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Professional Responsibility

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Professional Responsibility

Michael Howlett*
and Shelley Dunck**

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I. INTRODUCTION

During the *Survey* year, the Illinois Supreme Court decided matters relating to both the admission and reinstatement of attorneys to the Illinois Bar and the discipline of Illinois Bar members.¹ Also during this period, Illinois appellate courts decided privately initiated attorney malpractice actions.² The Illinois Supreme Court disposed of most disciplinary proceedings by court order, and without a written opinion. Analyses of the opinions issued, as

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1. The *Survey* year covers the period July 1, 1986 through July 1, 1987. Some of the matters decided by the courts during the *Survey* year, however, were initiated by the Attorney Registration and Disciplinary Commission prior to July 1, 1986.

2. Procedurally, matters involving attorney misconduct may reach the court through two separate mechanisms: the Attorney Registration and Disciplinary Commission (the "ARDC"), and privately initiated malpractice actions. Although the Illinois Supreme Court may hear both types of cases, it is the only court that hears ARDC related cases.

well as the appellate court opinions issued in attorney malpractice actions, however, should apprise the practitioner of the professional ethical guidelines that members of the Illinois Bar are expected to observe. Moreover, these opinions will familiarize the practitioner with the proceedings by which ethical issues are brought to the attention of the courts.

II. THE ROLES OF THE ILLINOIS SUPREME COURT AND THE ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION

The Illinois Supreme Court regulates the admission of attorneys to the bar and ultimately imposes attorney discipline for infractions of the Code of Professional Responsibility.³ During the *Survey* year, an Illinois appellate court decided a case in which both the role and nature of the disciplinary process was restated in detail.⁴

In *People ex rel Brazen v. Finley*, the plaintiff filed a complaint challenging the validity of Circuit Court Rule 0.7, arguing that the circuit court was without authority to promote such a rule.⁵ Following a hearing, and pursuant to the defendant's motion, the trial court dismissed the plaintiff's claim, reasoning that Rule 0.7 related to administrative court procedures and was, therefore, neither illegal nor unconstitutional.⁶

On appeal, the court reversed the trial court's decision.⁷ In reaching its conclusion, the appellate court reasoned that Rule 0.7 overlapped with Supreme Court Rules 2-103 and 5-103 of the Code of Professional Responsibility; and, therefore, represented an improper intrusion on the forum created by the Illinois Supreme Court.⁸ The court noted that "[the] supreme court in its rules has

3. For a detailed discussion of the mechanics of these procedures, see Sukowicz & Thompson, *Professional Responsibility, 1985-86 Illinois Law Survey*, 18 LOY. U. CHI. L.J. 715, 716 (1986).

4. *People ex rel. Brazen v. Finley*, 146 Ill. App. 3d 750, 497 N.E.2d 1013 (1st Dist. 1986). Although *Finley* was not a disciplinary or attorney malpractice cause of action, it provides a useful discussion of the supreme court rules that regulate the conduct of members of the Illinois Bar.

5. *Id.* at 751, 497 N.E.2d at 1014. Circuit Court Rule 0.7 requires attorneys representing clients in personal injury and domestic relations cases to submit an affidavit of compliance describing the factual circumstances surrounding their employment. *Id.*

6. *Id.* at 752, 497 N.E.2d at 1015.

7. *Id.* at 755, 497 N.E.2d at 1017.

8. *Id.* at 754, 497 N.E.2d at 1016. Supreme Court Rules 2-103 and 5-103 of the Code of Professional Responsibility bar attorneys from private communications soliciting employment and from providing financial assistance to clients. CODE OF PROFESSIONAL

already established a comprehensive regulatory scheme for investigating and disciplining attorneys who may have violated the Code of Professional Responsibility.⁹ Further, the court restated that the area of attorney discipline is under the exclusive regulation of the Illinois Supreme Court.¹⁰ Specifically, "the disciplining of attorneys is in the nature of an original proceeding in which the Attorney Registration and Disciplinary Commission . . . serve as agents of the supreme court in administering the disciplinary functions that have been delegated to them."¹¹ In light of the Illinois Supreme Court's exclusive role in the regulation of attorney discipline, the appellate court found Rule 0.7 beyond the circuit court's power and authority for the purposes of the relief sought.¹²

III. THE ARDC ANNUAL REPORT

In addition to its duties of administrative supervision of attorney registration and disciplinary proceedings, the ARDC is responsible for submitting an annual report to the Illinois Supreme Court, the Illinois Bar members, and the public. The report is a statement of the activities of the ARDC for the relevant calendar year. The most recent ARDC report submitted to the Supreme Court of Illinois on April 30, 1987, shows the 1986 disciplinary caseload at an all time high.¹³ In 1986, 4,535 investigations were initiated by the administrator, compared with 3,935 administrator-initiated complaints in 1985.¹⁴ Since 1976, this figure has increased one hundred and seventy-five percent.¹⁵ The 1986 report also classified charges of misconduct received by the administrator according to the specific types of violation alleged and the area of law in which the

RESPONSIBILITY Rules 2-103 and 5-103, ILL. REV. STAT. ch. 110A CANONS 2, 5 (1985 and Supp. 1987).

9. *Finley*, 146 Ill. App. 3d at 754, 497 N.E.2d at 1016.

10. *Id.*

11. *Id.* (citing *Shnack v. Crumley*, 103 Ill. App. 3d 1000, 1007, 431 N.E.2d 1364, 1369 (1982)).

12. *Id.*

13. 1986 ARDC ANN. REP. at 4 (1987).

14. *Id.* Of the 4,535 investigations in 1986, 3,373 complaints came from individuals, and 1,162 were initiated by the administrator. *Id.* at 5. Three hundred and seventeen of the charges investigated by the administrator during the 1986 calendar year were Grey-lord related. *Id.*

15. *Id.* at 6. In 1977, there were a reported 1,650 investigations, compared with 4,535 investigations in 1986. *Id.* During the same ten year period, the number of registered attorneys increased 54%. *Id.* There were 31,936 registered attorneys in Illinois in 1977, compared with 49,177 attorneys in 1986. *Id.* Further, the 1986 figures indicate a general increase in the number of complaints voted by the inquiry board, as well as cases ultimately filed with the hearing board, the review board, and the supreme court. *Id.*

misconduct allegedly occurred.¹⁶ The most frequently alleged violations include neglect (922 cases), failure to communicate with a client (655 cases), conduct involving dishonesty or fraud (378 cases), and conduct involving improper handling of funds (403 cases).¹⁷ The most common areas of law involved at the time of the alleged attorney misconduct were torts, criminal law, domestic relations, and real estate, including landlord and tenant law.¹⁸

Finally, the 1986 report noted changes and amendments in the Supreme Court Rules, the Commission Rules, and the Code of Judicial Conduct.¹⁹ Supreme Court Rule 756, which governs attorney registration, was amended to provide for an increase in registration fees.²⁰ Additionally, Rule 773(b), which governs the financial duties of the attorney respondent in disciplinary proceedings, was amended to clarify the situations in which the attorney is required to reimburse the Commission for the costs of his disciplinary proceedings.²¹ The revised rules of the Illinois Supreme Court and the Commission are published by the ARDC, and are available upon request.

