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Professional Responsibility

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Professional Responsibility

James J. Grogan* and Pamela A. Gregory**

TABLE OF CONTENTS

I. INTRODUCTION	565
II. THE ADMISSION PROCESS.....	567
III. THE DISCIPLINARY PROCESS.....	573
A. Bench-Bar Relations	573
B. Mishandling of Client Funds and Property.....	578
C. Scope of Attorney-Client Relations	583
D. Neglect	584
E. Fraud and the Unauthorized Practice of Law ...	589
F. Conflict of Interest	590
G. Violations of the Criminal Code	592
H. Reinstatement Proceedings	595
I. Rulings on Procedural Issues	596
IV. CONCLUSION.....	598

I. INTRODUCTION

The Illinois Supreme Court decided issues relating to admission to the bar, professional responsibility, and reinstatement to the bar during this *Survey* year.¹ This Article will analyze issues resolved by the Supreme Court of Illinois in reported opinions.² Furthermore, it will apprise the practitioner of new developments in the area of professional ethics and it will discuss the impact of these court decisions.

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1. The *Survey* year is from July 1, 1987, to July 1, 1988. Most disciplinary actions are disposed of before reaching the court. On January 1, 1987, there were 4,336 charges pending, and during 1987, 4,886 charges were docketed. 1987 ARDC ANN. REP. at 5 (1988). Of the 5,628 investigations terminated in 1987, 229 formal complaints were voted to be filed. *Id.* The Administrator closed 4,542 cases and the Inquiry Board closed or dismissed 1,275. *Id.* This report encompasses the period of April 30, 1987, to April 30, 1988. *Id.* at 3.

2. This article will only encompass reported opinions of the Illinois Supreme Court.

THE ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION

The registration and discipline of members of the Illinois bar is supervised by the Attorney Registration and Disciplinary Commission ("ARDC").³ An administrator oversees the ARDC,⁴ and his two principal duties are to investigate attorney conduct⁵ and to prosecute disciplinary cases.⁶

The ARDC appoints an Inquiry Board composed of no less than twenty-one members⁷ and a Hearing Board composed of at least twenty-one members.⁸ The Inquiry Board investigates charges against attorneys,⁹ and it may dispose of investigations by voting to dismiss, by closing an investigation or by filing a complaint with the Hearing Board.¹⁰ The Hearing Board¹¹ hears complaints and makes findings of fact, conclusions of fact and law,¹² and recommendations.¹³

The supreme court appoints a nine-member Review Board which reviews Hearing Board recommendations when exceptions

3. The Illinois Supreme Court appoints seven members to serve on the ARDC for a three-year term. ILL. S. CT. R. 751(b), ILL. REV. STAT. ch. 110A, para. 751(b) (1987). Prior to August 1, 1987, the ARDC consisted of four members of the bar. ILL. S. CT. R. 751(b), ILL. ANN. STAT. ch. 110A, para. 751(b) (Smith-Hurd Supp. 1986). The rule as amended requires the ARDC to include three laypersons. ILL. S. CT. R. 751(b), ILL. REV. STAT. ch. 110A, para. 751(b) (1987). A quorum to conduct business consists of four members. ILL. S. CT. R. 751(d), ILL. REV. STAT. ch. 110A, para. 751(d) (1987).

4. ILL. S. CT. R. 752, ILL. ANN. STAT. ch. 110A, para. 752 (Smith-Hurd Supp. 1988). The ARDC now appoints the administrator with the consent of the court. *Id.*

5. Rule 752(a) provides that the Administrator shall investigate "on his own motion, on the recommendation of an Inquiry Board or at the instance of an aggrieved party," attorney conduct which "tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute." ILL. S. CT. R. 752(a), ILL. REV. STAT. ch. 110A, para. 752(a) (1987).

6. ILL. S. CT. R. 752(b), ILL. REV. STAT. ch. 110A, para. 752(b) (1987).

7. ILL. S. CT. R. 753(a)(1), ILL. REV. STAT. ch. 110A, para. 753(a)(1) (1987).

8. ILL. S. CT. R. 753(c)(1), ILL. REV. STAT. ch. 110A, para. 753(c)(1) (1987).

9. ILL. S. CT. R. 753(a)(2), ILL. REV. STAT. ch. 110A, para. 753(a)(2) (1987). The Inquiry Board may initiate its own investigation, it may refer investigations to the Administrator, and it may investigate matters referred to it by the Administrator. *Id.* The Board acts in panels consisting of no less than three members. ILL. S. CT. R. 753(a)(4), ILL. REV. STAT. ch. 110A, para. 753(a)(4) (1987). The majority of panel members constitutes a quorum and a concurrence of the majority is necessary to decide a matter. *Id.*

10. ILL. S. CT. R. 753(a)(3), ILL. REV. STAT. ch. 110A, para. 753(a)(3) (1987).

11. See ILL. S. CT. R. 753(c)(2), ILL. REV. STAT. ch. 110A, para. 753(c)(2) (1987).

12. Rule 753(c)(6) establishes that the standard of proof in all hearings is clear and convincing evidence, except as otherwise provided by Illinois Supreme Court Rules. ILL. S. CT. R. 753(c)(6), ILL. REV. STAT. ch. 110A, para. 753(c)(6) (1987).

13. ILL. S. CT. R. 753(c)(3), ILL. REV. STAT. ch. 110A, para. 753(c)(3) (1987). The Hearing Board makes recommendations for discipline, non-disciplinary suspension, or dismissal of the complaint. *Id.*

are filed by either party.¹⁴ The Review Board may approve, reject, or modify Hearing Board findings.¹⁵ Whenever the Review Board decides that public disciplinary action should be imposed, it files a report with the Illinois Supreme Court.¹⁶ When a report is filed, the court reviews the Boards' findings and determines whether discipline should be imposed and, if so, the severity of the discipline.¹⁷

One of the responsibilities of the ARDC is to report on its activities annually.¹⁸ Among other things, the ARDC's report presents the caseloads of the various administrative boards and publicly announces recent administrative changes in the ARDC. Two announcements were presented in the most recent report. First, the membership of the ARDC was expanded to include laypersons as well as lawyers.¹⁹ Second, on September 1, 1987, the court appointed a seven-member Blue Ribbon Committee to study the ARDC's function and operation.²⁰

The disciplinary caseload continued to rise this year, reaching a record high.²¹ The supreme court decided 340 disciplinary cases during 1987, it ordered discipline in 103 cases,²² and it took non-disciplinary action in 154 cases.²³

II. THE ADMISSION PROCESS

There was no decision more highly debated during the *Survey*

14. ILL. S. CT. R. 753(d), ILL. REV. STAT. ch. 110A, para. 753(d) (1987). The court appoints one member as chairman who generally serves for a three-year term. *Id.* A quorum consists of five members and a decision requires a concurrence of at least five members. *Id.*

15. ILL. S. CT. R. 753(c)(3), ILL. REV. STAT. ch. 110A, para. 753(c)(3) (1987).

16. ILL. S. CT. R. 753(c)(4), ILL. REV. STAT. ch. 110A, para. 753(c)(4) (1987).

17. While the court will give the Boards' records due deference, final responsibility for determining the appropriate sanction in attorney discipline cases rests with the supreme court. *In re Harris*, 93 Ill. 2d 285, 291-92, 443 N.E.2d 557, 559 (1982).

18. ILL. S. CT. R. 751(e)(6), ILL. REV. STAT. ch. 110A, para. 751(e)(6) (1987).

19. 1987 ARDC ANN. REP. at 4 (1988). This expansion was pursuant to the supreme court's amendment of Rule 751; three new members were appointed on August 31, 1987. *See supra* note 3.

20. 1987 ARDC ANN. REP. at 4 (1988).

21. *Id.* at 4-5. *See supra* note 1.

22. 1987 ARDC ANN. REP. at 5 (1988). The action taken was as follows: Fifty-four attorneys were disbarred, thirty-nine were suspended, and ten were censured. *Id.* Censure is "[a]n official reprimand or condemnation." BLACK'S LAW DICTIONARY 115 (5th ed. 1979).

23. 1987 ARDC ANN. REP. at 5 (1988). Pursuant to rules 767, 770, and 759 respectively, non-disciplinary types of action deal with petitions for reinstatement, transfers to inactive status, and petitions for restoration. *See* ILL. S. CT. R. 767, ILL. REV. STAT. ch. 110A, para. 767 (1987); ILL. S. CT. R. 770, ILL. REV. STAT. ch. 110A, para. 770 (1987); ILL. S. CT. R. 759, ILL. REV. STAT. ch. 110A, para. 759 (1987).

year than *In re Loss*.²⁴ In an unprecedented decision, the supreme court denied an applicant admission to the bar after the Committee on Character and Fitness ("Committee") certified to the Board of Examiners that he was fit for admission.²⁵ Illinois Supreme Court Rule 708 sets forth the procedures for an attorney's admission to the Illinois bar.²⁶ The rule, as recently amended, provides that if the Committee certifies an applicant's fitness to practice law to the Board of Law Examiners, "the applicant shall thereafter be admitted to the bar *unless* the court orders otherwise."²⁷ Prior to the amendment, Rule 708(c) contained no explicitly written provision entitling the court to overturn the Committee's decision to admit an applicant.²⁸ The court defended its review of the Committee's decision by declaring that a literal interpretation of Rule 708(c) would elicit absurd results.²⁹ The court explained that such an interpretation would result in an unconstitutional delegation of its power to the Committee.³⁰ It reasoned that if the Committee is not subject to judicial review, then the court has unconstitutionally abdicated its authority to oversee the Committee.³¹

Although Loss argued that the non-literal interpretation of the rule violated his due process rights, the court concluded other-

24. 119 Ill. 2d 186, 518 N.E.2d 981 (1987).

25. *Id.* at 198, 518 N.E.2d at 986.

26. ILL. S. CT. R. 708, ILL. REV. STAT. ch. 110A, para. 708 (1987). Rule 708(a) provides for the appointment of the Committee on Character and Fitness, which consists of at least three members of the bar. ILL. S. CT. R. 708(a), ILL. REV. STAT. ch. 110A, para. 708(a) (1987). Rule 708(b) requires the Committee to decide whether each applicant has the "good moral character and general fitness to practice law." ILL. S. CT. R. 708(b), ILL. REV. STAT. ch. 110A, para. 708(b) (1987).

27. ILL. S. CT. R. 708(c), ILL. REV. STAT. ch. 110A, para. 708(c) (1987) (emphasis added).

28. *Id.* Prior to the amendment there was only one mechanism for judicial review of an applicant who was denied admission; the applicant could petition the court for relief so long as notice was given to the Committee. ILL. S. CT. R. 708(d), ILL. REV. STAT. ch. 110A, para. 708(d) (1987). The standard of review applied by the court is whether the Committee's decision was arbitrary. *Loss*, 119 Ill. 2d at 219, 518 N.E.2d at 995 (Simon, J., dissenting) (citing *In re Latimer*, 11 Ill. 2d 327, 330, 143 N.E.2d 20, 22, cert. denied, 355 U.S. 82 (1957); *In re Ascher*, 81 Ill. 2d 485, 487, 411 N.E.2d 1, 7 (1980)).

29. *Loss*, 119 Ill. 2d at 194-95, 518 N.E.2d at 984. Although Rule 708 was amended and became effective prior to the date of this opinion, *Loss*' application for admission was submitted on November 21, 1984. *Id.* at 189, 518 N.E.2d at 982. At that time there was no statutory provision explicitly entitling the court to overturn the Committee's decision to admit an applicant. See *supra* note 28 and accompanying text.

30. *Loss*, 119 Ill. 2d at 194-95, 518 N.E.2d at 984.

31. *Id.* The court reaffirmed its authority to regulate the Illinois bar. *Id.* at 192, 518 N.E.2d at 983. See also *In re Day*, 181 Ill. 73, 94, 54 N.E. 646, 652 (1899) (the court possesses the power to pass upon the fitness of an applicant to the bar). Moreover, the Committee on Character and Fitness was created by the court. ILL. S. CT. R. 708(a), ILL. REV. STAT. ch. 110A, para. 708(a) (1987).

wise.³² The court emphasized that even though Loss may have relied upon unfortunate language in the rule, that language would not be interpreted so as to divest the court of its jurisdiction "to perform its constitutional duty."³³

After deciding that Loss was afforded "all of the due process which the situation required,"³⁴ the court proceeded to consider whether he should be admitted to the bar.³⁵ The court explained that, generally, a petitioner bears the burden of establishing his present moral character.³⁶ The court declared, however, that when a petitioner such as Loss has a prior record of misconduct, he must undertake an additional burden.³⁷ Like an applicant for reinstatement to the bar, the petitioner must show by clear and convincing evidence that he is rehabilitated such that he is fit to practice law, and that he is prepared to return to a helpful, useful, and trustful role in society.³⁸

The court stressed that rehabilitation is the most important consideration in determining whether an applicant is fit for admission to the bar.³⁹ The court listed the following six factors which constitute indicia of rehabilitation of character and fitness:

- (1) community service and achievements, as well as the opinions of others regarding present character;
- (2) candor before the court;
- (3) the age of the applicant at the time of the offenses;

32. *Loss*, 119 Ill. 2d at 193, 518 N.E.2d at 983-84. The court reasoned that "an applicant for admission to the bar has no vested interest in the continued existence of a rule of this court." *Id.* (citing *Schlenz v. Castle*, 84 Ill. 2d 196, 208, 417 N.E.2d 1336, 1342 (1981)).

