).

286. 126 Ill. 2d at 118-19, 533 N.E.2d at 841.

287. *Id.* at 119, 533 N.E.2d at 842.

288. *Id.* at 119-20, 533 N.E.2d at 842.

289. *Id.* (citing ILL. S. CT. R. 766, ILL. REV. STAT. ch. 110A, para. 766 (1987)). Tepper also argued that he did not receive a hearing within ninety days of service as required under the ARDC rules. *Id.* (citing DIS. COM. R. 271, ILL. REV. STAT. ch. 110A foll. para. 774 (1987)). The court noted that it addressed this issue in *In re Mitran*, in which it held that the rule did not set a mandatory time limit, but rather required the Administrator to conduct timely proceedings. *Id.* (citing *In re Mitran*, 75 Ill. 2d 118, 387 N.E.2d 278, cert. denied, 444 U.S. 916 (1979)). Not mentioned by the court, however, was that the ARDC deleted Rule 271 altogether from its rules, effective October 21, 1988. See DIS. COM. R. 271, ILL. REV. STAT. ch. 110A foll., para. 774 (Supp. 1988).

290. On February 8, 1990, however, the court replaced the Illinois Code of Professional Responsibility with the Illinois Rules of Professional Conduct, effective August 1, 1990. ILLINOIS RULES OF PROFESSIONAL CONDUCT, ILL. REV. STAT. ch. 110A, Rules 1.1 through 8.5 (effective Aug. 1, 1990), reprinted in *Chi. Daily L. Bull.*, Feb. 14, 1990, at 4-6. See generally, Gross & DeGeorge, *The Illinois Code: Proposed Changes Update and Clarify Lawyer Conduct*, 77 ILL. B.J. 121-176 (1988) for a full discussion of the new Rules.

291. ILL. S. CT. R. 705, ILL. REV. STAT. ch. 110A, para. 705 (Supp. 1988). The court repealed former Rule 705 shortly after the United States Supreme Court's decision in *Virginia v. Friedman*, 487 U.S. 59 (1988). In *Friedman*, the Court held that a residency requirement for admission to a state bar was unconstitutional because it violated the privileges and immunities clause. *Id.*

applicant to establish Illinois residency.²⁹² Second, the court amended Rule 756, entitled Registration Fees, to increase the annual registration fees paid by Illinois practitioners.²⁹³

V. CONCLUSION

As the cases discussed in this Article demonstrate, the Illinois Supreme Court continued to pursue its goal of fairness and uniformity in imposing sanctions during the *Survey* year. The court faced many difficult issues, including the failure of an attorney to report the misconduct of another attorney, the continuing Grey-lord-related cases involving gifts or loans to judges, misleading statements by attorneys, and multiple issues regarding attorney conduct toward clients and the handling of client funds. In each case the court considered the facts, previous similar cases, and any aggravating and mitigating factors, to arrive at an appropriate sanction. Whether the court followed or distinguished precedent in each case turned on the presence or absence of those latter factors.

292. Compare ILL. S. CT. R. 705(d), ILL. REV. STAT. ch. 110A, para. 705(d) (1987) (repealed 1988), with ILL. S. CT. R. 705, ILL. REV. STAT. ch. 110A, para. 705 (Supp. 1988).

293. ILL. S. CT. R. 756, ILL. REV. STAT. ch. 110A, para. 756 (Supp. 1988). Specifically, the amendment increases from \$50 to \$70 the registration fee for attorneys admitted to practice more than one year but less than three, and increases from \$100 to \$140 the registration fee for attorneys admitted for more than three years. ILL. S. CT. R. 756(a)(1), ILL. REV. STAT. ch. 110A, para. 756(a)(1) (Supp. 1988). Additionally, the fee for licensed Illinois attorneys who neither live nor practice in Illinois was increased from \$25 to \$35. ILL. S. CT. R. 756(a)(4), ILL. REV. STAT. ch. 110A, para. 756(a)(4) (Supp. 1988). Finally, the reinstatement fee for attorneys whose names were stricken from the rolls for nonpayment of the registration fee was increased from \$3 to \$10 per month each month the fee is delinquent. ILL. S. CT. R. 756(e), ILL. REV. STAT. ch. 110A, para. 756(e) (Supp. 1988).