IV. THE DISCIPLINARY PROCESS

The majority of cases decided during the *Survey* year involved attorney discipline imposed after a finding of misconduct. All disciplinary cases reached the court pursuant to Supreme Court Rule 753.²²

16. *Id.* at 10.

17. *Id.*

18. *Id.* The four most common types of misconduct and five most common types of subject matter accounted for over 50% of the total charges in 1986 and have been among the most common in every ARDC report including this analysis. *Id.*; 1985 ARDC ANN. REP. 4 (1986); 1984 ARDC ANN. REP. 12 (1985); 1983 ARDC ANN. REP. 6 (1984); 1982 ARDC ANN. REP. 3 (1983); 1981 ARDC ANN. REP. 5 (1982); 1980 ARDC ANN. REP. 5 (1981).

19. 1986 ARDC ANN. REP. at 8. The Illinois Supreme Court adopted a new Code of Judicial Conduct effective January 1, 1987. ILL. REV. STAT. ch. 110A, paras. 61-71 (Supp. 1987) (adopted Dec. 2, 1986, effective Jan. 1, 1987).

20. ILL. S. CT. R. 756, ILL. REV. STAT. ch. 110A, para. 756 (Supp. 1986).

21. ILL. S. CT. R. 773(b), ILL. REV. STAT. ch. 110A, para. 773 (b)(1986). When the review of matters brought before the ARDC pursuant to Supreme Court Rules 753, 754, 761, 762, and 763 result in the imposition of discipline, it is the duty of the attorney respondent to reimburse the Commission for costs incurred in the investigation. *Id.*

22. ILL. S. CT. R. 753, ILL. REV. STAT. ch. 110A, para. 753 (1985). The disciplinary process begins under Supreme Court Rule 753 with an investigation by the Inquiry Board. The Inquiry Board then votes to close the investigation, to dismiss the charge, or to file a complaint. When the Inquiry Board votes to file a complaint, the complaint is prepared by the Administrator and filed with the Hearing Board. Both the Respondent and the Administrator may file exceptions, as a matter of right, to a Hearing Board's

A. Mishandling of Client Funds

During the *Survey* year, two opinions concerned the mishandling of client funds.²³ Both cases involved the violation of Canon 9 of the Code of Professional Responsibility.²⁴ In each case, the court suspended the respondents from the practice of law. The suspensions imposed were for a period of three months in one case,²⁵ and three years in the other.²⁶

In *In re Cheronis*, the court imposed a three-month suspension for the mishandling of client funds. Specifically, the court determined that the respondent had commingled and converted client funds, thereby jeopardizing his client's ability to recover money rightfully belonging to the client.²⁷ The court held that such conduct, even absent a dishonest motive, warranted suspension.²⁸

The respondent's specific offense involved depositing a client's bond refund check into his combined business and personal bank account.²⁹ This account was not a client escrow or trust account required by Rule 9-102(a) of the Code of Professional Responsibility, and was used by the respondent to pay both personal and business expenses.³⁰ The account was overdrawn within three weeks of

report. If exceptions are filed, the Hearing Board's report is then evaluated by the Review Board. If the Review Board determines that disciplinary action is required, the Review Board's report is filed with the Illinois Supreme Court. The respondent may file exceptions to this report as a matter of right. The Administrator may petition the court for leave to file exceptions. The court then determines what discipline, if any, is appropriate. *Id.* For a detailed discussion of the disciplinary process under Rule 753, see Sukowicz & Thompson, *supra* note 3, at 720.

23. *In re Cheronis*, 114 Ill. 2d 527, 502 N.E.2d 722 (1986); *In re Elias*, 114 Ill. 2d 321, 499 N.E.2d 1327 (1986), *cert. denied*, 107 S. Ct. 1351 (1987).

24. CODE OF PROFESSIONAL RESPONSIBILITY Rule 9-102, ILL. REV. STAT. ch. 110A, CANON 9 (1985), *amended by* ILL. REV. STAT. ch. 110A, CANON 9 (Supp. 1987) (effective August 1, 1987). Rule 9-102 deals with the specific duty imposed upon attorneys to preserve the identity of client property and funds. *Id.*

25. *Cheronis*, 114 Ill. 2d at 537, 502 N.E.2d at 727.

26. *Elias*, 114 Ill. 2d 340, 499 N.E.2d 1335.

27. *Cheronis*, 114 Ill. 2d at 536, 502 N.E.2d at 726.

28. *Id.* The court restated that commingling or conversion of client funds are grounds for suspension or, absent mitigating factors, disbarment. *Id.* at 535, 502 N.E.2d at 726.

29. *Id.* at 530, 502 N.E.2d at 723. Under Rule 9-102 of the Code of Professional Responsibility, attorneys are under a strict duty to maintain and preserve the identity of client funds and property. CODE OF PROFESSIONAL RESPONSIBILITY Rule 9-102, ILL. REV. STAT. ch. 110A, CANON 9 (1985), *amended by* ILL. REV. STAT. ch. 110A, Canon 9 (Supp. 1987) (effective August 1, 1987). Rule 9-102(a) specifically provides that "[a]ll 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." *Id.*

30. *Cheronis*, 114 Ill. 2d at 530, 534, 502 N.E.2d at 723, 725.

depositing the bond refund check.³¹ Between the time the check was deposited and the final payment to the client, the respondent's account was overdrawn approximately nineteen times.³²

The respondent testified before the Hearing Board that he was unaware of the Code of Professional Responsibility requirement to maintain segregated client fund accounts.³³ The Hearing Board recommended censure.³⁴ The Review Board, however, recommended a six-month suspension.³⁵ The Illinois Supreme Court upheld the Review Board's recommendation.³⁶ The court, however, imposed a lesser suspension of three months.³⁷ The court's decision was based, in part, on a series of mitigating factors that weighed heavily in the respondent's behalf.³⁸ Additionally, the court emphasized that the client who filed the complaint against the respondent retained him for three additional legal matters.³⁹ Moreover, the client referred others to the respondent for legal representation and assistance.⁴⁰ Despite the mitigating factors, the court held that discipline was nonetheless warranted⁴¹ and suspended the respondent for a period of three months.⁴²

In re Elias also involved the suspension of an attorney for commingling and converting client funds.⁴³ As in *In re Cheronis*, the respondent was found to have mismanaged client funds in violation of Canon 9 of the Code of Professional Responsibility.⁴⁴ The respondent's conduct, however, was also found to be dishonest and fraudulent, in violation of Supreme Court Rule 1-102(a)(4).⁴⁵ In

31. *Id.* at 530, 502 N.E.2d at 723.

32. *Id.* at 532, 502 N.E.2d at 724.

33. *Id.* at 533, 502 N.E.2d at 724.

34. *Id.* at 534, 502 N.E.2d at 725.

35. *Id.*

36. *Id.* at 537, 502 N.E.2d at 727.

37. *Id.*

38. *Id.* The following mitigating factors were considered in determining the proper sanction: the lack of dishonest motive, respondent's full cooperation with the Administrator and Hearing Board, respondent's full restitution to the client, respondent's active role in *pro bono* work, respondent's remorse, respondent's prompt action in opening a client trust account, and respondent's good reputation in the community. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 535, 502 N.E.2d at 726.