33. *Id.* at 195, 518 N.E.2d at 984.

34. *Id.* at 195, 518 N.E.2d at 985. At the supreme court level, Loss was allowed to file a brief and to present oral argument. *Id.* at 190, 518 N.E.2d at 982.

35. *Id.* at 195, 518 N.E.2d at 985.

36. *Id.* (citing *In re Ascher*, 81 Ill. 2d 485, 498, 411 N.E.2d 1, 7 (1980)).

37. *Id.* The court listed a number of Loss' wrongdoings that were recorded at his hearing before the Committee. *Id.* at 190, 518 N.E.2d at 982-83. The misconduct involved addictions to drugs and alcohol, and criminal activities. *Id.* Although the court noted that the record was unclear as to the number of convictions against Loss, he had been charged with robbery, disorderly conduct, and a variety of drug-related crimes. *Id.* at 190-91, 518 N.E.2d at 982. Finally, the court mentioned that Loss misstated and omitted facts about his background in his application to law school. *Id.* at 191, 518 N.E.2d at 982.

38. *Id.* at 195-96, 518 N.E.2d at 985 (citing *In re Wigoda*, 77 Ill. 2d 154, 159, 395 N.E.2d 571, 573-74 (1979)). In contrast, Justice Simon argued that "[u]nlike the attorney petitioning for reinstatement . . . an applicant in Loss's position has never breached nor abused a position of public trust such as an attorney occupies." *Id.* at 223, 518 N.E.2d at 998 (Simon, J., dissenting). According to Simon, the burden placed on Loss was inapplicable because his misconduct did not bear on the public trust, the profession, or the administration of justice. *Id.* at 223-24, 518 N.E.2d at 998 (Simon, J., dissenting).

39. *Id.* at 196, 518 N.E.2d at 985.

- (4) the amount of time which has passed since the last offense;
- (5) the nature of the offenses; and (6) the applicant's current mental state.⁴⁰

After a brief discussion of Loss's evidence of good moral character,⁴¹ the court noted that the Administrator had not presented evidence at the committee hearing.⁴² The Administrator, however, had been appointed by the court to raise matters which were adverse to Loss's case at the supreme court level.⁴³ Although the evidence which Loss presented was uncontroverted,⁴⁴ the court ruled that the evidence neither established Loss's good character nor proved that he was sufficiently rehabilitated to be admitted to the Illinois bar.⁴⁵

On the other hand, the court declared that Loss, like a disbarred attorney, could reapply for admission to the bar after an appropriate period of time, which in Loss's case was found to be immediately.⁴⁶ In addition to the relevant factors that the Committee is normally required to consider,⁴⁷ the court provided three factors that the Committee would be required to consider should Loss reapply.⁴⁸ These factors were Loss's conduct following the court proceeding, his candor in the new application, and his candor in

40. *Id.* (citing *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 239 (1957)). See also, ILL. S. CT. R. 767(f)(1)-(6), ILL. REV. STAT. ch. 110A, para. 767(f)(1)-(6) (1987).

41. The court noted that Loss graduated from law school with honors, that he was on law review, and that he tutored a handicapped law student. *Loss*, 119 Ill. 2d at 196, 518 N.E.2d at 985. In addition, Loss presented numerous character witnesses, including the Dean of DePaul College of Law, who attested to his good character. *Id.* at 196, 225, 518 N.E.2d at 985, 998. Finally, Loss asserted that his last arrest occurred 11 years before the court proceeding and that he had overcome both his alcohol and drug addiction. *Id.* at 196, 518 N.E.2d at 985.

42. *Id.* While the case was under advisement, the Administrator moved to supplement the record before the court with recently uncovered evidence. *Id.* at 196-97, 518 N.E.2d at 985. Based on allegations in the Administrator's motion for leave to supplement, the court asserted that those allegations, if verified, might be relevant to the issue of rehabilitation. By implication, the Administrator's motion to supplement the record was not granted. Nevertheless, the court did have the opportunity to read the supplemental allegations and may have given them some credibility. *Id.* at 197, 518 N.E.2d at 985. But see *id.* at 227, 518 N.E.2d at 999 (Simon, J., dissenting) ("[t]he information submitted to the court subsequent to the hearing is both unproved and irrelevant . . .").

43. *Id.* at 196-97, 518 N.E.2d at 985.

44. *Id.* at 196, 518 N.E.2d at 985.

45. *Id.* at 197, 518 N.E.2d at 985.

46. *Id.* at 197, 518 N.E.2d at 986. Rule 767(a) pertains to the filing of petitions for reinstatement and the minimum time period which must elapse between an order of discipline and the time in which a petition may be filed. ILL. S. CT. R. 767(a), ILL. REV. STAT. ch. 110A, para. 767(a) (1987).

47. See *supra* note 40 and accompanying text.

48. *Loss*, 119 Ill. 2d at 196, 518 N.E.2d at 985.

response to any inquiry made by the Committee.⁴⁹

In a scathing dissent, Justice Simon criticized the majority's ruling on numerous grounds.⁵⁰ Justice Simon set forth three principal arguments.⁵¹ First, citing Illinois Supreme Court Rule 708(c),⁵² Justice Simon asserted that the majority ignored the clear mandate of the rule.⁵³ Specifically, he explained that the Committee is a branch of the court which was created pursuant to a proper delegation of authority.⁵⁴ Thus, no abdication of authority took place, and therefore no constitutional issue was presented.⁵⁵

Second, Justice Simon argued that the majority deprived Loss of due process by refusing to follow the court's own rules.⁵⁶ Furthermore, Simon maintained that the proceeding ordered by the court was "fundamentally unfair."⁵⁷ Simon based this argument upon two facts: the court failed to inform Loss of the way in which his case came before the court, and the court failed to notify Loss of the specific issues to be addressed during the proceeding.⁵⁸

Finally, Simon argued that the majority created an unprecedented burden of proof, labeled it a standard of review, and then applied it to Loss.⁵⁹ In addition, Simon maintained that the majority deprived Loss of due process by failing to inform him of his

49. *Id.* at 198, 518 N.E.2d at 986 (citing *In re DeBartolo*, 111 Ill. 2d 1, 6-7, 488 N.E.2d 947, 949 (1986)).

50. *Id.* at 218-28, 518 N.E.2d at 995-1000 (Simon, J., dissenting).

51. *Id.* (Simon, J., dissenting).

52. ILL. S. CT. R. 708(c), ILL. REV. STAT. ch. 110A, para. 708(c) (1987). In part, the rule states that if the Committee certifies to the Board of Law Examiners that an applicant is of good moral character, then the "applicant *shall thereafter be entitled to admission to the bar.*" *Loss*, 119 Ill. 2d at 218, 518 N.E.2d at 995 (Simon, J., dissenting) (citing ILL. S. CT. R. 708(c), ILL. REV. STAT. ch. 110A, para. 708(c) (1987) (emphasis in original)).

53. *Id.* at 218-19, 518 N.E.2d at 996 (Simon, J., dissenting).

54. *Id.* (Simon, J., dissenting).

55. *Id.* at 220, 518 N.E.2d at 996 (Simon, J., dissenting).

56. *Id.* (Simon, J., dissenting).

57. *Id.* (Simon, J., dissenting).

58. *Id.* at 220-21, 518 N.E.2d at 996 (Simon, J., dissenting).

59. *Id.* at 222, 518 N.E.2d at 997 (Simon, J., dissenting). The standard the court employs when reviewing denials of certification is whether the Committee acted arbitrarily. *Id.* at 193, 518 N.E.2d at 984 (Simon, J., dissenting). Yet, the majority without explanation concluded that the appropriate "standard" was clear and convincing evidence. *Id.* at 222, 518 N.E.2d at 997 (Simon, J., dissenting). Simon explained that the party seeking reversal of an administrative body's finding bears the burden of proof. *Id.* (Simon, J., dissenting). In the present case, the Illinois Supreme Court sought to reverse the Committee's findings. *Id.* (Simon, J., dissenting). Simon conceded that this result was absurd; however, he insisted that it was equally perverse to require Loss to bear the burden. *Id.* (Simon, J., dissenting). See *supra* note 12 for a discussion of the standard of proof in all disciplinary hearings.

evidentiary burden prior to the hearing before the Committee.⁶⁰

In response to Justice Simon's widely publicized dissent which evoked public criticism,⁶¹ Justice Ryan added a special concurrence⁶² and cataloged the details of Loss's unsavory past.⁶³ He also countered Justice Simon's due process argument⁶⁴ and expressed his concern with regard to Loss's application for admission.⁶⁵ Finally, Justice Ryan argued that irresponsible members of both the media and the public condemned the majority for its decision.⁶⁶ He maintained that the same group of people would have objected just as vigorously if Loss had been admitted to the bar and then had harmed the public.⁶⁷

60. *Loss*, 119 Ill. 2d at 223, 518 N.E.2d at 997 (Simon, J., dissenting). Simon explained that without knowledge of the appropriate burden of proof, Loss lacked sufficient notice of what he needed to show before the Committee. *Id.* (Simon, J., dissenting). Therefore, the court failed to afford Loss an essential tenet of due process. *Id.* (Simon, J., dissenting).

61. *See, e.g., Royko, Legally Speaking, Lawyers Don't Lie*, Chicago Tribune, Sept. 3, 1987, at 3, col. 1; Royko, *Let's Get to Bottom of Ed Loss Affair*, Chicago Tribune, Aug. 20, 1987, at 3, col. 1; Royko, *Because the Fix is in, Loss is Out*, Chicago Tribune, Aug. 19, 1987, at 3, col. 1; Royko, *High Court Misses the Point of Law*, Chicago Tribune, Aug. 18, 1987, at 3, col. 1.

62. *Loss*, 119 Ill. 2d at 198, 518 N.E.2d at 986 (Ryan, J., concurring). Justice Ryan explained that because Loss was invited to reapply in the original opinion filed, the majority thought it "inappropriate to unnecessarily besmirch his character by a detailed recitation of his past conduct." *Id.* at 208, 518 N.E.2d at 990 (Ryan, J., concurring).

63. *Id.* at 208-18, 518 N.E.2d at 991-95 (Ryan, J., concurring). For example, on a number of occasions Loss was arrested for possession of heroin, cocaine, and marijuana. *Id.* at 210, 518 N.E.2d at 991 (Ryan, J., concurring). While in college he sold drugs, and he was addicted to heroin by the time he graduated from college. *Id.* at 209-10, 518 N.E.2d at 991 (Ryan, J., concurring). He also was convicted of disorderly conduct twice. *Id.* at 210, 518 N.E.2d at 991 (Ryan, J., concurring).

64. According to Ryan, Loss should have known that he was not entitled to admission solely on the basis of the Committee's certification because there were other requirements. *Id.* at 208, 518 N.E.2d at 990 (Ryan, J., concurring). For example, Rule 701(a) requires, in part, that the applicant have passed the bar, that he is of good character and fitness, and that he is at least 21 years old. ILL. S. CT. R. 701(a), ILL. REV. STAT. ch. 110A, para. 701(a) (1987). In addition, Ryan asserted that all circumstances were considered; thus, no due process deprivation occurred. *Loss*, 119 Ill. 2d at 208, 518 N.E.2d at 990 (Ryan, J., concurring).

65. After reviewing Loss's history, Justice Ryan concluded that Loss had a propensity for lying to further his own interests. *Loss*, 119 Ill. 2d at 214, 518 N.E.2d at 993 (Ryan, J., concurring). Justice Ryan also took cognizance of Loss's conduct as an adult. *Id.* (Ryan, J., concurring). For example, until 1980 when Loss was 33 years old, he used numerous aliases, and at 34 years of age, Loss lied on his law school application. *Id.* (Ryan, J., concurring).