42. *Id.* at 537, 502 N.E.2d at 727.

43. *Elias*, 114 Ill. 2d at 325, 499 N.E.2d at 1328.

44. *Id.*

45. *Id.* at 339, 499 N.E.2d at 1334. See CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-102(a)(4), ILL. REV. STAT. ch. 110A CANON 1 (1985). Specifically, Rule 1-102(a)(4) provides that an attorney shall not "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." *Id.*

light of a pattern of similar behavior, the court imposed a three-year suspension.⁴⁶

Respondent, a solo practitioner, was active in the area of personal injury.⁴⁷ To facilitate business, the respondent opened and maintained six bank accounts, each under a different name.⁴⁸ In addition to personal use,⁴⁹ the respondent used these accounts to deposit checks in settlement of a client's personal injury claim.⁵⁰ The respondent then issued a check to the client for the client's share of the settlement.⁵¹ Though the client's check was drawn on one of the respondent's six accounts, it was not necessarily drawn on the account into which that client's settlement check was deposited.⁵² On at least thirteen separate occasions, the respondent's check was dishonored when presented for payment.⁵³

The Hearing Board found that the respondent violated Rule 9-102(b),⁵⁴ and recommended reprimand and admonishment.⁵⁵ The Review Board, however, found that the respondent violated Rule 9-102(a) and Rule 1-102(a)(4).⁵⁶ Based on the record, the Review Board recommended that the respondent be disbarred.⁵⁷

Although the court found the respondent's pattern and practice of depositing and disbursing funds to be "premised on a basic de-

46. *Elias*, 114 Ill. 2d at 340, 499 N.E.2d at 1335.

47. *Id.* at 326, 499 N.E.2d at 1328.

48. *Id.* at 327, 499 N.E.2d at 1328.

49. *Id.* at 328, 499 N.E.2d at 329. The record reveals that respondent disbursed funds from the six business accounts for the payment of gambling casinos in Nevada and New Jersey in amounts ranging from \$7,000 to \$50,000. Additionally, respondent made various disbursements to family members and withdrew cash for personal use. *Id.*

50. *Id.* at 327, 499 N.E.2d at 1328.

51. *Id.*

52. *Id.* at 327, 499 N.E.2d at 1328-29.

53. *Id.* at 327-28, 499 N.E.2d at 1329. On eight occasions, respondent's check was dishonored because of insufficient funds. *Id.* at 327, 499 N.E.2d at 1329. Although the record does not indicate the specific reason that the bank dishonored the additional five checks, it does indicate that large sums of money were deposited into these accounts. *Id.* at 327-28, 499 N.E.2d at 1329. For example, during 1984, the statements for one of these accounts showed deposits for the year to be in excess of three million dollars. *Id.* at 328, 499 N.E.2d at 1328.

54. *Id.* at 329, 499 N.E.2d at 1329. CODE OF PROFESSIONAL RESPONSIBILITY Rule 9-102(b), ILL. REV. STAT. ch. 110A, CANON 9 (1985), amended by ILL. REV. STAT. ch. 110A, CANON 9 (Supp. 1987)(effective August 1, 1987). CANON 9 provides, in part, that the portion of funds deposited into separate and identifiable accounts belonging to the lawyer or law firm may be withdrawn only after reasonable notice to the client of the intent to withdraw.

55. *Elias*, 114 Ill. 2d at 329, 499 N.E.2d at 1329.

56. *Id.* at 329, 499 N.E.2d at 1329-30. See *supra* note 41 and accompanying text.

57. *Elias*, 114 Ill. 2d at 330, 499 N.E.2d at 1329-30.

ception,"⁵⁸ they determined that disbarment was an inappropriate sanction in light of the respondent's behavior.⁵⁹ In reaching this conclusion, the court noted that disbarment has been imposed primarily in cases in which attorneys have permanently converted their clients' funds through negotiation of settlement without consent, or forgery of their clients' endorsements.⁶⁰ Although the respondent consistently misrepresented to clients the availability of their settlement proceeds each time he presented them with checks drawn on accounts he knew or should have known might be overdrawn, direct losses to clients were cured by the respondent upon receipt of notification.⁶¹ Accordingly, the court imposed a suspension from the practice of law for a period of three years, rather than following the Review Board's recommendation of disbarment.⁶²

B. *Misconduct Involving Fraud and Deceit*

The Illinois Supreme Court generally has applied a broad definition of fraud when deciding attorney disciplinary actions. Four opinions during the *Survey* year involved attorney fraud, dishonesty, deceit, and misrepresentation.⁶³ The disciplinary sanctions imposed by the court in these cases ranged from censure⁶⁴ to disbarment.⁶⁵

In *In re Levy*, the respondent was censured for "knowingly negotiating a check containing a false endorsement."⁶⁶ After concluding that the respondent was guilty, the Hearing Board determined that reprimand was the proper sanction in light of the offense.⁶⁷ The Review Board affirmed this finding, and the Administrator filed an exception.⁶⁸ The supreme court concluded that the respon-

58. *Id.* at 337, 499 N.E.2d at 1333.

59. *Id.* at 339, 499 N.E.2d at 1334.

60. *Id.*

61. *Id.*

62. *Id.* at 339-40, 499 N.E.2d at 1334-35.

63. *In re McAuliffe*, 116 Ill. 2d 254, 506 N.E.2d 1300 (1987); *In re Braner*, 115 Ill. 2d 384, 504 N.E.2d 102 (1987); *In re Levy*, 115 Ill. 2d 395, 504 N.E.2d 107 (1987); *In re Houdek*, 113 Ill. 2d 323, 497 N.E.2d 1169 (1986).

64. *McAuliffe*, 116 Ill. 2d at 263, 506 N.E.2d at 1304; *Levy*, 115 Ill. 2d at 401, 504 N.E.2d at 109.

65. *Braner*, 115 Ill. 2d at 395, 504 N.E.2d at 106.

66. *Levy*, 115 Ill. 2d at 396, 504 N.E.2d at 107.

67. *Id.*

68. *Id.* at 396-97, 504 N.E.2d at 107. Although both the respondent and Administrator have the right to file exceptions to the report of the Hearing Board at the Review Board level, exceptions are a matter of right for the respondent only. ILL. S. CT. R. 753(e)(1),(5),(6), ILL. REV. STAT. ch. 110A, para. 753(e)(1),(5),(6) (1985). The Adminis-

dent's conduct was imprudent and improper, but did not constitute fraud.⁶⁹ Although the court acknowledged that acts of forgery necessarily involve dishonesty, fraud, deceit, and misrepresentation, they determined that the respondent lacked the essential element of intent.⁷⁰ In light of this determination, and the fact that the respondent's conduct did not cause any actual harm or loss, the court concluded that suspension was unnecessary to safeguard the public or to maintain the integrity of the legal profession.⁷¹ Accordingly, the court imposed censure.⁷²

In re McAulliffe also involved the imposition of censure when the respondent was found to have acted in an imprudent, improper and unprofessional manner.⁷³ Specifically, the respondent was charged with conduct involving fraud, deceit, dishonesty, misrepresentation, prejudice to the administration of justice, moral turpitude, and false statements with the intent to obstruct an inquiry.⁷⁴ These charges stemmed from the settlement with a former business partner of a dispute over legal fees that the respondent claimed were owed to him.⁷⁵ In order to settle the dispute, the respondent agreed to recant his prior sworn testimony before the ARDC.⁷⁶

The Hearing Board recommended reprimand in light of the extraordinary mitigating circumstances concerning the respondent's mental and physical impairment at the time of the incident.⁷⁷ The

trator must petition the court for leave to file exceptions to an order or report of the Review Board. *Id.* If the Administrator is granted leave to file exceptions, the order or report of the Review Board is filed with the court and the respondent is given twenty-one days in which to respond. *Id.*

69. *Levy*, 115 Ill. 2d at 399, 504 N.E.2d at 108.