66. *Id.* at 218, 518 N.E.2d at 995 (Ryan, J., concurring). *See supra* note 61.

67. *Loss*, 119 Ill. 2d at 218, 518 N.E.2d at 995 (Ryan, J., concurring).

III. THE DISCIPLINARY PROCESS

A. Bench-Bar Relations

During the *Survey* period, the supreme court also reviewed the conduct of seven lawyers who had loaned money that benefited a judge. A violation of Illinois Supreme Court Rule 7-110(a) established the core of the court's review.⁶⁸ In the first case to address this issue, *In re Corboy*,⁶⁹ the court imposed no sanction.⁷⁰ In *In re Ketchum*,⁷¹ however, the court imposed a two-year suspension.⁷²

In *Corboy*, the court addressed an issue of first impression; that is, whether Rule 7-110(a) of the Code of Professional Responsibility was violated by attorneys who loaned at least \$1000 to a presiding judge.⁷³ Four attorneys,⁷⁴ including Philip Corboy, each gave lawyer Walter Ketchum checks for \$1000 payable to Judge Richard LeFevour; the attorneys either believed the money was a charitable gift or a loan to the judge's ill mother.⁷⁵ There was no agreement drawn for repayment, no discussion of interest on the loan, and no money was ever repaid.⁷⁶

A majority of both the Hearing and Review Boards found that the four attorneys had violated Rule 7-110(a) of the Code of Professional Responsibility.⁷⁷ Nevertheless, members of the Boards disagreed as to the specific discipline that ought to be imposed.⁷⁸ The dispute centered around the rule's proper interpretation.

68. Illinois Supreme Court Rule 7-110(a) of the Code of Professional Responsibility provided in part that "[a] lawyer shall not give or lend any thing of value to a judge . . . except that a lawyer may make a contribution to the campaign fund of a candidate for office." CODE OF PROFESSIONAL RESPONSIBILITY Rule 7-110(a), ILL. REV. STAT. ch. 110A, CANON 7 (1987). The Rule has been amended. See *infra* note 106 for the text of amended Rule 7-110(a).

69. 124 Ill. 2d 29, 528 N.E.2d 694 (1988) (per curiam).

70. *Id.* at 50, 528 N.E.2d at 703.

71. 124 Ill. 2d 50, 528 N.E.2d 689 (1988) (per curiam).

72. *Id.* at 61, 528 N.E.2d at 693.

73. *Corboy*, 124 Ill. 2d at 33, 528 N.E.2d at 695. See *supra* note 68.

74. The attorneys were Philip Corboy, William Maddux, William Harte, and James Madler, and they were solicited by Walter Ketchum. *Corboy*, 124 Ill. 2d at 34, 528 N.E.2d at 696.

75. *Id.* at 35, 528 N.E.2d at 696. Two other attorneys, Samuel Banks and Patrick Tuite, also loaned money to LeFevour without securing a note for repayment. *Id.* at 47-48, 528 N.E.2d at 702. These attorneys were close personal family friends and lent the money at LeFevour's request for the payment of LeFevour's taxes. *Id.* The court found that both of these respondents expected to be repaid. *Id.* Both lawyers had cases pending in the First Municipal District of the Circuit Court of Cook County, but neither had tried cases before LeFevour. *Id.* at 47, 528 N.E.2d at 702.

76. *Id.* at 35, 528 N.E.2d at 696.

77. *Id.* at 36, 528 N.E.2d at 697.

78. *Id.*

Members of the Board who interpreted Rule 7-110(a) as a *per se* prohibition argued that the attorneys' intent was irrelevant and that censure should be the discipline imposed.⁷⁹ Opposing Board members argued that the rule was not an absolute prohibition; rather, the attorneys' intent was, in part, determinative of whether a violation occurred.⁸⁰ The Board members who considered intent argued that a reprimand should be imposed for a technical violation of the rule.⁸¹

The court rejected both groups' theories; it refused to declare Rule 7-110(a) to be a *per se* rule and it concluded that a violation of the rule does not depend upon an attorney's intent or motive.⁸² The court explained that if a violation were to depend upon an attorney's state of mind, the prophylactic effect of the rule would be abrogated.⁸³ The rule aims to maintain an independent and unbiased judiciary and to eradicate even the appearance of impropriety.⁸⁴ Because loans or gifts to judges, even if motivated by charity, are likely to elicit suspicion of impropriety, motive is not crucial when applying the rule.⁸⁵ Furthermore, evidence of intent generally is germane only to the determination of the type of sanction to be imposed.⁸⁶

The court explained that in order to properly interpret the rule, it must be read in conjunction with Rule 65(C)(4) of the Code of Judicial Conduct.⁸⁷ To conclude that a judge may accept that which an attorney is prohibited from giving would be absurd; thus, the court ruled that Rules 65(C)(4) and 7-110(a) are necessary complements.⁸⁸ Rule 65(C)(4)(a)-(c) of the Code of Judicial Conduct provides for three exceptions to the general prohibition,⁸⁹ and

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* at 39, 528 N.E.2d at 698.

83. *Id.*

84. *Id.* at 37-38, 528 N.E.2d at 697.

85. *Id.* at 39, 528 N.E.2d at 698. Also, the rule does not contain intent as a specific element. *Id.* See *supra* note 68 for the text of Rule 7-110(a).

86. *Corboy*, 124 Ill. 2d at 39, 528 N.E.2d at 698 (citing *In re Clayter*, 78 Ill. 2d 276, 283, 399 N.E.2d 1318, 1321 (1980); *In re Thompson*, 30 Ill. 2d 560, 569, 198 N.E.2d 337, 342 (1963)).

87. *Corboy*, 124 Ill. 2d at 40, 528 N.E.2d at 699. Rule 65(C)(4) forbids a judge from accepting a "gift, bequest, favor, or loan from anyone . . ." CODE OF JUDICIAL CONDUCT Rule 65(C)(4)(a)-(c), ILL. REV. STAT. ch. 110A, CANON 5 (1987).

88. *Corboy*, 124 Ill. 2d at 41, 528 N.E.2d at 699.

89. In part, Rule 65(C)(4)(a)-(c) states as follows:

(a) a judge may accept a gift incident to a public testimonial to him; . . . or an invitation . . . to attend a bar-related function or activity devoted to the improvement of the law . . . (b) a judge . . . may accept ordinary social hospitality;

Rule 7-110(a) of the Code of Professional Responsibility provides one exception.⁹⁰ These four exceptions combine to establish the only circumstances under which an attorney may make a gift or loan to a judge.⁹¹

Applying this newly enunciated standard, the court addressed the two exceptions which arguably were applicable.⁹² These exceptions were "ordinary social hospitality" pursuant to Rule 65(c)(4)(b), and "a gift or loan from a lawyer not practicing before or not likely to practice before the judge."⁹³ The court announced an objective test to be used as the touchstone in determinations of ordinary social hospitality. The test is a "careful consideration of social custom," including the following four factors: "(1) the monetary value of the gift, (2) the relationship, if any, between the judge and the donor/lender lawyer, (3) the social practices and customs associated with gifts and loans, and (4) the particular circumstances surrounding the gifts and loans."⁹⁴ In the instant case, the court reasoned that the amount of each gift or loan was substantial and that some of the attorneys only had a tenuous acquaintance with the judge.⁹⁵ Furthermore, the court explained that the sum of \$1000 raised an appearance of impropriety regardless of any altruistic motives that the attorneys may have held.⁹⁶ Consequently, the court ruled that these loans did not fall within the purview of the "ordinary social hospitality" exception.⁹⁷

Addressing the issue of whether these loans or gifts were given by attorneys "who practice or have practiced before the judge,"⁹⁸ the court declared that it would not liberally construe this exception in favor of donors.⁹⁹ The court interpreted Rule 65(C)(4)(c)

a bequest, favor, or loan from a relative; a wedding or engagement gift . . . (c) a judge . . . may accept any other gift, bequest, favor, or loan, only if the donor is not a party or other person whose interests have come or are likely to come before him, including lawyers who practice or have practiced before the judge.

CODE OF JUDICIAL CONDUCT Rule 65(C)(4)(a)-(c), ILL. REV. STAT. ch. 110A, CANON 5 (1987).

90. *Corboy*, 124 Ill. 2d at 41, 528 N.E.2d at 699. See *supra* note 68 for the text of Rule 7-110(a).

91. *Corboy*, 124 Ill. 2d at 41, 528 N.E.2d at 699.

92. *Id.* at 42, 528 N.E.2d at 700.

93. *Id.* (citing CODE OF JUDICIAL CONDUCT Rule 65(C)(4)(c), ILL. REV. STAT. ch. 110A, CANON 5 (1987)).

94. *Id.* at 42-43, 528 N.E.2d at 700.

95. *Id.* at 43, 528 N.E.2d at 700.

96. *Id.*

97. *Id.*

98. *Id.* (citing CODE OF JUDICIAL CONDUCT Rule 65(C)(4)(c), ILL. REV. STAT. ch. 110A, CANON 5 (1987)).

99. *Id.*

as follows: If an attorney's practice is the type which will bring him into a court proceeding, the attorney is prohibited from loaning or giving anything to any judge who sits on that court.¹⁰⁰ In addition, departmental distinctions at the circuit court level are irrelevant.¹⁰¹ The court reasoned that judges are not "permanent fixture[s] of any division, but [are] subject to reassignment by the chief judge."¹⁰² In the instant case, the attorneys did in fact have cases before the circuit court in which Judge LeFevour was the presiding judge.¹⁰³ Thus, the attorneys' conduct was not excused pursuant to Rule 65(C)(4)(c).¹⁰⁴

Though the court held that the attorneys violated Rule 7-110(a), it discharged respondents on the ground that they "acted without the guidance of precedent or settled opinion."¹⁰⁵ Furthermore, the court explained that it would have been "unfair to apply the limitations" that were undefined when the conduct in this case occurred.¹⁰⁶ Finally, the court briefly considered other mitigating factors such as the attorneys' outstanding reputations, their charitable contributions, and their diligent work to improve the reputation of the legal profession.¹⁰⁷

*In re Ketchum*¹⁰⁸ involved an attorney whose friendship with LeFevour was long-standing.¹⁰⁹ Before LeFevour became a judge,

100. *Id.* This prohibition applies with equal force to the attorney's associates. *Id.* at 43-44, 528 N.E.2d at 700.

101. *Id.* at 44, 528 N.E.2d at 700. Examples of these distinctions are criminal, probate, and traffic divisions. *Id.*

102. *Id.* That Judge LeFevour was excused from hearing cases was not relevant because a gift to a presiding judge could appear to be more improper than a gift to a lower judge. *Id.* In addition, there was no guarantee that Judge LeFevour would not be demoted or transferred. *Id.*

103. *Id.* Specifically, LeFevour presided in the Circuit Court of Cook County, First Municipal District. *Id.*

104. *Id.* at 45, 528 N.E.2d at 701.

105. *Id.* But see *supra* note 32 and accompanying text.

106. *Corboy*, 124 Ill. 2d at 45, 528 N.E.2d at 701. Rule 7-110(a) as amended states:

(a) A lawyer shall not give or lend any thing of value to a judge . . . except those gifts or loans which a judge . . . 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. ANN. STAT. ch. 110A, CANON 7 (Smith-Hurd Supp. 1988). The amendment was effective as of the date of this opinion, June 20, 1988. *Corboy*, 124 Ill. 2d at 46, 528 N.E.2d at 701. But see *supra* note 57 and accompanying text.

107. *Corboy*, 124 Ill. 2d at 46, 528 N.E.2d 701-02. The court applied the same rationale and arrived at the same conclusion with regard to Samuel Banks and Patrick Tuite who had lent money to LeFevour for the payment of his taxes. *Id.* at 49-50, 528 N.E.2d at 703. See *supra* note 75.

108. 124 Ill. 2d 50, 528 N.E.2d 689 (1988) (per curiam).

109. *Id.* at 52, 528 N.E.2d at 689. Ketchum and LeFevour also were neighbors. *Id.*

Ketchum made occasional loans to him that were always repaid.¹¹⁰ After LeFevour became a judge, however, respondent extended at least nine loans to him that totaled at least \$9,300.¹¹¹ In addition, when LeFevour requested a \$10,000 "loan," respondent claimed that he did not have the funds when in fact he did.¹¹² Instead of producing the money himself, respondent offered to solicit \$1,000 contributions from other attorneys.¹¹³ In total, respondent collected \$6,000 for LeFevour.¹¹⁴

Ketchum was charged with violating Rule 7-110(a) of the Code of Professional Responsibility.¹¹⁵ The Hearing Board found that Ketchum had violated the rule even though he lacked the intent to influence Judge LeFevour.¹¹⁶ The Review Board agreed that respondent had violated Rule 7-110(a) based on a *per se* interpretation of the rule.¹¹⁷

The court emphasized that Ketchum's conduct violated Rule 7-110(a) under any construction of the rule.¹¹⁸ It further noted that although there was no evidence the respondent received a direct benefit from the loans in actual court cases, there was the "appearance of impropriety"¹¹⁹ because 20% to 50% of Ketchum's cases were tried in LeFevour's judicial district.¹²⁰ Finally, the court ruled that Ketchum's repeated violations of the rule and his experience and knowledge of the rule's prohibition warranted a two-year suspension.¹²¹

110. *Id.* at 53, 528 N.E.2d at 690.