70. *Id.*

71. *Id.* at 400, 504 N.E.2d at 108-09.

72. *Id.* at 401, 504 N.E.2d at 109.

73. *McAulliffe*, 116 Ill. 2d at 263, 506 N.E.2d at 1303-04.

74. *Id.* at 255, 506 N.E.2d at 1300.

75. *Id.* The respondent was a former judge of the Circuit Court of Cook County. *Id.* at 256, 506 N.E.2d at 1301. After resigning from the bench in 1979, respondent went into private practice with a personal injury attorney. *Id.* at 257, 506 N.E.2d at 1301. The relationship ended after eight months when the respondent became associated with another attorney. *Id.* After approximately one year, the respondent received notice from the second attorney terminating their business relationship. *Id.* The attorney also informed the respondent that he would not pay the respondent certain fees that the respondent claimed were owed to him. *Id.*

76. *Id.* at 258, 506 N.E.2d at 1302. The respondent filed a complaint with the ARDC in an effort to persuade the attorney to pay the amount the respondent claimed was owed to him. *Id.* at 257, 506 N.E.2d at 1301. Specifically, the respondent claimed that the attorney had used waiver-of-attorney-lien forms without the respondent's consent. *Id.* The respondent provided the ARDC with a sworn statement supporting his charges. *Id.* Further, the respondent repeated these charges during a citation deposition. *Id.*

77. *Id.* at 256, 261, 506 N.E.2d at 1300, 1303. Although the Hearing Board deter-

Review Board, however, determined that a six-month suspension was appropriate in light of the Hearing Board's findings of fact.⁷⁸

The Illinois Supreme Court held that censure was the appropriate sanction.⁷⁹ Although the court stated that the intentional recantation of sworn testimony in exchange for financial gain could not be justified, the court noted that the respondent's misconduct did not result in any "real harm."⁸⁰ Further, the court reasoned that suspension was not necessary "either to safeguard the public or maintain the integrity of the legal profession."⁸¹

In reaching this conclusion, the court placed great emphasis on the respondent's impairment at the time of the recantation and his successful rehabilitation.⁸² The court emphasized that evidence linking one's impairment to his misconduct will be considered in mitigation.⁸³ The court noted, however, that this evidence "will not act as a bar to discipline."⁸⁴ Additionally, the court held that a "respondent's successful rehabilitation is relevant in determining an appropriate sanction."⁸⁵ Moreover, the court considered the respondent's production of favorable character witnesses, and his unblemished career record.⁸⁶ In light of these factors, the court concluded that the respondent's unprofessional conduct did not indicate that he was an improper person to practice law.⁸⁷ Therefore, censure was imposed.⁸⁸

In *In re Houdek*, the respondent was found to have "commingled and converted client funds, neglected a legal matter, and made misrepresentations of fact to his client and to the Attorney Regis-

mined that the respondent intended to recant his prior sworn testimony, they reached no conclusion concerning the involvement of fraud, dishonesty, deceit, or moral turpitude. *Id.* at 260, 506 N.E.2d at 1302. The Hearing Board found instead that the respondent was mentally and physically impaired when he recanted his testimony. *Id.* at 261, 506 N.E.2d at 1303. The respondent was suffering from mental as well as physical problems. *Id.* at 258, 506 N.E.2d at 1301-02. The respondent's two daughters had been raped violently and murdered in 1964. *Id.* at 256, 506 N.E.2d at 1301. This incident haunted the respondent for years and eventually led to a severe psychotic depression. *Id.* at 256, 258, 506 N.E.2d at 1301-02.

78. *Id.* at 256, 506 N.E.2d at 1300-01.

79. *Id.* at 263, 506 N.E.2d at 1304.

80. *Id.* at 262, 506 N.E.2d at 1303.

81. *Id.* at 263, 506 N.E.2d at 1304.

82. *Id.* at 261-63, 506 N.E.2d at 1303.

83. *Id.* at 261, 506 N.E.2d at 1303.

84. *Id.* (quoting *In re Crisel*, 101 Ill. 2d 332, 334, 461 N.E.2d 994, 999 (1984)).

85. *Id.* at 263, 506 N.E.2d at 1304.

86. *Id.*

87. *Id.*

88. *Id.*

tration and Disciplinary Commission.”⁸⁹ The court held that the respondent’s behavior warranted suspension for a period of two years and until further order of the court.⁹⁰ The court based this holding primarily upon the respondent’s dishonest and deceitful behavior during the judicial proceedings.⁹¹

The respondent’s initial misconduct involved the commingling and conversion of a small amount of money in connection with the representation of one client.⁹² In order to facilitate a real estate closing, the respondent agreed to submit the necessary documents on behalf of his client.⁹³ Pursuant to this agreement, the client gave the respondent a required forty-five dollar title registration fee.⁹⁴ Four months later, and after several assurances by the respondent that the papers had been mailed, the client discovered that nothing had been done in connection with these papers.⁹⁵ In response to the Commission’s initial investigation, the respondent insisted that he had mailed the documents in September.⁹⁶ Based on a finding that the respondent fabricated evidence presented in support of his position, and because the allegations contained in the Administrator’s complaint concerning respondent’s misconduct were found to be true, the Hearing Board recommended that the respondent be suspended for a period of two years.⁹⁷ The Review Board approved the Hearing Board’s report.⁹⁸ In a concurring opinion, however, two members of the Review Board recommended that the respondent be suspended for a two-year period and until further order of the court.⁹⁹ The court agreed with the concurring members’ recommendation.¹⁰⁰

The court held that the respondent’s behavior indicated an unwillingness and inability to “conform his conduct to professional standards.”¹⁰¹ The court concluded that, although the respon-

89. *Houdek*, 113 Ill. 2d at 324, 497 N.E.2d at 1169.

90. *Id.* at 327, 497 N.E.2d at 1170.

91. *Id.*

92. *Id.* at 326, 497 N.E.2d at 1170.

93. *Id.* at 325, 497 N.E.2d at 1169.

94. *Id.*

95. *Id.* The client was forced to retain a second attorney, and incurred \$347.50 in additional fees and costs to register his title. *Id.*

96. *Id.* at 325-26, 497 N.E.2d at 1170. In support of his position, the respondent attached a copy of the check he claimed to have sent. The respondent claimed to have sent a check for \$45.00 to the client for reimbursement. *Id.* at 326, 497 N.E.2d at 1170.

97. *Id.* at 324, 497 N.E.2d at 1169.