111. *Id.* at 55, 528 N.E.2d at 691.

112. *Id.* at 54, 528 N.E.2d at 690.

113. *Id.*

114. *Id.* at 54-55, 528 N.E.2d at 690. None of this money was secured by a note and no agreement for repayment was ever drawn. *Id.* at 55, 528 N.E.2d at 690.

115. *Id.* See *supra* note 68 for the text of Rule 7-110(a).

116. *Ketchum*, 124 Ill. 2d at 56, 528 N.E.2d at 691. Consequently, the Board recommended censure. *Id.* It further noted that the respondent was an experienced attorney who admitted to being aware of the rule's proscription; his relationship with LeFevour was business-oriented as well as social; the respondent was not completely "candid and forthright" with regard to all the facts; LeFevour never repaid the money and respondent never attempted to collect the money owed. *Id.*

117. *Id.* The Review Board recommended a one-year suspension reasoning that the respondent's conduct " 'was not an isolated incident' but a 'calculated, continuing wrong and a blot upon our profession and our system of Justice.' " *Id.* at 57, 528 N.E.2d at 692.

118. *Id.* at 58, 528 N.E.2d at 692. In contrast, the court explained that the respondents in *Corboy* had not violated the unrevised version of Rule 7-110(a). *Id.* at 60-61, 528 N.E.2d at 693. See *supra* note 106 and accompanying text for the current text of Rule 7-110(a).

119. *Ketchum*, 124 Ill. 2d at 59, 528 N.E.2d at 693.

120. *Id.*

121. *Id.* at 61, 528 N.E.2d at 693. Specifically, the court found that the evidence supported a conclusion that the respondent intended to, and actually did, derive a benefit

B. Mishandling of Client Funds and Property

During the *Survey* year, the supreme court issued six written opinions involving the mishandling of client funds in violation of Rule 9-102 of the Code of Professional Responsibility. Rule 9-102 requires an attorney to preserve the identity of the funds and property of a client.¹²² In fact, the Illinois Supreme Court, in *In re Clayter*,¹²³ admonished the Illinois bar that it was "absolutely impermissible for an attorney to commingle his funds with those of his client or with money he holds as a fiduciary."¹²⁴ Nevertheless, the imposition of sanctions in such cases varied from censure to disbarment.¹²⁵ Justice Moran, in *In re Grant*, reviewed numerous cases involving Rule 9-102 and concluded that inconsistent sanctions may be due to the acknowledgement of mitigating circumstances.¹²⁶ He also recognized an "uneven and arbitrary application of the mitigating factors."¹²⁷

In each opinion issued during the *Survey* period, the court imposed a sanction. The maximum sanction imposed was a three-year suspension¹²⁸ and the minimum was a censure.¹²⁹

The respondent in *In re Lewis*¹³⁰ was charged with specific acts of conversion as well as engaging in a four to five year pattern of

from the money loaned. *Id.* at 60, 528 N.E.2d at 693. In addition, the fact that the frequency of the loans increased after LeFevour was made a presiding judge suggested impropriety. *Id.* Furthermore, the solicitation of other lawyers for monetary contributions also constituted a violation of the rule. *Id.* at 59, 528 N.E.2d at 693.

122. CODE OF PROFESSIONAL RESPONSIBILITY Rule 9-102, ILL. REV. STAT. ch. 110A, CANON 9 (1987). Rule 9-102(a) provides that:

All funds of clients paid to a lawyer or law firm, including funds belonging in part to a client and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more separate identifiable trust accounts in a bank or savings and loan association maintained in the State in which the law office is situated.

CODE OF PROFESSIONAL RESPONSIBILITY Rule 9-102(a), ILL. REV. STAT. ch. 110A, CANON 9 (1987).

123. 78 Ill. 2d 276, 399 N.E.2d 1318 (1980).

124. *Id.* at 276, 399 N.E.2d at 1319. The court explained that commingling may result in a conversion of client funds by operation of law because the funds are jeopardized by an attorney's possible insolvency or death. *Id.* at 281, 399 N.E.2d at 1321.

125. See *In re Grant*, 89 Ill. 2d 247, 255, 433 N.E.2d 259, 265 (1982) (Moran, J., dissenting).

126. *Id.* (Moran, J., dissenting).

127. *Id.* at 257, 433 N.E.2d at 264 (Moran, J., dissenting). For example, the court has inconsistently treated the following factors: Financial, emotional, or family problems; restitution; the exemplary or poor prior record of the attorney; and a pattern of commingling and conversion. *Id.* (Moran, J., dissenting).

128. *In re Lewis*, 118 Ill. 2d 357, 515 N.E.2d 96 (1987).

129. *In re Walner*, 119 Ill. 2d 511, 519 N.E.2d 903 (1988).

130. 118 Ill. 2d 357, 515 N.E.2d 96 (1987).

converting client funds.¹³¹ In addition, the respondent admitted to eleven situations in which he converted and unreasonably delayed remittance of client funds.¹³²

Although the respondent argued that mere oversights due to poor health caused his misconduct, both the Hearing and Review Boards rejected this contention.¹³³ The court agreed with both Boards' factual findings.¹³⁴ Although respondent further argued that he lacked dishonest motivation,¹³⁵ the court held that even absent an invidious motive, the conversion of client funds is grave misconduct.¹³⁶

The court refused to impose a mere censure for repeated serious violations even though the clients' funds had been returned.¹³⁷ Nevertheless, the court considered as mitigating factors the respondent's sincerity and contriteness in answering the charges, evidence from practicing attorneys and judges as to his good reputation, and respondent's significant contributions in pro bono cases.¹³⁸ Thus, the court imposed a three-year suspension.¹³⁹

In *In re Ushijima*,¹⁴⁰ the Hearing Board's finding that respondent had not converted client funds was reversed by the Review Board.¹⁴¹ The court found that respondent had substantially converted funds¹⁴² and persistently failed to account for funds in es-

131. *Id.* at 359, 515 N.E.2d at 97.

132. *Id.* at 363, 515 N.E.2d at 98.

133. *Id.* at 361, 515 N.E.2d at 97. The Boards disagreed as to the appropriate sanction to be imposed. *Id.* at 360, 515 N.E.2d at 97. The Hearing Board recommended a two-year suspension until further order of the court, whereas the Review Board recommended disbarment. *Id.*

134. *Id.* at 362, 515 N.E.2d at 98. The court agreed that respondent failed to establish the existence of an impairment which would excuse his misconduct. *Id.*

135. *Id.* at 361, 515 N.E.2d at 97. As proof of his honesty, respondent argued that his clients did not suffer a monetary loss because they were reimbursed for their inability to use the funds. *Id.*

136. *Id.* at 362, 515 N.E.2d at 98. The court stated that commingling jeopardizes clients' funds by subjecting them to the attorney's creditors. *Id.* at 362-63, 515 N.E.2d at 98.

137. *Id.* at 364, 515 N.E.2d at 99.

138. *Id.*

139. *Id.*

140. 119 Ill. 2d 51, 518 N.E.2d 73 (1987).

141. *Id.* at 53, 518 N.E.2d at 74. In addition, the Review Board found that the respondent compounded the violation of converting client funds by giving false testimony in order to conceal his misconduct. *Id.* The Hearing Board recommended censure and the Review Board recommended a one-year suspension. *Id.* at 53-54, 518 N.E.2d at 74.

142. *Id.* at 56-57, 518 N.E.2d at 76. The court reversed the Review Board's finding that respondent had concealed his misconduct; however, it upheld the Review Board's finding that respondent had converted client's funds. *Id.*

crow in spite of client requests.¹⁴³

As to the appropriate sanction, the court considered both mitigating and aggravating factors.¹⁴⁴ As evidence of mitigation, the court noted that practicing attorneys testified to his good reputation; this was the first instance of misconduct since respondent's admission to the bar in 1966 and respondent was cooperative in the disciplinary proceedings.¹⁴⁵ On the other hand, respondent acknowledged his indifference toward his clients' interests and that he had refused to make restitution to his clients because he was angry with them.¹⁴⁶ Finally, respondent's attitude revealed a lack of understanding as to the purpose of the disciplinary process.¹⁴⁷ The court expressed concern for the public's protection from attorneys whose anger would cause them to disregard their professional obligations.¹⁴⁸ Therefore, the court ordered an eighteen-month suspension.¹⁴⁹

In *In re Solomon*,¹⁵⁰ the Review Board affirmed the Hearing Board's findings that respondent commingled the funds of one client, converted the funds of one client, and failed to render an accounting to three clients, thereby violating Rules 9-102(a),(b), and (c)(3) of the Code of Professional Responsibility.¹⁵¹ The respondent argued in mitigation that none of the three clients lost money due to his conduct, his action was not motivated by dishonesty, and he fully and candidly cooperated in the disciplinary proceeding.¹⁵² Nonetheless, the court found that respondent's testimony

143. *Id.* at 59, 518 N.E.2d at 77. Respondent's misconduct constituted violations of Rules 9-102(c)(3) and (c)(4). Rule 9-102(c)(3) states in part that "a lawyer shall . . . render appropriate accounts to his client." CODE OF PROFESSIONAL RESPONSIBILITY Rule 9-102(c)(3), ILL. REV. STAT. ch. 110A, CANON 9 (1987). Rule 9-102(c)(4) provides in part that "a lawyer shall promptly pay or deliver to the client, as requested by the client, the funds . . . in the possession of the lawyer which the client is entitled to receive." CODE OF PROFESSIONAL RESPONSIBILITY Rule 9-102(c)(4), ILL. REV. STAT. ch. 110A, CANON 9 (1987).

144. *Ushijima*, 119 Ill. 2d at 60, 518 N.E.2d at 77.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.* The court found that respondent "portrayed himself as the victim of dead-beat clients" and that he held clients' escrow funds as "ransom in fee dispute[s]." *Id.*

149. *Id.*

150. 118 Ill. 2d 286, 515 N.E.2d 52 (1987).

151. *Id.* at 292-93, 515 N.E.2d at 54-55. The Review Board also agreed with the Hearing Board's recommendation of a nine-month suspension. *Id.* at 288, 515 N.E.2d at 52. Rule 9-102(b) provides that an attorney may withdraw funds owed to him from the client's account only "after reasonable notice to the client of an intention to withdraw" CODE OF PROFESSIONAL RESPONSIBILITY Rule 9-102(b), ILL. REV. STAT. ch. 110A, CANON 9 (1987).

152. *Solomon*, 118 Ill. 2d at 294, 515 N.E.2d at 55.

manifested a deliberate disregard of his professional obligations.¹⁵³ Furthermore, respondent treated his desire to be reimbursed as more important than his duties to his clients, and the court found this completely unacceptable.¹⁵⁴ Consequently, the court found that the Boards' recommendations were amply supported by the evidence, and it ordered a nine-month suspension.¹⁵⁵

The respondent in *In re Freiman*¹⁵⁶ deposited client funds into a "special funds account" from which he later withdrew money to fulfill his personal obligations.¹⁵⁷ One year after the client's money was deposited, the client tried to cash respondent's settlement check. The check was dishonored.¹⁵⁸ Eventually, respondent reimbursed his client with interest.¹⁵⁹

Although the respondent argued that his conduct was not intentional, the court noted that intent is usually inferred from the circumstances.¹⁶⁰ The Review Board found, and the court affirmed, that the respondent knew there were insufficient funds in the client's fund account.¹⁶¹ The court acknowledged two mitigating factors: testimony of respondent's good character, and the Hearing Board's finding that this was respondent's first instance of misconduct.¹⁶² Nevertheless, the court expressed a concern over the client's loss from the delay she experienced in receiving her money.¹⁶³ Consequently, the court concluded that the client was prejudiced¹⁶⁴ and it ordered a four-month suspension.¹⁶⁵

In *In re Trezise*,¹⁶⁶ the respondent mishandled a client's property

153. *Id.* at 296, 515 N.E.2d at 56. Respondent's testimony established that he knew he had a duty to render a formal accounting regardless of a client's request, and independent of any dispute over the funds as legal fees, to account for all settlement proceeds. *Id.*

154. *Id.* at 297, 515 N.E.2d at 56-57.

155. *Id.* at 297, 515 N.E.2d at 57.

156. 118 Ill. 2d 341, 515 N.E.2d 78 (1987).

157. *Id.* at 342, 515 N.E.2d at 78.

158. *Id.*

159. *Id.* Restitution was not made until after the client filed charges with the ARDC. *Id.*

160. *Id.* at 344, 515 N.E.2d at 79.

161. *Id.* at 344-45, 515 N.E.2d at 79. The Review Board reversed the Hearing Board's finding that the conversion had not been intentional. *Id.* at 344, 515 N.E.2d at 79. The Hearing Board recommended censure; the Review Board recommended a one-year suspension. *Id.* at 342, 515 N.E.2d at 78.

162. *Id.* at 344, 515 N.E.2d at 79.

163. *Id.* at 345, 515 N.E.2d at 80.

164. *Id.*

165. *Id.*

166. 118 Ill. 2d 346, 515 N.E.2d 80 (1987).

by executing a trustee's deed in violation of a court order.¹⁶⁷ He also conveyed property which he held for the benefit of the client while a citation order prohibiting the client from transferring the property was in effect.¹⁶⁸ The Hearing Board found, and the Review Board affirmed, that respondent acted with an almost complete indifference toward the transaction.¹⁶⁹

Respondent argued that Illinois Supreme Court Rule 772,¹⁷⁰ which provides for probation, should have been applied because he was suffering from emotional distress.¹⁷¹ Although respondent conceded that Rule 772 was adopted pursuant to decisions which involved alcoholic attorneys, he argued that the scope should be broadened to cover attorneys suffering from emotional distress.¹⁷² Noting that the nature of the practice of law is itself stressful, the court refused to broaden the scope of the rule.¹⁷³

When deciding the appropriate discipline to impose, the court noted that the respondent acted carelessly in transferring his client's property.¹⁷⁴ Furthermore, the court found that respondent failed to perceive the importance of the disciplinary proceedings.¹⁷⁵ Finally, this particular misconduct occurred only seven months after the respondent had been censured by the court for a separate matter.¹⁷⁶ Consequently, the court ordered a nine-month

167. *Id.* at 347, 515 N.E.2d at 80.

168. *Id.*

169. *Id.* at 347, 515 N.E.2d at 80-81. Neither Board found that the respondent intended to defraud the client. Because the respondent failed to answer the Administrator's complaint within the appropriate time pursuant to ILL. S. CT. R. 231, ILL. REV. STAT. ch. 110A, para. 231 (1987), the Administrator moved to have all allegations in the complaint admitted. *Trezise*, 118 Ill. 2d at 351, 515 N.E.2d at 82. The Hearing Board granted the motion, but it did not admit the allegations pertaining to code violations. *Id.*

170. ILL. S. CT. R. 772, ILL. REV. STAT. ch. 110A, para. 772 (1987). Illinois Supreme Court Rule 772 provides for the imposition of probation when an attorney demonstrates the following: (1) his continued practice of law will not cause the disrepute of either the profession or the courts; (2) during his rehabilitation period he is unlikely to harm the public and his probation can be adequately supervised; (3) "his disability [is] temporary or minor and does not require treatment and transfer to inactive status"; and (4) his misconduct does not warrant disbarment. *Id.*

171. *Trezise*, 118 Ill. 2d at 354, 515 N.E.2d at 84.

172. *Id.* at 355, 515 N.E.2d at 84.

173. *Id.* Notwithstanding this refusal, the court ruled that respondent had failed to carry his burden of proving such a disability. *Id.* The court noted that respondent failed to show evidence of both a specific condition from which he was suffering and treatment by a therapist who allegedly was treating him. *Id.* at 353, 515 N.E.2d at 83.

174. *Id.* at 357, 515 N.E.2d at 85.

175. *Id.*

176. *Id.*

suspension.¹⁷⁷

C. *Scope of Attorney-Client Relations*

Although the scope of attorney-client relations is not defined in the Illinois Code of Professional Responsibility,¹⁷⁸ one case filed during the *Survey* year directly dealt with the principle that clients have the ultimate authority to determine the purpose to be served by that relationship. In *In re Walner*,¹⁷⁹ the respondent was censured for settling a client's personal injury claim without consent and for signing a client's name without authority.¹⁸⁰ Furthermore, he withdrew attorney's fees without notifying clients in violation of Rule 9-102(b);¹⁸¹ he failed to provide a closing statement as mandated by Rule 2-106(c)(3);¹⁸² he was dilatory in notifying a client of a settlement; and he failed to promptly remit funds to the client.¹⁸³

The court reviewed respondent's dealings with two different cli-

177. *Id.* The Hearing Board had recommended probation; however, the Review Board recommended a six-month suspension. *Id.* at 347, 515 N.E.2d at 80-81.

178. *Cf.* MODEL CODE OF PROFESSIONAL RESPONSIBILITY Rule 1.2 (Discussion Draft 1983). This rule, which is entitled "Scope of Representation" and which has no counterpart in the Illinois Code of Professional Responsibility, provides that a lawyer shall abide by a client's decisions concerning the objectives of representation and the means by which they are to be pursued. MODEL CODE OF PROFESSIONAL RESPONSIBILITY Rule 1.2(a) (Discussion Draft 1983). Rule 1.2(a) also provides that lawyers shall abide by a client's decision as to whether an offer of settlement should be accepted. *Id.* Illinois law states that lawyers shall not intentionally fail to seek the lawful objectives of a client through reasonable means permitted by law. CODE OF PROFESSIONAL RESPONSIBILITY Rule 7-101(a)(1), ILL. REV. STAT. ch. 110A, CANON 7 (1987). In addition, Rule 5-106(a) provides that lawyers representing two or more clients shall not participate in the making of an aggregate settlement of the claims absent the consent of each client. CODE OF PROFESSIONAL RESPONSIBILITY Rule 5-106(a), ILL. REV. STAT. ch. 110A, CANON 5 (1987) (emphasis added).

179. 119 Ill. 2d 511, 519 N.E.2d 903 (1988).

180. *Id.* at 525, 519 N.E.2d at 909. The Hearing Board found misconduct only in one case and it recommended censure. *Id.* at 513, 519 N.E.2d at 903. The Review Board found misconduct in both cases and recommended a one-year suspension. *Id.*

181. *Id.* at 522, 524, 519 N.E.2d at 908. *See supra* note 151 wherein Rule 9-102(b) is paraphrased.

182. *Walner*, 119 Ill. 2d at 521, 519 N.E.2d at 907. The rule provides in part that "[o]ne copy of the closing statement signed by the lawyer shall be provided to each party represented by him within a reasonable time after receipt by the lawyer of any sum or sums to which the contingent-fee agreement is applicable." CODE OF PROFESSIONAL RESPONSIBILITY Rule 2-106(c)(3), ILL. REV. STAT. ch. 110A, CANON 2 (1987).

183. *Walner*, 519 Ill. 2d at 521, 519 N.E.2d at 907. Rule 9-102(c)(1) requires a lawyer to "promptly notify a client of the receipt of his funds" CODE OF PROFESSIONAL RESPONSIBILITY Rule 9-102(c)(1), ILL. REV. STAT. ch. 110A, CANON 9 (1987). Rule 9-102(c)(4) requires promptness in the delivery of client funds in the attorney's possession. CODE OF PROFESSIONAL RESPONSIBILITY Rule 9-102(c)(4), ILL. REV. STAT. ch. 110A, CANON 9 (1987).

ents.¹⁸⁴ In each instance, the respondent had settled personal injury claims for clients who could not be located at the time the settlements were negotiated.¹⁸⁵ In one case, respondent agreed with the client at the time of retention that no settlement would be made without the consent of the client.¹⁸⁶ In another case, respondent originally had his client sign a retention agreement wherein the client granted the firm a general power of attorney.¹⁸⁷

The court explained that when the express terms of an attorney-client agreement specify client authorization, an attorney's belief to the contrary will not suffice to escape discipline.¹⁸⁸ Moreover, respondent's claim that one client had permission to authorize a settlement for all was not supported by the evidence.¹⁸⁹ The court noted that suspicious circumstances surrounded the execution of the settlement.¹⁹⁰ The court concluded that despite the "substantial risk of harm" caused by respondent's misconduct, there was no evidence of prejudice to his clients.¹⁹¹

The court also stated that there was no evidence of dishonest motivation, that the conduct apparently resulted from a "misguided sense of efficiency and was apparently designed to accommodate clients who were difficult to reach," and that this was the first formal complaint against respondent.¹⁹² The court declared that "absent clear evidence of dishonest motive or economic harm to his clients or others,"¹⁹³ censure is the appropriate sanction.¹⁹⁴

D. Neglect

Neglect of a client's interests directly contravenes the mandates of Canons 6 and 7 of the Code of Professional Responsibility.¹⁹⁵

184. *Walner*, 119 Ill. 2d at 512-13, 519 N.E.2d at 903-04.

185. *Id.* at 522-23, 519 N.E.2d at 908.

186. *Id.* at 513, 519 N.E.2d at 904.

187. *Id.* at 516, 519 N.E.2d at 905.

188. *Id.* at 521, 519 N.E.2d at 907.

189. *Id.* at 520-21, 519 N.E.2d at 907.

190. *Id.* at 521, 519 N.E.2d at 907. The circumstances were "simulated signatures, false notarization, and failure to indicate that the signatures were made in a representative capacity." *Id.*

191. *Id.* at 525, 519 N.E.2d at 909.

192. *Id.* Respondent had been in practice for 23 years at the time of this misconduct. *Id.*

193. *Id.* (citing *In re Levy*, 115 Ill. 2d 395, 504 N.E.2d 107 (1987)).

194. *Id.*

195. Rule 6-101(a)(3) commands a lawyer to 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). Canon 7 requires all lawyers to "zealously" represent clients within the bounds of the law. CODE OF PROFESSIONAL RESPONSIBILITY CANON 7, ILL. REV. STAT. ch. 110A, CANON 7 (1987).

During the *Survey* year, the supreme court issued four opinions reviewing attorneys charged with neglect of clients' interests.¹⁹⁶ The resolution of these cases varied from dismissal of the complaint¹⁹⁷ to disbarment.¹⁹⁸

The conduct which gave rise to the charges against respondent in *In re Mason*¹⁹⁹ resulted from respondent's failure to file a notice of claim as required by statute in all personal injury suits filed against the Chicago Transit Authority ("CTA").²⁰⁰ Respondent compounded this misconduct with an attempt to conceal the error from his client.²⁰¹

Based on the entire record, both the Hearing and Review Boards found that respondent was not negligent, therefore warranting discipline.²⁰² Nevertheless, the Boards found that respondent's attempt to conceal his error constituted misconduct.²⁰³ The court affirmed the Boards' decisions as to the issue of negligence.²⁰⁴ It warned, however, that its failure to find negligence in a disciplinary hearing does not foreclose the possibility that the conduct is sufficiently negligent to prove an element in a malpractice suit.²⁰⁵

Despite the finding of no negligence, the court affirmed the Boards' findings with regard to respondent's concealment of his error.²⁰⁶ As to the appropriate sanction, the court considered a number of factors: first, respondent was inexperienced, the notice requirement was not widely known, and respondent was not noti-

196. Rule 7-101(2) states in part: "[a] lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional service" CODE OF PROFESSIONAL RESPONSIBILITY Rule 7-101(2), ILL. REV. STAT. ch. 110A, CANON 7 (1987). Also, Rule 7-101(3) states in part: "[a] lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship" CODE OF PROFESSIONAL RESPONSIBILITY Rule 7-101(3), ILL. REV. STAT. ch. 110A, CANON 7 (1987).

197. *In re Harris*, 118 Ill. 2d 117, 514 N.E.2d 462 (1987).

198. *In re Levin*, 118 Ill. 2d 77, 514 N.E.2d 174 (1987).

199. 122 Ill. 2d 163, 522 N.E.2d 1233 (1988).

200. *Id.* at 164, 522 N.E.2d at 1234. This conduct gave rise to the charge of neglect in violation of Rule 6-101(a)(3) of the Code of Professional Responsibility. *Id.*

201. *Id.* at 165, 522 N.E.2d at 1234. This conduct gave rise to charges of misconduct for respondent's attempt to limit liability for malpractice in violation of Rule 6-102(a) and misconduct constituting fraud, deceit, dishonesty, and misrepresentation in violation of Rule 1-102(a)(4) of the Code of Professional Responsibility. *Id.*

202. *Id.* at 169, 522 N.E.2d at 1236.