98. *Id.*

99. *Id.* at 324-25, 497 N.E.2d at 1169.

100. *Id.* at 327, 497 N.E.2d at 1170.

101. *Id.*

dent's misrepresentations in dealing with both his client and the Commission warranted a two-year suspension, his general disregard for professional standards warranted suspension until further order of the court.¹⁰²

In *In re Braner*, the court imposed disbarment when the respondent had violated Canons 1 and 7 of the Code of Professional Responsibility.¹⁰³ The respondent was charged with violating Canon 1 of the Code of Professional Responsibility by defrauding and deceiving the Illinois Department of Public Aid and his client's mentally incompetent wife, Mrs. Booker.¹⁰⁴ In addition, the respondent was charged with failing to disclose pertinent information to the court during probate and domestic court proceedings, in violation of Canon 7 of the Code of Professional Responsibility.¹⁰⁵ These allegations arose in connection with the respondent's representation of one client in two separate proceedings.¹⁰⁶

The respondent's representation of the client involved a dissolution of marriage proceeding and a claim for the payment of medical bills against the estate of the client's wife.¹⁰⁷ Although the respondent knew that the Department of Public Aid had a claim against Mrs. Booker's estate, he failed to provide the court with this information.¹⁰⁸ Further, the respondent failed to inform the department, Mrs. Booker, or the bank, as her conservator, of the proceedings.¹⁰⁹ As a result, when the respondent's petition was granted by the court, Mrs. Booker's estate was left with no assets.¹¹⁰ Similarly, in the divorce proceeding, the respondent presented his case without informing the court of both previous

102. *Id.*

103. *Braner*, 115 Ill. 2d at 386-87, 395, 504 N.E.2d at 103, 106. Canon 1 of the Code of Professional Responsibility regulates the maintenance of integrity and competence of the legal profession and Canon 7 deals with client representation. CODE OF PROFESSIONAL RESPONSIBILITY Rules 1-101 to 1-103, 7-101 to 7-110, ILL. REV. STAT. ch. 110A, CANONS 1 and 7 (1985).

104. *Braner*, 115 Ill. 2d at 386-87, 504 N.E.2d at 103.

105. *Id.*

106. *Id.* at 386, 504 N.E.2d at 103.

107. *Id.* at 388, 504 N.E.2d at 103. Pursuant to Mr. Booker's claims, the respondent filed a petition in probate court praying that his client receive both Mrs. Booker's interest in the house as reimbursement for prior medical payments, and priority over any pending public source claims. *Id.* Mrs. Booker sustained permanent brain damage in an automobile accident in 1974. *Id.* at 387, 504 N.E.2d at 103. The accident left her mentally incompetent, and she was confined to a nursing home. *Id.*

108. *Id.* at 388, 504 N.E.2d at 103.

109. *Id.* Respondent was a former trust officer at the Belleville National Savings Bank. *Id.* at 387, 504 N.E.2d at 103. In this capacity, respondent was responsible for handling Mrs. Booker's conservatorship. *Id.*

110. *Id.* at 388, 504 N.E.2d at 103.

proceedings involving Mrs. Booker and Mrs. Booker's impaired mental state.¹¹¹ In light of the evidence, the Hearing Board found the respondent guilty of the alleged violations and recommended disbarment.¹¹² The Review Board affirmed, and the respondent filed exceptions to the Review Board's recommendation.¹¹³

The court affirmed the review board's recommendation.¹¹⁴ Specifically, the court concluded that the respondent's motive and intent to defraud and deceive could be inferred from both the respondent's conduct, and the circumstances under which such conduct took place.¹¹⁵ In arriving at this decision, the court noted that "a lawyer's 'high vocation' is to inform correctly the court upon the law and the facts of a case and to aid it in doing justice and arriving at correct conclusions."¹¹⁶ Finally, the court restated that intentional fraud warrants disbarment absent evidence of extenuating circumstances.¹¹⁷

C. *Misconduct Resulting from Incompetent Representation of Clients*

The Illinois Supreme Court decided two cases during the *Survey* year involving the incompetent misrepresentation of clients.¹¹⁸ In each case, the attorney was suspended from the practice of law for a period of two years.¹¹⁹

In *In re Guilford*, the respondent was charged with making misrepresentations to a client, making false statements to the Administrator, and neglecting a legal matter entrusted to him.¹²⁰ The court found the respondent guilty of these charges, and imposed a two-year suspension to maintain the integrity of the legal profession.¹²¹

The client in *Guilford* retained the respondent to pursue reme-

111. *Id.* at 389, 504 N.E.2d at 103-04. Mrs. Booker received nothing from the dissolution proceeding and was left without assets or anticipated income. *Id.* at 389, 504 N.E.2d at 104.

112. *Id.* at 387, 504 N.E.2d at 103.

113. *Id.*

114. *Id.* at 394, 504 N.E.2d at 106.

115. *Id.*

116. *Id.* at 392, 504 N.E.2d at 105 (quoting *People v. Beattie*, 137 Ill. 553, 574, 27 N.E.2d 1096, 1103 (1891)).

117. *Id.* at 394, 504 N.E.2d at 106.

118. *In re Segall*, 117 Ill. 2d 1, 509 N.E.2d 988 (1987); *In re Guilford*, 115 Ill. 2d 495, 505 N.E.2d 342 (1987).

119. *Segall*, 117 Ill. 2d at 8, 509 N.E.2d at 991; *Guilford*, 115 Ill. 2d at 506, 505 N.E.2d at 347.

120. *Guilford*, 115 Ill. 2d at 496, 505 N.E.2d at 342-43.

121. *Id.* at 506, 505 N.E.2d at 347.

dies in connection with a back injury his client incurred at work.¹²² Accordingly, the respondent was required to file a workers' compensation claim.¹²³ When the client inquired about the status of his case, the respondent assured him on numerous occasions that it was "on file" and would be "coming up."¹²⁴ After approximately one year, and repeated attempts by the client to obtain the number of the case from the respondent, the client discovered that the respondent never filed a workers' compensation or personal injury claim on his behalf.¹²⁵

The Hearing Board recommended a suspension for three years and until further order of the court.¹²⁶ The Review Board affirmed the findings of the Hearing Board and recommended a two-year suspension.¹²⁷ The court concluded that the findings of the Hearing and Review Board were supported by clear and convincing evidence.¹²⁸ In order to determine the appropriate sanction, however, the court considered the respondent's prior misconduct.¹²⁹ Based on the evidence and circumstances presented, and in light of the respondent's prior misconduct, the court found a two-year suspension to be the proper sanction.¹³⁰ Regarding the Hearing Board's recommended sanction, the court specifically noted that suspension "until further order of the court" is reserved for attorneys who

122. *Id.* at 497, 505 N.E.2d at 343.

123. *Id.*

124. *Id.* at 498, 505 N.E.2d at 343.

125. *Id.* at 498, 500, 505 N.E.2d at 343-44. The client was told by the respondent that the number was 80 WC 22682. *Id.* at 498, 505 N.E.2d at 343. The client later discovered that file number 80 WC 22682 identified a case unrelated to Brandon's claim. *Id.* at 498, 505 N.E.2d at 343-44. By the time Brandon discovered the absence of a filed complaint, the two-year statute of limitations had lapsed, thus effectively barring any potential personal injury action. *Id.* at 500, 505 N.E.2d at 344.

126. *Id.* at 497, 505 N.E.2d at 343. When an attorney is suspended for a specified period of time and until further order of the court, he is not reinstated automatically when the period expires. Rather, the attorney must petition the court for reinstatement pursuant to Rule 767. ILL. S. CT. R. 767, ILL. REV. STAT. ch. 110A, para. 767 (1985). See *infra* note 144 and accompanying text.

127. *Guilford*, 115 Ill. 2d at 497, 505 N.E.2d at 343.

128. *Id.* at 502, 505 N.E.2d at 345. Clear and convincing evidence is a standard of proof requiring that no reasonable doubt remain in the mind of the trier of fact concerning the truth of the matter at issue. *In re Jones*, 34 Ill. App. 3d 603, 340 N.E.2d 269 (1975).

129. *Guilford*, 115 Ill. 2d at 502, 505 N.E.2d at 345. In 1978, the respondent was suspended for a period of six months for the neglect of the matters of two separate clients. *Id.* at 502-03, 505 N.E.2d at 345-46. In 1982, the respondent was suspended for six weeks after his failure to comply with a subpoena duces tecum for the production of documents. *Id.* at 503, 505 N.E.2d at 345-46. This suspension was later vacated when the respondent produced the requested documents. *Id.*

130. *Id.* at 506, 505 N.E.2d at 347.

suffer from mental illness, mental instability, or some form of addiction.¹³¹

In re Segall involved an attorney's attempted settlement of lawsuits brought against him by certain creditors.¹³² The court concluded that these attempted settlements violated Rules 1-102(a)(4), 1-104(a)(5), and 7-104(a)(1) of the Code of Professional Responsibility.¹³³ On two separate occasions, the respondent attempted to settle delinquent credit accounts by sending the company a letter that referenced the pending lawsuit and a check for an amount substantially lower than his balance.¹³⁴ The letters failed to state the amount the respondent actually owed, and the checks included an endorsement restriction in an attempt to limit the corporation's recovery.¹³⁵ In both instances, the respondent knowingly bypassed the company's lawyers, and sent the letter and check directly to the corporation.¹³⁶

Though the respondent admitted that he "knowingly contacted a party represented by counsel without obtaining counsel's consent," the respondent maintained that he contacted these parties as a litigant, and was, therefore, outside the parameters of Rule 7-104(a)(1).¹³⁷ The court, however, disagreed.¹³⁸ The court stated that when an attorney is a party to litigation, he represents himself when he contacts opposing parties.¹³⁹ To conclude otherwise, the court reasoned, would defeat the purpose of Rule 7-104(a)(1), which serves to protect litigants represented by counsel from the type of direct contact made by the respondent.¹⁴⁰ Consequently,

131. *Id.* at 503, 505 N.E.2d at 346. During the *Survey* year, however, the supreme court imposed a suspension "until further order of the court" based on a respondent's general disregard for professional standards. *In re Houdek*, 113 Ill. 2d 323, 497 N.E.2d 1169 (1986). See *supra* notes 89-102 and accompanying text.

132. *In re Segall*, 117 Ill. 2d at 3, 509 N.E.2d at 988-89.

133. *Id.* CODE OF PROFESSIONAL RESPONSIBILITY Rules 1-102(a)(4), 1-102(a)(5), 7-104(a)(1), ILL. REV. STAT. ch. 110A, CANONS 1 and 7 (1985). For an explanation of Rule 1-102(a)(4), see *supra* note 45. Rule 1-102(a)(5) provides that an attorney may not engage in conduct that is prejudicial to the administration of justice. Rule 7-104(a)(1) provides that during the course of a lawyers representation of a client, he may not "communicate on the subject of representation. . . with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party."

134. *Segall*, 117 Ill. 2d at 3-5, 509 N.E.2d at 989.

135. *Id.*

136. *Id.*

137. *Id.* at 6, 509 N.E.2d at 990.

138. *Id.*

139. *Id.*

140. *Id.*

the court held the respondent was in direct violation of the rule.¹⁴¹ Moreover, the court held that the respondent's general conduct was fraudulent in nature.¹⁴² In view of the respondent's attempted fraud and his Rule 7-105(a)(1) violation, the court imposed a suspension for two years.¹⁴³

V. ATTORNEY REINSTATEMENT

During the *Survey* year, the court addressed one case involving attorney reinstatement to the bar.¹⁴⁴ In *In re Carnow*, the Illinois Supreme Court restated that when considering an attorney's petition for reinstatement, it alone decides whether or not the petition will be granted.¹⁴⁵

In re Carnow involved a disbarred attorney's petition for reinstatement after the minimum waiting period imposed by Rule 767.¹⁴⁶ A hearing panel ruled that the petitioner's initial misconduct had been too serious to permit reinstatement after the minimum period.¹⁴⁷ The Review Board disagreed, however, finding that the petitioner had met the requirements imposed by Rule 767.¹⁴⁸ The Review Board unanimously recommended reinstatement.¹⁴⁹ The petitioner's initial misconduct involved the payment

141. *Id.*

142. *Id.* at 8, 509 N.E.2d at 991. Specifically, the court held that the respondent's behavior amounted to attempts to settle large claims for unusually small amounts. *Id.* The court also concluded that by filing motions to dismiss the suits because of alleged settlement, the respondent acted in a manner that was prejudicial to the administration of justice in violation of Rule 1-102(a)(5). *Id.*

143. *Id.*

144. *In re Carnow*, 114 Ill. 2d 461, 501 N.E.2d 128 (1986). In order to initiate the reinstatement process, an attorney must petition the court pursuant to Rule 767. ILL. S. CT. R. 767, ILL. REV. STAT. ch. 110A, para. 767 (1985). Rule 767 lists six specific factors that are to be considered by the court when determining whether a petitioner has been rehabilitated. The six factors are as follows: (1) the nature of the petitioner's initial misconduct; (2) the maturity and experience of the petitioner at the time the petitioner was initially disbarred; (3) the level of petitioner's recognition of the nature and seriousness of the initial misconduct; (4) whether restitution has been made if required; (5) petitioner's conduct since disbarment; and (6) the petitioner's straightforwardness and honesty in presenting the evidence in support of his petition. According to the Illinois Supreme Court, when evaluating a Rule 767 petition, the greatest emphasis should be placed on the petitioner's rehabilitation and present character. ILL. S. CT. R. 767, ILL. REV. STAT. ch. 110A, para. 767 (1985).

145. *Carnow*, 114 Ill. 2d at 469, 501 N.E.2d at 131.

146. *Id.* at 464, 501 N.E.2d at 129. Rule 767(a) permits an attorney to petition for reinstatement no less than five years after the entry of the order of disbarment. ILL. S. CT. R. 767, ILL. REV. STAT. ch. 110A, para. 767 (1985).

147. *Carnow*, 114 Ill. 2d at 464, 501 N.E.2d at 129.

148. *Id.* at 465, 501 N.E.2d at 129.