203. *Id.* at 165, 522 N.E.2d at 1234. The Hearing and Review Boards agreed in recommending censure as the appropriate sanction. *Id.*

204. *Id.* at 169, 522 N.E.2d at 1236.

205. *Id.* A malpractice suit would not be estopped by this disciplinary decision because disciplinary proceedings and malpractice suits seek different objectives. *Id.*

206. *Id.* at 170, 522 N.E.2d at 1236. The court regarded this attempt as "reprehensible." *Id.*

fied by the CTA of the requirement;²⁰⁷ second, the client's claim was dubious;²⁰⁸ and third, although respondent's acknowledgement of his scheme before the Hearing Board was not a mitigating factor, it nevertheless deserved consideration in light of disciplinary objectives.²⁰⁹ Consequently, the court ordered the respondent censured.²¹⁰

The respondent in *In re Harris*²¹¹ was charged with misrepresentation and the failure to discharge professional obligations in an expeditious manner.²¹² Respondent failed to appear when the Hearing Board convened, and when contacted by phone he admitted all facts encompassed by the complaint.²¹³ The Hearing Board concluded that respondent was guilty of both neglect and misrepresentation.²¹⁴ Although respondent filed exceptions with the Review Board and submitted affidavits from both of his clients who acknowledged their satisfaction with him, the Review Board adopted the Hearing Board's conclusions.²¹⁵

Basing its conclusion on two facts, the court ruled that respondent was not guilty of neglect or delay.²¹⁶ First, the court observed that respondent's clients had not filed charges with the ARDC.²¹⁷ Second, no evidence as to the content of the attorney-client agreement was presented.²¹⁸ Addressing the issue of whether respon-

207. *Id.* But see *In re Cheronis*, 114 Ill. 2d 527, 535, 502 N.E.2d 722, 726 (1986) (ignorance of the law was no excuse for attorney error).

208. *Mason*, 122 Ill. 2d at 171, 522 N.E.2d at 1237.

209. *Id.* at 173, 522 N.E.2d at 1238.

210. *Id.* at 175, 522 N.E.2d at 1239.

211. 118 Ill. 2d 117, 514 N.E.2d 462 (1987).

212. *Id.* at 119, 514 N.E.2d at 463. The misrepresentation charge was based on respondent's repeated assertions to the Administrator that his client's case would be concluded in "short order." *Id.*

213. *Id.* at 120, 514 N.E.2d at 463. Respondent suggested that the Board decide the case without him. *Id.*

214. *Id.*

215. *Id.* at 120-21, 514 N.E.2d at 463-64. As a result of its findings, the Hearing Board recommended a 90-day suspension with which the Review Board concurred. *Id.* at 121, 514 N.E.2d at 463-64.

216. *Id.* at 118, 514 N.E.2d at 462.

217. *Id.* The clients' niece filed charges with the ARDC. *Id.*

218. *Id.* at 121-22, 514 N.E.2d at 464. There was no need for the Administrator to produce evidence in support of his allegations because respondent admitted to the Administrator's allegations and the Hearing Board required no such proof. ILL. S. CT. R. 236(1), ILL. REV. STAT. ch. 110A, para. 236(1) (1987). Furthermore, pursuant to Rule 753(e)(3), the Review Board's capacity to alter the Hearing Board's decision is limited to situations in which the Hearing Board's decision is not supported by clear and convincing evidence. ILL. S. CT. R. 753(e)(3), ILL. REV. STAT. ch. 110A, para. 753 (e)(3) (1987). The Review Board is also limited to the same standard when making supplementary findings. *Id.*

dent was guilty of misrepresentation, the court concluded that the Administrator failed to show "deceptive intent."²¹⁹ The court explained that respondent's letters to the Administrator did not concern past events, rather they were "clearly puffed expectations that should have been understood as such."²²⁰ Finally, the court observed that respondent's two partners died during the time he was representing the clients in question, that these deaths indicated respondent was left with an increased work load, and that this factor should have been considered.²²¹ Consequently, the court ordered dismissal of the complaint.²²²

*In re Weinberg*²²³ involved the neglect of a criminal appeal. The respondent, attorney of record on the appeal, delegated the responsibility of writing a brief to an inexperienced attorney.²²⁴ Although respondent periodically checked on the progress of the brief, the attorney failed to file it.²²⁵ After several extensions the appellate court dismissed the appeal.²²⁶

Respondent was charged with neglect, failing to carry out a contract of employment, failing to represent a client zealously, and prejudicing a client.²²⁷ The Hearing Board found, and the Review Board affirmed, that the Administrator proved all of the charges.²²⁸ Respondent only argued the issue of discipline before the court; he

219. *Harris*, 118 Ill. 2d at 123, 514 N.E.2d at 465.

220. *Id.*

221. *Id.* at 124, 514 N.E.2d at 465.

222. *Id.*

223. 119 Ill. 2d 309, 518 N.E.2d 1037 (1988).

224. *Id.* at 312, 518 N.E.2d at 1039. The court noted that the attorney to whom the writing of the brief was delegated had been admitted to the bar shortly before he assumed this responsibility. *Id.* at 315, 518 N.E.2d at 1040.

225. *Id.* at 312, 518 N.E.2d at 1039.

226. *Id.* Restitution was not an issue because the respondent did not receive a fee. *Id.*

227. *Id.* at 313, 518 N.E.2d at 1039. These charges represented alleged violations of the CODE OF PROFESSIONAL RESPONSIBILITY Rule 6-101, ILL. REV. STAT. ch. 110A, CANON 6 (1987), and CODE OF PROFESSIONAL RESPONSIBILITY Rule 7-101, ILL. REV. STAT. ch. 110A, CANON 7 (1987). See *supra* notes 195-96 for the text of these rules.

228. *Weinberg*, 119 Ill. 2d at 313, 518 N.E.2d at 1039. In fact, the respondent acknowledged that it was his responsibility to ensure that a competent brief was timely filed. *Id.* Recently, the court has received a proposed Illinois Code of Professional Responsibility. Proposed Rule 1-104, entitled "Responsibility of a Lawyer," provides for the situation at issue in this case. The rule requires a lawyer who functions as a supervisor over another lawyer to "make reasonable efforts to ensure that the other lawyer's conduct conforms to [the] Code." ILLINOIS CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-104(b) (proposed 1987). The rule also states that "[a] lawyer shall be responsible for another lawyer's violation of this Code if . . . the lawyer . . . has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action." ILLINOIS CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-104(c)(2) (proposed 1987).

did not take exception to the Boards' findings.²²⁹

With regard to the appropriate discipline to impose, the court asserted that in criminal cases more severe discipline is appropriate to deter neglect because the potential for non-compensable loss is great.²³⁰ Nevertheless, the court noted respondent had practiced mainly in the area criminal law since 1967, this was the first disciplinary action against him, that he was not motivated by dishonesty or fraud, and that his client suffered no permanent harm because the case was later reinstated and decided on the merits.²³¹ Therefore, the court ordered the respondent censured.²³²

The misconduct at issue in *In re Fox*²³³ also was neglect of criminal appeals;²³⁴ specifically, with regard to three clients who paid the respondent a retainer, the respondent failed to pursue criminal appeals properly.²³⁵ The Hearing and Review Boards found respondent guilty of all counts charged against him.²³⁶

In response to the Review Board's recommendations, the respondent argued that factors which mitigated his misconduct should be considered by the court.²³⁷ The court, however, reasoned that greater discipline was warranted because respondent's misconduct caused his clients to forfeit constitutional guarantees.²³⁸ In addition, the court recognized serious aggravating conduct.²³⁹ It therefore adopted the Review Board's recommendation

229. *Weinberg*, 119 Ill. 2d at 313, 518 N.E.2d at 1039. The Hearing Board recommended a 90-day suspension and the Review Board recommended censure. *Id.* at 310-11, 518 N.E.2d at 1038.

230. *Id.* at 314-15, 518 N.E.2d at 1040 (citing *In re Hall*, 95 Ill. 2d 371, 375, 447 N.E.2d 805, 806 (1983)).

231. *Id.* at 315, 518 N.E.2d at 1040.

232. *Id.* at 316, 518 N.E.2d at 1040.

233. 122 Ill. 2d 402, 522 N.E.2d 1229 (1988).

234. Respondent was charged with neglect of legal matters entrusted to him, failure to seek the lawful objective of his client, failure to execute contracts of employment, and prejudice or damage to his client. *Id.* at 404, 522 N.E.2d at 1230.

235. *Id.* at 404-05, 522 N.E.2d at 1230. Also, with respect to one client, respondent did not refund a \$1500 fee. *Id.* at 407, 522 N.E.2d at 1231.

236. *Id.* at 405, 522 N.E.2d at 1230. Although the Hearing Board recommended censure, a majority of the Review Board recommended an 18-month suspension. *Id.*

237. *Id.* at 405-06, 522 N.E.2d at 1231. The factors he asserted were as follows: respondent had never before been disciplined; he suffered from an aggravated hearing condition; his marriage of 20 years was in the process of being dissolved; his association with another attorney was in the midst of a break up; and he voluntarily returned a fee paid to him by one client's family, including \$100 more than the record indicated was due. *Id.*

238. *Id.* at 409, 522 N.E.2d at 1232-33.

239. Namely, the respondent had misrepresented his actions by informing a client's family that a brief had been filed when he knew that it had not. *Id.* at 410, 522 N.E.2d at

and ordered an eighteen-month suspension.²⁴⁰

Due to numerous aggravating factors and prior unrelated misconduct, the court ordered disbarment in *In re Levin*.²⁴¹ Respondent was charged with neglect of three criminal appeals, making misrepresentations to clients, and commingling and converting a client's fund.²⁴² Respondent failed to answer the charges; thus, the Hearing Board ordered admission of all allegations in the complaint.²⁴³

The court took cognizance of a prior suspension of the respondent,²⁴⁴ his conversion of a bond check's proceeds,²⁴⁵ and his contempt for both the disciplinary process and the court.²⁴⁶ Consequently, the court ordered the respondent disbarred.²⁴⁷

E. Fraud and the Unauthorized Practice of Law

Canon 1 of the Code of Professional Responsibility directs lawyers to assist in the maintenance of the integrity and competence of the legal profession.²⁴⁸ Rule 3-101(a) of the Code prohibits a lawyer from assisting the unauthorized practice of law.²⁴⁹ During the *Survey* year, the supreme court issued one published opinion reviewing charges of fraud and assistance in the unauthorized practice of law.²⁵⁰

1233. Also, he returned money to only one client after charges were filed against him. *Id.*

240. *Id.* at 411, 522 N.E.2d at 1233.

241. 118 Ill. 2d 77, 89, 514 N.E.2d 174, 180 (1987).

242. *Id.* at 78, 514 N.E.2d at 175.

243. *Id.* Furthermore, respondent did not comply with the Hearing Board's order to file written closing arguments. *Id.* Because the respondent did not file objections with the Review Board, the Hearing Board's report was submitted to the court as an agreed matter pursuant to Supreme Court Rule 753(e)(1). *Id.* at 79, 514 N.E.2d at 175. Respondent also failed to comply with the court's briefing schedule. *Id.*

244. *Id.* at 88, 514 N.E.2d at 179. The court stated that the reason for suspension in the prior instance of misconduct was due to the mitigating factor of alcoholism. In the instance case, there was no evidence of any mitigating factors. *Id.*

245. *Id.* The court further declared that "[e]ven a single act of conversion may warrant disbarment." *Id.* at 88, 514 N.E.2d at 180 (citing *In re Pass*, 105 Ill. 2d 366, 370, 475 N.E.2d 525, 527 (1985)).

246. *Id.* at 89, 514 N.E.2d at 180. The court specifically noted that respondent "impeded the Commission's efforts to investigate the charges against him at the inquiry stage," and when he finally submitted evidence before the court, it was "wholly inadequate." *Id.*

247. *Id.*

248. See CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-101, ILL. REV. STAT. ch. 110A, CANON 1 (1987).

249. CODE OF PROFESSIONAL RESPONSIBILITY Rule 3-101(a), ILL. REV. STAT. ch. 110A, CANON 3 (1987).

250. *In re Yamaguchi*, 118 Ill. 2d 417, 515 N.E.2d 1235 (1987). Rule 1-102(a)(4)

In *In re Yamaguchi*,²⁵¹ the Hearing Board found that respondent signed several blank real estate valuation complaints and gave them to a non-lawyer friend who used them in tax board proceedings within which respondent did not participate.²⁵² Respondent also allowed another non-lawyer to sign his name to these types of complaints.²⁵³ The court adopted the Hearing Board's factual findings,²⁵⁴ but before it imposed discipline it considered mitigating circumstances.²⁵⁵ Consequently, the court ordered a six-month suspension.²⁵⁶

F. Conflict of Interest

Two opinions issued during the *Survey* year addressed the precepts of Canon 5 of the Code of Professional Responsibility. Rule 5-101 declares that a lawyer should refuse employment when his independent judgment may be impaired by his interests.²⁵⁷ In both cases the misconduct warranted suspension.