149. *Id.*

of twenty thousand dollars to a City of Chicago employee in connection with a zoning variance desired by one of the petitioner's clients.¹⁵⁰ The court held that although the petitioner's misconduct had been extremely serious, his petition must be granted in recognition of the uniformity of treatment principle.¹⁵¹ The court also noted that it had been more than seven years since the petitioner's disbarment, and fourteen years since his offense.¹⁵² Further, the court stated that the misconduct had occurred early in the petitioner's career, and had been induced, in part, by economic and physical threats.¹⁵³ Moreover, the court concluded that the petitioner's conduct since his disbarment was exemplary.¹⁵⁴ Based on these findings, the court concluded that the petitioner had successfully met his burden of proving his rehabilitation and present good character.¹⁵⁵ Accordingly, the court reinstated the petitioner to the role of an attorney licensed to practice law in Illinois.¹⁵⁶

VI. PROFESSIONAL LEGAL MALPRACTICE

The Illinois Appellate Courts addressed four cases involving legal malpractice during the *Survey* year.¹⁵⁷ Attorney malpractice actions, like attorney disciplinary proceedings, arise directly out of the attorney-client relationship. Additionally, both malpractice actions and disciplinary proceedings involve the failure of an attorney to adhere to certain minimum standards of conduct.¹⁵⁸ During

150. *Id.* Although the employee had no direct power with regard to zoning, the petitioner made the payment to prevent the employee from interfering with the zoning request. *Id.*

151. *Id.* at 472, 501 N.E.2d at 132-33. In an effort to impose a uniform standard of discipline, the court looked to the discipline deemed appropriate in similar circumstances. *Id.* at 472-73, 501 N.E.2d at 133. See *In re Williams*, 111 Ill. 2d 105, 116, 488 N.E.2d 1017, 1023 (1986)(where respondent was convicted of mail fraud, the court relied on cases with similar facts and circumstances when deciding the appropriate discipline); *In re Young*, 111 Ill. 2d 98, 104, 488 N.E.2d 1014, 1017 (1986)(where respondent commingled and converted client funds, and censure was imposed in light of similar cases involving similar attorney misconduct). In *Carnow*, the court observed that in several cases, attorneys who had engaged in misconduct of a similar nature had been reinstated by the court. *Carnow*, 114 Ill. 2d at 472-73, 501 N.E.2d at 133.

152. *Carnow*, 114 Ill. 2d at 473, 501 N.E.2d at 133.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Goldstein v. Lustig*, 154 Ill. App. 3d 595, 507 N.E.2d 164 (1987); *Coughlin v. SeRine*, 154 Ill. App. 3d 510, 507 N.E.2d 505, *appeal denied*, 116 Ill. 2d —, 515 N.E.2d 104 (1987); *Claire Associates v. Pontikes*, 151 Ill. App. 3d 116, 502 N.E.2d 1186, *appeal denied*, 114 Ill. 2d —, 508 N.E.2d 726 (1987); *Shehade v. Gerson*, 148 Ill. App. 3d 1026, 500 N.E.2d 510, *appeal denied*, — Ill. 2d —, 505 N.E.2d 352 (1987).

158. See, e.g., *Coughlin*, 154 Ill. App. 3d at 510, 507 N.E.2d at 505. In *Coughlin*, the

the *Survey* year, the court restated that the ethical standards set forth in the Canons of Ethics are relevant and proper considerations in each area.¹⁵⁹ The court reasoned that to hold attorneys to one set of professional standards in disciplinary proceedings, and to some other set of standards in a tort action would be anomalous.¹⁶⁰ Although the Code of Professional Responsibility is not binding on the courts, the Canons of Ethics provide a professional standard by which an attorney's conduct may be judged.¹⁶¹ Moreover, the court stated that an attorney may be disciplined for not observing these standards.¹⁶²

In *Shehade v. Gerson*, the plaintiff appealed from a trial court's order dismissing two counts of her three-count malpractice complaint for failure to state a cause of action.¹⁶³ The plaintiff's complaint against the defendant, her attorney, alleged that because the attorney insufficiently protected her interests, she lost custody of her son.¹⁶⁴ Specifically, the plaintiff's complaint alleged that her attorney failed to obtain a court order barring her ex-husband from unsupervised visitation of her son.¹⁶⁵ The plaintiff maintained that this failure resulted in the kidnapping of her son.¹⁶⁶

In reviewing the trial court's decision, the Illinois Supreme Court reiterated the elements necessary to state a sufficient legal malpractice cause of action.¹⁶⁷ A plaintiff must allege a duty aris-

plaintiff filed a legal malpractice complaint alleging that the defendant engaged in unnecessary and unauthorized services and demanded a bonus absent an agreement during the course of representation. *Id.* at 513-14, 507 N.E.2d at 508-09. The circuit court dismissed the complaint for failure to state a cause of action. *Id.* at 512, 507 N.E.2d at 507. The appellate court, however, looking to the professional standards of ethics, found that the defendant had breached his duty not to overcharge the plaintiff. *Id.* at 514, 507 N.E.2d at 509. The appellate court reversed the circuit court's finding on this count of the plaintiff's complaint. *Id.* at 517, 507 N.E.2d at 510.

159. *Id.* at 514, 507 N.E.2d at 509.

160. *Id.*

161. *Id.* See, e.g., *Rogers v. Robson*, 74 Ill. App. 3d 467, 392 N.E.2d 1365 (1979) *aff'd*, 81 Ill. 2d 201, 407 N.E.2d 47 (1980) (professional standards of ethics are relative considerations in tort cases and represent the minimum standards by which an attorney's conduct may be judged).

162. *Coughlin*, 154 Ill. App. 3d at 514, 501 N.E.2d at 509.

163. *Shehade*, 148 Ill. App. 3d at 1027, 500 N.E.2d at 511. The matter before the court arose from a trial court's order dismissing two counts of the plaintiff's three-count complaint. *Id.* The appellate court affirmed the trial court's decision on count III, but reversed on count II. *Id.* at 1032, 500 N.E.2d at 514. Malpractice complaints may be dismissed under the authority of section 2-615 of the Code of Civil Procedure. ILL. REV. STAT. ch. 110, para. 2-615 (1985).

164. *Shehade*, 148 Ill. App. 3d at 1029, 500 N.E.2d at 512.

165. *Id.* at 1028, 500 N.E.2d at 511.

166. *Id.*

167. *Id.* at 1029, 500 N.E.2d at 512.

ing out of the attorney-client relationship, a breach of that duty,¹⁶⁸ a causal connection between the breach and the client's resulting injury or loss, and resulting damages.¹⁶⁹

In *Shehade*, the appellate court found that all the necessary elements were evident from the face of the plaintiff's complaint except proximate cause.¹⁷⁰ The court stated, however, that unless it found as a matter of law that no set of facts could be proven that would entitle the plaintiff to relief, and the plaintiff's attorney could not have obtained the requested court order, the trial court's findings would have to be reversed.¹⁷¹ Accordingly, because the kidnapping of the plaintiff's child took place during the unsupervised visitation that the plaintiff requested her attorney to prevent,¹⁷² proximate cause could be proven.¹⁷³ The court, therefore, reversed the judgment of the trial court on this count of the plaintiff's complaint.¹⁷⁴

In *Claire Associates v. Pontikes*,¹⁷⁵ the court again addressed the issue of the sufficiency of a legal malpractice complaint.¹⁷⁶ The circuit court dismissed the plaintiff's initial complaint pursuant to section 2-615 of the Code of Civil Procedure¹⁷⁷ because it failed to state an actionable claim of malpractice.¹⁷⁸ On appeal, this determination was upheld.