The respondent in *In re Rosin*²⁵⁸ was charged with five violations of Canon 5 of the Code.²⁵⁹ The Hearing Board found that

declares that "a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation . . ." CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-102(a)(4), ILL. REV. STAT. ch. 110A, CANON 1 (1987). Furthermore, the aiding of a non-lawyer in the unauthorized practice of law violates Rule 3-101(a) of the code. *Yamaguchi*, 118 Ill. 2d at 420, 515 N.E.2d at 1236.

251. 118 Ill. 2d 417, 515 N.E.2d 1235 (1987).

252. *Id.* at 424, 515 N.E.2d at 1238.

253. *Id.* Although the Administrator sought disbarment, the Hearing Board recommended a reprimand and the Review Board recommended a six-month suspension. *Id.* at 420-21, 515 N.E.2d at 1236.

254. *Id.* at 424, 515 N.E.2d at 1238.

255. *Id.* at 428, 515 N.E.2d at 1240. The court noted that in over 40 years, this was the first action for dishonesty against respondent. *Id.* Also, respondent did not intend to profit or cause harm from his misconduct, and he did not actually profit or cause harm. *Id.*

256. *Id.* at 429, 515 N.E.2d at 1240.

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

258. 118 Ill. 2d 365, 515 N.E.2d 85 (1987).

259. *Id.* at 367, 515 N.E.2d at 86. Although there were several charges pending against the respondent, only the material violations of Canon 5 will be discussed for purposes of the *Survey*. The violations alleged in count one were as follows: (1) the respondent violated Rule 5-101 because he undertook employment which could have been influenced by his personal judgment; (2) that respondent violated Rule 5-107 because he failed to avoid the influence from people other than the client; (3) that respondent violated Rule 5-107(a) because he did not represent his client with undivided fidelity; and (4) that respondent violated Rule 5-104 by not limiting his business relations with his client. *Id.*

respondent was guilty of all violations of Canon 5.²⁶⁰ The Review Board, however, dismissed the complaint.²⁶¹

The court found that the respondent influenced his client into investing \$100,000 in a collector's stamp company which was controlled by a close friend of respondent's who was also a circuit court judge in Cook County.²⁶² Without investigating the company, respondent assured his client that the investment was a good one, and he persuaded her to sign the investment agreement.²⁶³ Moreover, respondent did not provide his client with adequate security against loss.²⁶⁴

The court emphasized that Rule 5-101(a) does not require an actual compromise; the rule will be violated even in instances where an attorney's professional judgment "will or *reasonably may* be affected . . . by his personal interests."²⁶⁵ Thus, the court ruled that even if respondent had competently executed the investment agreement, he still would not have been protected from discipline.²⁶⁶ Before ordering discipline, the court considered both mitigating and aggravating factors.²⁶⁷ Considering the totality of the circumstances, the court ordered a two-year suspension.²⁶⁸

The most serious charge levied against respondent in *In re*

260. *Id.* Consequently, the Hearing Board recommended a three-month suspension. *Id.*

261. *Id.*

262. *Id.* at 383-84, 515 N.E.2d at 94. Respondent's client had "severe psychological problems . . . was diagnosed a schizophrenic," and only had an eleventh grade education. *Id.* at 370, 515 N.E.2d at 87.

263. *Id.* at 381, 515 N.E.2d at 92-93.

264. *Id.* at 382, 515 N.E.2d at 93.

265. *Id.* at 381, 515 N.E.2d at 93 (emphasis in original). Rule 5-101(a) states "[e]xcept with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interest." CODE OF PROFESSIONAL RESPONSIBILITY Rule 5-101(a), ILL. REV. STAT. ch. 110A, CANON 5 (1987).

266. *Rosin*, 118 Ill. 2d at 381, 515 N.E.2d at 93. The court held that by failing to make full disclosure to his client and by failing to obtain his client's informed consent, respondent violated Rule 5-101(a). *Id.* The court also concluded that respondent's actions evidenced an intentional prejudice and damage to his client's interests. *Id.* at 383, 515 N.E.2d at 93-94.

267. *Id.* at 387, 515 N.E.2d at 95. For example, respondent reaped no personal benefit from his misconduct, he did not intend to defraud his client, and he had no prior record of professional misconduct. *Id.* On the other hand, respondent divided fees with an attorney who had solicited the client's case. *Id.* at 388, 515 N.E.2d at 96. In addition, respondent personally lent \$60,000 to Chambers Stamp Company which was controlled by a judge. *Id.*

268. *Id.* at 389, 515 N.E.2d at 96. The two-year suspension was conditioned upon respondent's making full restitution to his client within 60 days. *Id.* at 388-89, 515 N.E.2d at 95-96.

*Gordon*²⁶⁹ was also that respondent violated Rule 5-101(a) by undertaking employment which could have been affected by his personal judgment.²⁷⁰ Respondent made an unauthorized loan out of an estate which he represented.²⁷¹

The Hearing Board found, and the Review Board affirmed, that respondent was guilty of the charge.²⁷² Addressing only the issue of the appropriate sanction to be imposed,²⁷³ the court noted that respondent voluntarily brought his misconduct to the ARDC's attention,²⁷⁴ he fully cooperated in the investigatory proceedings, he made full restitution before the proceedings were instituted, this was his first instance of misconduct, and he was active in pro bono programs and charities.²⁷⁵ Consequently, the court ordered an eighteen-month suspension.²⁷⁶

G. *Violations of the Criminal Code*

Violations of the criminal code are addressed by Supreme Court Rule 761.²⁷⁷ When an attorney is convicted of a crime involving fraud or moral turpitude, the Administrator is required to file a petition with the court which prays for a suspension.²⁷⁸ Pursuant to Rule 761(f), proof of conviction is conclusive evidence of the attorney's guilt of the crime.²⁷⁹ Convictions of crimes not involving moral turpitude or fraud are referred by the Administrator to the Inquiry Board.²⁸⁰ During the *Survey* year, the supreme court issued three published opinions which involved attorneys who had violated the criminal code. Only in one case did the crime involve moral turpitude.²⁸¹

In *In re Ciardelli*, the respondent was a criminal defense attor-

269. 122 Ill. 2d 540, 524 N.E.2d 547 (1988).

270. *Id.* at 544, 524 N.E.2d at 549. See *supra* note 265 for the text of Rule 5-101(a).

271. *Gordon*, 122 Ill. 2d at 542, 524 N.E.2d at 548. Respondent was also charged with filing a false and misleading account of the estate in the probate division of the circuit court. *Id.*

272. *Id.* at 545, 524 N.E.2d at 549. The Boards also found that respondent was guilty of a misrepresentation charge. The Hearing Board recommended a two-year suspension with which the Review Board concurred. *Id.*

273. *Id.*

274. *Id.* at 546, 524 N.E.2d at 550. Actually, respondent told his law partners of his misconduct and his partners brought the matter to the ARDC's attention. *Id.* at 543-44, 524 N.E.2d at 549.

275. *Id.* at 546, 524 N.E.2d at 550.

276. *Id.*

277. ILL. S. CT. R. 761, ILL. REV. STAT. ch. 110A, para. 761 (1987).

278. ILL. S. CT. R. 761(b), ILL. REV. STAT. ch. 110A, para. 761(b) (1987).

279. ILL. S. CT. R. 761(f), ILL. REV. STAT. ch. 110A, para. 761(f) (1987).

280. ILL. S. CT. R. 761(c), ILL. REV. STAT. ch. 110A, para. 761(c) (1987).

281. *In re Ciardelli*, 118 Ill. 2d 233, 514 N.E.2d 1006 (1987).

ney who was convicted of harboring and concealing a fugitive and plotting to defraud a United States agency.²⁸² He was suspended by the court for a period of three years.²⁸³

Ruling on the question of discipline,²⁸⁴ the court stated that notwithstanding the conclusive evidence of conviction, the court is not precluded from examining other evidence for the purpose of determining the severity of the discipline to be imposed.²⁸⁵ It reasoned that discipline is warranted because of the conduct, not the conviction.²⁸⁶

Although the court was concerned with the severely damaging effect that this type of reprehensible conduct has on the public's image of the legal profession, it did not disbar the respondent because of several mitigating factors.²⁸⁷ Consequently, the court ordered a three-year suspension.²⁸⁸

The respondent in *In re Rolley*²⁸⁹ was convicted of intentionally failing to file an Illinois income tax return.²⁹⁰ Respondent also was charged with other violations of the Code of Professional Responsibility, one of which was commingling and conversion of client funds.²⁹¹ The Hearing and Review Boards found respondent guilty of conflicting business transactions which amounted to overreaching and self-dealing.²⁹²

282. *Id.* at 238, 514 N.E.2d at 1008-09.

283. *Id.* at 244, 514 N.E.2d at 1011. The suspension was applied retroactively to February 4, 1986, the date that the interim suspension was ordered by the court. *Id.* at 235-36, 514 N.E.2d at 1007-08. On that date, based on his conviction, respondent was suspended until further order of the court. *Id.* at 235, 514 N.E.2d at 1007.

284. After making findings of fact and law, the Hearing Board recommended a three-year suspension from February 4, 1986. *Id.* at 236, 514 N.E.2d at 1008. The Review Board affirmed the Hearing Board's findings of fact and law, but it recommended a one-year suspension from February 3, 1986. *Id.*

285. *Id.* at 239, 514 N.E.2d at 1009.

286. *Id.* (citing *In re Scott*, 98 Ill. 2d 9, 16, 455 N.E.2d 81, 84 (1983); *In re Andros*, 64 Ill. 2d 419, 423-24, 356 N.E.2d 513, 514 (1976); *In re Crane*, 23 Ill. 2d 398, 400, 178 N.E.2d 349, 350 (1961)).

287. *Id.* at 243, 514 N.E.2d at 1011. For example, respondent had never before been charged with professional misconduct, and he had been active in the bar association, pro bono programs, his church, and several charities. *Id.* at 243-44, 514 N.E.2d at 1011. Also, respondent had been a panelist on the federal court's pro bono criminal defense program and there was testimony from attorneys and judges as to his good character. *Id.* at 243, 514 N.E.2d at 1011.

288. *Id.* at 244, 514 N.E.2d at 1011.

289. 121 Ill. 2d 222, 520 N.E.2d 302 (1988).

290. *Id.* at 230, 520 N.E.2d at 306.

291. *Id.* at 227, 520 N.E.2d at 304.

292. *Id.* at 228, 520 N.E.2d at 304. The Hearing Board recommended a two-year suspension. *Id.* at 225, 520 N.E.2d at 303. The Review Board members were in disagreement as to the appropriate sanction to be recommended. *Id.* A majority of five members

The court ruled that absent extraordinary mitigating circumstances, a conviction for failing to file an income tax return is grounds for discipline.²⁹³ In addition, the court explained that it is the criminal conduct, and not the conviction itself, which justifies discipline.²⁹⁴ Therefore, even a pardon or formal acquittal does not automatically bar a disciplinary proceeding.²⁹⁵

Before imposing discipline, the court considered mitigating factors.²⁹⁶ First, the respondent had made full restitution to the client before he filed his answer to the Administrator's complaint;²⁹⁷ second, this was the first complaint against him since his admission to the bar in 1955;²⁹⁸ and third, respondent testified that he suffered depression due to several family problems at the time the misconduct occurred.²⁹⁹ The court stated that the respondent's unfortunate circumstances would not exonerate him; it therefore ordered an eighteen-month suspension.³⁰⁰

*In re Kunz*³⁰¹ involved an attorney who suffered from alcoholism, was convicted for driving under the influence of alcohol, and fled the state before serving his jail sentence for that conviction.³⁰² The attorney later surrendered to authorities.³⁰³ The Hearing Board recommended a two-year suspension or, alternatively, "until further order of court with probation; and that the suspension be stayed on the condition that the respondent" periodically report to the Administrator, enter an alcohol abuse treatment program, and abstain from alcohol.³⁰⁴ The Review Board recommended a one-year suspension, or until further order of the court with probation stayed on the condition he enter a treatment program, abstain from alcohol, and subject himself to any of the Administrator's requirements for supervisory purposes.³⁰⁵

The court acknowledged that the respondent admitted to all of

recommended a three-month suspension, two members recommended a two-year suspension, and one member recommended a six-month suspension. *Id.*

293. *Id.* at 232, 520 N.E.2d at 307. This rule applies even if such conduct does not constitute moral turpitude. *Id.*

294. *Id.* at 233, 520 N.E.2d at 307.

295. *Id.*

296. *Id.*

297. *Id.* at 227-28, 520 N.E.2d at 304.

298. *Id.* at 234, 520 N.E.2d at 307.

299. *Id.* at 235, 520 N.E.2d at 308.

300. *Id.* at 235-36, 520 N.E.2d at 308.

301. 122 Ill. 2d 547, 524 N.E.2d 544 (1988).

302. *Id.* at 549-50, 524 N.E.2d at 545.

303. *Id.*

304. *Id.* at 548, 524 N.E.2d at 544.

305. *Id.* at 548-49, 524 N.E.2d at 545.

the allegations against him, including being an alcoholic.³⁰⁶ Moreover, the respondent claimed to be in a treatment program³⁰⁷ and that his disease evidently did not affect his ability to serve his clients.³⁰⁸ Based on these factors and the fact that probation generally is used to deal with alcoholic attorneys,³⁰⁹ the court ordered a two-year suspension stayed on the following conditions: The presentation of proof that he is in an alcohol abuse treatment program and abstaining from alcohol; and that he comply with any reasonable condition the Administrator ordered.³¹⁰

H. Reinstatement Proceedings

During the *Survey* year, the court issued two opinions that considered petitions for reinstatement to the bar.³¹¹ In both cases the petitions were denied.³¹²

Petitioner was disbarred on consent in *In re Anglin* after being convicted of possession of stolen securities and after he refused, on more than one occasion, to name others who were involved in the scheme to sell the stolen securities.³¹³ The Hearing and Review Boards both recommended that respondent be reinstated to the bar.³¹⁴ The court nevertheless explained that the petitioner continued to refuse to answer questions relating to the identity of the other attorneys involved in the scheme.³¹⁵ This code of silence, the court ruled, showed a present inability to adhere to the Code of Professional Responsibility which requires lawyers to report the misconduct of other attorneys.³¹⁶ Because the petitioner bears the

306. *Id.* at 551, 524 N.E.2d at 546.

307. *Id.*

308. *Id.* at 553, 524 N.E.2d at 547. Illinois Supreme Court Rule 758 governs the problem of drug or alcohol addiction and mental diseases. ILL. S. CT. R. 758, ILL. REV. STAT. ch. 110A, para. 758 (1987). Rule 758(c) provides for an attorney's transfer to inactive status if the court determines that he is "incapacitated from continuing to practice law" ILL. S. CT. R. 758(c), ILL. REV. STAT. ch. 110A, para. 758(c) (1987).

309. *Kunz*, 122 Ill. 2d at 552, 524 N.E.2d at 546. *See supra* note 165 and accompanying text for a discussion of Rule 772.

310. *Kunz*, 122 Ill. 2d at 554, 524 N.E.2d at 547.

311. The two cases considered were *In re Anglin*, 122 Ill. 2d 531, 524 N.E.2d 550 (1988), and *In re Powers*, 122 Ill. 2d 18, 521 N.E.2d 921 (1988). Rule 767 governs reinstatement and it includes six factors to consider in order to determine rehabilitation. ILL. S. CT. R. 767, ILL. REV. STAT. ch. 110A, para. 767 (1987). *See supra* note 40 and accompanying text.

312. *Anglin*, 122 Ill. 2d at 540, 524 N.E.2d at 555; *Powers*, 122 Ill. 2d at 22, 521 N.E.2d at 923.

313. *Anglin*, 122 Ill. 2d at 533-34, 524 N.E.2d at 552.

314. *Id.* at 533, 524 N.E.2d at 551.

315. *Id.* at 539, 524 N.E.2d at 554.

316. *Id.* *See* CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-103, ILL. REV. STAT.

burden of proving rehabilitation by clear and convincing evidence,³¹⁷ the court held that his code of silence belies any other evidence in his favor.³¹⁸ Thus, the court denied reinstatement to the bar.³¹⁹

I. Rulings on Procedural Issues

The court decided two cases during the *Survey* year that primarily involved procedural issues. In one case the court reviewed the requirements that a complaint must meet in order to withstand dismissal,³²⁰ and in another case it addressed two procedural issues involving the imposition of sanctions.³²¹

The issues addressed in *In re Mitan*³²² presented the court with the question of whether Illinois Rule of Civil Procedure 2-611³²³ applied to disciplinary proceedings.³²⁴ The court also addressed whether sanctions should be imposed on the attorneys representing respondent and whether sanctions should be imposed on the Administrator prosecuting the case.³²⁵

The Administrator requested that the respondent's attorneys be sanctioned for filing a fraudulent and frivolous petition for reinstatement on behalf of respondent.³²⁶ The court explained that its duty to regulate the practice of law authorizes the court to impose sanctions where a false petition for reinstatement is filed.³²⁷ It declared the appropriate standard to be an "objectively reasonable inquiry" into the relevant facts and law.³²⁸ As for the attorneys charged, the court stated that the Administrator had not proven

ch. 110A, CANON 1 (1987). Specifically, the court stated "[p]etitioner's continuing belief in a code of silence and nondisclosure of the misconduct of others under the circumstances described prevents us from concluding that he is clearly and convincingly rehabilitated and currently fit to practice law." *Anglin*, 122 Ill. 2d at 539, 524 N.E.2d at 554.

317. *Anglin*, 122 Ill. 2d at 537, 524 N.E.2d at 553.

318. *Id.* at 540, 524 N.E.2d at 555.

319. *Id.*

320. *In re Beatty*, 118 Ill. 2d 489, 517 N.E.2d 1065 (1987).

321. *In re Mitan*, 119 Ill. 2d 229, 518 N.E.2d 1000 (1987). The issue involving the named petitioner was a motion to withdraw his petition for reinstatement; the court reserved ruling on this motion. *Id.* at 258, 518 N.E.2d at 1013.

322. 119 Ill. 2d 229, 518 N.E.2d 1000 (1987).

323. ILL. REV. STAT. ch. 110, para. 2-611 (1987). Paragraph 2-611 requires an attorney to verify that he has made a "'reasonable inquiry'" into the facts and law of everything filed in state court. *Mitan*, 119 Ill. 2d at 243, 518 N.E.2d at 1006 (quoting ILL. REV. STAT. ch. 110, para. 2-611 (1987)). See also FED. R. CIV. P. 11.

324. *Mitan*, 119 Ill. 2d at 242, 518 N.E.2d at 1006.

325. *Id.* at 239, 518 N.E.2d at 1004.

326. *Id.*

327. *Id.* at 246, 518 N.E.2d at 1008.

328. *Id.* at 247, 518 N.E.2d at 1008. Although the court was explicit in stating that

that there was no objectively reasonable inquiry made.³²⁹ Furthermore, the court asserted that the Administrator was partially to blame for the attorneys' lack of information.³³⁰ Consequently, the court refused to impose sanctions on the attorneys.³³¹

The attorneys argued that the Administrator violated his duty of privacy and confidentiality.³³² The Administrator's alleged misconduct was a statement which revealed that these attorneys were "under scrutiny" based on their drawing and filing of Mitan's petition.³³³ Although the court thought that the statement was ambiguous, it was persuaded by the Administrator that the statement only referred to the court's scrutiny of the sanction issue brought against the attorneys.³³⁴ The court decided that the statement did not announce a disciplinary investigation; therefore, the Administrator had not violated his duty to preserve confidentiality.³³⁵ Thus, the court also denied sanctions against the Administrator.³³⁶

In *In re Beatty*,³³⁷ six respondents were charged with numerous violations of the Code of Professional Responsibility³³⁸ based on an alleged anti-retention committee that they organized to oppose two circuit court judges.³³⁹ The Hearing Board found that the complaint did not allege the respondents knowingly made false statements sufficient to constitute a cause of action.³⁴⁰ Furthermore, the complaint did not specify which false statements were attribu-

paragraph 2-611 does not apply in disciplinary proceedings, it likened the inquiry to Rule 2-611 of the Illinois Code of Civil Procedure and Federal Rule of Civil Procedure 11. *Id.*

329. *Id.* at 248, 518 N.E.2d at 1008-09.

330. *Id.* The court explained that the Administrator failed to communicate with the respondent's attorneys and failed to set a date on which the attorneys could examine the ARDC's files on Mitan. *Id.*

331. *Id.* at 258, 518 N.E.2d at 1013.

332. *Id.* at 256, 518 N.E.2d at 1012. This duty arises pursuant to Rule 766. ILL. S. CT. R. 766, ILL. REV. STAT. ch. 110A, para. 766 (1987). The charges against the Administrator and the attorneys were levied at the supreme court level. *Mitan*, 119 Ill. 2d at 256, 518 N.E.2d at 1012.

333. *Mitan*, 119 Ill. 2d at 257, 518 N.E.2d at 1013. The statement was contained in a sentence in the Administrator's memo in support of his motion for sanctions against the attorneys. *Id.*

334. *Id.*

335. *Id.*

336. *Id.*

337. 118 Ill. 2d 489, 517 N.E.2d 1065 (1987).

338. They were charged with violating CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-101(a)(2), (a)(4), (a)(5), ILL. REV. STAT. ch. 110A, CANON 1 (1987), and CODE OF PROFESSIONAL RESPONSIBILITY Rule 8-102(a)-(b), ILL. REV. STAT. ch. 110A, CANON 8 (1987). *Beatty*, 118 Ill. 2d at 490, 517 N.E.2d at 1066.

339. *Beatty*, 118 Ill. 2d at 491, 517 N.E.2d at 1066.

340. *Id.* at 497, 517 N.E.2d at 1069.

table to the respondents.³⁴¹ Therefore, the complaint failed to notify each respondent of the particular charge against him.³⁴² Consequently, the Board dismissed the Administrator's complaint with prejudice.³⁴³

The court affirmed the Hearing Board's findings.³⁴⁴ It also stated that the complaint was required to charge specific allegations of fact as to the professional misconduct of each attorney.³⁴⁵ In addition, the court declared that a complaint which does not allege the essential elements for recovery will not be remedied by permissive construction.³⁴⁶ Thus, the case was dismissed.³⁴⁷

IV. CONCLUSION

During the *Survey* year, the Illinois Supreme Court manifested a strong concern for safeguarding the public from attorneys whose conduct departs from the standards set forth in the Code of Professional Responsibility. It also faced several difficult issues to resolve. For the first time, it addressed the problems posed by a candidate for admission to the bar whose admission had initially been approved by a court-created agency, but whose background was permeated with serious misconduct. The court further faced the effect of ambiguity in a rule on bench-bar relations which will be applied with frequency as numerous Greylord related cases remain unresolved.³⁴⁸ The court also decided that sanctions may be imposed on attorneys who fail to make reasonable inquiries into petitions for reinstatement that they draft and file.

Admittedly, at first glance, there may be concern for a lack of predictability and uniformity in the court's decisions. A careful scrutiny, however, reveals a supreme court that refuses to apply general rules haphazardly. The varying severity of sanctions imposed, even as to similar misconduct, results from the court's care-

341. *Id.* at 496-97, 517 N.E.2d at 1068.

342. *Id.* at 498, 517 N.E.2d at 1069.

343. *Id.* at 493, 517 N.E.2d at 1066. The Review Board joined the Hearing Board's decision. *Id.* at 493, 517 N.E.2d at 1066-67.

344. *Id.* at 500, 517 N.E.2d at 1070.

345. *Id.* at 499, 517 N.E.2d at 1069-70. The court explained that the complaint must contain a statement of facts that constitutes a cause of action. *Id.* at 499, 517 N.E.2d at 1069.

346. *Id.* at 500, 517 N.E.2d at 1070.

347. *Id.*

348. 1987 ARDC ANN. REP. at 6 (1988). *See, e.g., In re D'Angelo*, No. 66514 (Ill. Dec. 15, 1988) (LEXIS, States Library, Ill file); *In re Karzov*, No. 65947 (Ill. Dec. 15, 1988) (LEXIS, States Library, Ill file); *In re Powell*, No. 65387 (Ill. Dec. 15, 1988) (LEXIS, States Library, Ill file); *In re Heller*, No. 66768 (Ill. Dec. 6, 1988) (LEXIS, States Library, Ill file).

ful study of the facts and consideration of both aggravating and mitigating factors in each case.