In *Claire*, the plaintiffs alleged that their attorneys' failed to reply and appear on the plaintiffs' behalf in a breach of contract action.¹⁷⁹ The plaintiffs further alleged that these failures resulted in the dismissal of the plaintiffs' contract action with prejudice.¹⁸⁰ Moreover, after the dismissal of their case, the plaintiffs were misled by their attorneys on several occasions about the status of their case.¹⁸¹

In addition to the required elements articulated in *Shehade*, the

168. *Id.* An act or omission on the part of an attorney may constitute a breach. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.* at 1028, 500 N.E.2d at 511-12. The plaintiff wanted to prevent periods of unsupervised visitation between the child and his father. *Id.*

173. *Id.*

174. *Id.* at 1032, 500 N.E.2d at 514.

175. 151 Ill. App. 3d 116, 502 N.E.2d 1186.

176. *Id.* at 122, 502 N.E.2d at 1190.

177. *Id.* at 118, 502 N.E.2d at 1187. *See supra* note 163 and accompanying text.

178. *Claire*, 151 Ill. App. 3d at 118, 502 N.E.2d at 1187.

179. *Id.* at 121, 502 N.E.2d at 1189.

180. *Id.*

181. *Id.*

appellate court held that a valid underlying claim is necessary in order to state a cause of action for legal malpractice.¹⁸² In reaching this conclusion, the court reasoned that legal malpractice actions are dependent upon predicate lawsuits as a matter of law.¹⁸³ Further, the court explained that no malpractice can exist unless the attorneys' negligence has resulted in the loss of either a valid underlying cause of action or a meritorious defense.¹⁸⁴ Finally, the court noted that, in light of the plaintiffs' burden of proof in attorney malpractice actions,¹⁸⁵ plaintiffs are obliged to establish that "but for" their attorney's negligence, the defense or prosecution of the underlying suit would have been successful.¹⁸⁶ Upon examination, the appellate court concluded that the plaintiffs' underlying complaint was deficient because the plaintiffs were unable to satisfy the necessary "but for" requirement.¹⁸⁷ Accordingly, the judgment of the circuit court was affirmed.¹⁸⁸

In *Goldstein v. Lustig*,¹⁸⁹ the plaintiff initiated a legal malpractice action against the defendant, alleging that the defendant negligently and carelessly misinterpreted and misadvised the plaintiff about his employment contract.¹⁹⁰ The circuit court dismissed the plaintiff's complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure.¹⁹¹ On appeal, the circuit court's dismissal was affirmed.¹⁹²

Specifically, the appellate court held that the plaintiff's complaint did not state a cause of action because the plaintiff could plead no set of facts that would establish the element of causation.¹⁹³ Accordingly, the appellate court concluded that the trial

182. *Id.* at 122, 502 N.E.2d at 1190.

183. *Id.*

184. *Id.* If a meritorious defense is lost, it is presumed that the attorney in question was defending in the underlying suit.

185. *Id.* The court stated that a plaintiff bears the burden of pleading and proving that damages resulted in a professional malpractice action. *Id.* at 122, N.E.2d at 1190 (citing *Bartholomew v. Crockett*, 131 Ill. App. 3d 456, 475 N.E.2d 1035 (1985)).

186. *Id.*

187. *Id.* at 125, 502 N.E.2d at 1192.

188. *Id.*

189. 154 Ill. App. 3d 595, 507 N.E.2d 164.

190. *Id.* at 597, 507 N.E.2d at 166-67.

191. *Id.* at 596, 507 N.E.2d at 166.

192. *Id.* at 604, 507 N.E.2d at 171.

193. *Id.* at 599, 507 N.E.2d at 169. The plaintiff's underlying suit dealt with the plaintiff's involvement in a fraudulent billing scheme in the course of his employment. *Id.* at 597, 507 N.E.2d at 166. In affirming the circuit court's determination that the plaintiff failed to state a cause of action, the court noted that the plaintiff would not be able to enforce his initial employment contract regardless of whether he resigned or was terminated. *Id.* at 600, 507 N.E.2d at 168.

court properly dismissed the complaint.¹⁹⁴

In addition to challenging the circuit court's ruling concerning his failure to state a cause of action, the plaintiff also alleged error in the circuit court's characterization of the defendant's conduct.¹⁹⁵ The circuit court found that the defendant's erroneous advice to the plaintiff was the result of an error in judgment rather than negligence.¹⁹⁶ The appellate court agreed, holding that the circuit court had correctly construed the defendant's conduct.¹⁹⁷ The court noted that in Illinois, an attorney is not liable to his clients for errors in judgment.¹⁹⁸ Rather, attorneys are liable only for failing to exercise a reasonable degree of care and skill.¹⁹⁹ The court stated that this rule applies regardless of an unfavorable result to the client.²⁰⁰ Accordingly, the circuit court's dismissal of the plaintiff's complaint was affirmed.²⁰¹

VII. CONCLUSION

During the *Survey* year, Illinois courts stressed the importance of moral fitness and adherence to ethical standards in the professional responsibility area. The courts' main concern was, and continues to be, the integrity of the legal profession and the safety of the public. Further, the courts' objectives and considerations were identical whether the matter involved a disciplinary proceeding, attorney reinstatement, or an action for legal malpractice.

In disciplinary matters, the Illinois Supreme Court focused primarily on the attorney's ability to comply with certain minimum standards of conduct as set forth in the Canons of Ethics. Although mitigating factors are considered by the court when making this determination, the court reiterated that mishandling of client funds will result in sanctions even absent a dishonest motive.

In the area of attorney reinstatement, the court focused on rehabilitation. The court noted that a petitioner has the burden of proving rehabilitation and present good character. Moreover, the

194. *Id.* at 599, 507 N.E.2d at 167.

195. *Id.* at 600, 507 N.E.2d at 168.

196. *Id.* at 600, 507 N.E.2d at 169.

197. *Id.*

198. *Id.* See e.g., *York v. Stiefel*, 109 Ill. App. 3d 342, 440 N.E.2d 449 (3d Dist. 1982), *aff'd in part rev'd in part*, 99 Ill. 2d 312, 458 N.E.2d 488 (1983)(attorneys are not obligated by law to serve as guarantors of their judgment or opinion).

199. *Goldstein*, 154 Ill. App. 3d at 600, 507 N.E.2d at 168-69.

200. *Id.* at 600, 507 N.E.2d at 169.

201. *Id.* at 604, 507 N.E.2d at 171.

court restated that the Illinois Supreme Court alone decides whether a petition for reinstatement will be granted.

Finally, in the area of professional legal malpractice, Illinois appellate courts held attorneys to the same ethical and moral standards imposed by the Illinois Supreme Court in disciplinary proceedings. The courts reasoned that it would be anomalous to impose some other sort of standards in tort actions. The opinions during the *Survey* year suggest that careful consideration should be given by members of the Illinois bar to the moral fitness necessary for the practice of law.