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Professional Responsibility

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I. INTRODUCTION

During the *Survey* year, the Supreme Court of Illinois decided matters relating to the admission and reinstatement of attorneys to the Illinois Bar as well as the discipline of Illinois Bar members.[1] The court disposed of the majority of these cases pursuant to a court order, and without a written opinion.[2] Analyses of the opin-

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1. The *Survey* year covers the period July 1, 1985 through July 1, 1986. Some of the matters decided by the court during the *Survey* year, however, were initiated by the Attorney Registration and Disciplinary Commission prior to July 1, 1985.

2. The matters decided by the Illinois Supreme Court that were not the subject of a written opinion will be discussed throughout the footnotes.

ions issued, however, should familiarize practitioners with the professional ethical guidelines that members of the Illinois Bar are expected to observe and the various disciplinary proceedings by which ethical issues are brought to the attention of the court. Accordingly, this article will discuss the cases decided during the *Survey* year in light of the relevant rules and mechanisms established by the Illinois Supreme Court.

II. The Roles of the Illinois Supreme Court and the Attorney Registration and Disciplinary Commission

During the *Survey* year, the Supreme Court of Illinois restated the proposition that it has the ultimate authority for implementing attorney discipline.[3] The court has described its power to regulate the admission of attorneys to the practice of law, and to discipline attorneys who have been admitted as an inherent part of the court's function.[4]

In executing this responsibility, the court provides for the registration and discipline of members of the Illinois bar. These judicial tasks are managed under the administrative supervision of the Attorney Registration and Disciplinary Commission ("ARDC").[5]

A. The Mechanics of the ARDC

The ARDC is composed of five members of the Illinois bar appointed to the Commission by the Supreme Court of Illinois.[6] The Administrator of the ARDC serves as the principal officer of the Commission and is also appointed by the court.[7]

Other components of the ARDC include the Inquiry Board, the Hearing Board, and the Review Board. At least twenty-one members of the Illinois bar are appointed by the Commission to serve annual terms on the Inquiry Board.[8] The Inquiry Board investigates matters referred by the Administrator.[9] No less than twenty-

3. *In re* Williams, 111 Ill. 2d 105, 115, 488 N.E.2d 1017, 1022 (1986). The decisions of the various Hearing and Review Boards are not published. Accordingly, only Illinois Supreme Court decisions will be discussed.

4. *In re* Mitan, 75 Ill. 2d 118, 123, 387 N.E.2d 278, 280 (1979), *cert. denied*, Mitan v. Attorney Registration and Disciplinary Commission, 444 U.S. 916 (1979).

5. Ill. S. Ct. R. 751(a), Ill. Rev. Stat. ch. 110A, para. 751(a) (1985).

6. Ill. S. Ct. R. 751(b), Ill. Rev. Stat. ch. 110A, para. 751(b) (1985).

7. Ill. S. Ct. R. 752, Ill. Rev. Stat. ch. 110A, para. 752 (1985).

8. Ill. S. Ct. R. 753(a)(1), Ill. Rev. Stat. ch. 110A, para. 753(a)(1) (1985).

9. Ill. S. Ct. R. 753(a)(2), Ill. Rev. Stat. ch. 110A, para. 753(a)(2) (1985). Further, the Board may initiate investigations on its own motion, and may refer matters to the Administrator to be investigated. *Id.*

one members of the Illinois bar are appointed by the Commission to serve annual terms on the Hearing Board.[10] Finally, a nine member Review Board is appointed by the court.[11]

B. The ARDC Annual Report

In addition to its duties of supervising registration and disciplinary proceedings, the ARDC is responsible for submitting an annual report to the court. This report evaluates the effectiveness of the ARDC and recommends changes.[12] The most recent report of the ARDC, submitted to the Supreme Court of Illinois, April 30, 1986, demonstrated the ARDC's increased caseload over the last ten years.[13] According to that report, in 1976, the Administrator initiated 1,740 investigations.[14] In 1985, 3,935 investigations were initiated, a 126% increase over the 1976 figure.[15]

The 1985 report also classified charges of misconduct received by the Administrator according to the type of misconduct charged and the subject matter in which the attorney was involved at the time of the alleged misconduct.[16] The most frequently alleged types of misconduct in 1985 included neglect, problems in the attorney/client relationship,[17] failure to communicate with a client, improper handling of funds, and conduct involving dishonesty or fraud.[18] The most common types of legal matters handled by attorneys at the time of the misconduct were torts,[19] domestic relations, criminal, and real estate, including landlord-tenant.[20]

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10. ILL. S. CT. R. 753(c)(1), ILL. REV. STAT. ch. 110A, para. 753(c)(1) (1985).

11. ILL. S. CT. R. 753(d), ILL. REV. STAT. ch. 110A, para. 753(d) (1985).

12. ILL. S. CT. R. 751(e)(6), ILL. REV. STAT. ch. 110A, para. 751(e)(6) (1985). This report is submitted on a calendar year basis. Therefore, it is not possible to directly apply the statistics contained therein to the *Survey* year. These statistics indicate, however, the general reoccurrence of types of misconduct which result in discipline, as well as the legal contexts in which they typically occur.

13. 1985 ARDC ANN. REP. 4 (1986).

14. *Id.*

15. *Id.*

16. *Id.* at 11. These classifications are based on information obtained at the time the charge is received, and before it has been investigated or established. *Id.* at 4.

17. Attorney/client relationship problems include disclosure of confidential information, improper withdrawal, abandonment, and failure to protect client interests. *Id.* at 11.

18. *Id.*

19. The tort context includes both personal injury and property damage. *Id.*

20. *Id.* at 4. The four most common types of misconduct and the five most common types of subject matter accounted for over 50% of the total charges in 1985 and have been among the most common in every ARDC report including this analysis. *Id.* at 4; 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).

C. *Primary Objectives and Procedural Guidelines*

During the *Survey* year, the court decided matters involving attorney admission to the bar,[21] discipline,[22] and reinstatement.[23] Prior to examining the specific issues resolved by the court, it is useful to note the primary objectives and procedural guidelines reiterated by the court for these proceedings.

The court stressed the need to demonstrate good moral character and fitness to practice law in cases involving petitions for admission to the bar.[24] The court emphasized that both attorney disciplinary proceedings and reinstatement proceedings serve "to safeguard the public, maintain the integrity of the profession, and protect the administration of justice from reproach."[25]

In addition to restating these objectives, the court identified the tension caused by striving to achieve uniformity in the application of discipline while considering each individual case on its own merits.[26] The court stated that "[i]n determining what discipline is appropriate, we consider the circumstances of each case and are mindful of the discipline which has been deemed appropriate under similar circumstances."[27]

The court made several observations regarding procedural matters. The court noted that a respondent in a disciplinary proceeding is entitled to a hearing before an impartial tribunal.[28] The tribunal established by the Illinois Supreme Court is the Hearing Board.[29] In hearings before this Board, the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence.[30]

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21. *See infra* notes 34-50 and accompanying text.

22. *See infra* notes 51-245 and accompanying text.

23. *See infra* notes 246-88 and accompanying text.

24. *In re* DeBartolo, 111 Ill. 2d 1, 5, 488 N.E.2d 947, 948 (1986). *See infra* notes 43-50 and accompanying text.

25. *In re* Rothenberg, 108 Ill. 2d 313, 323, 484 N.E.2d 289, 293 (1985). *See infra* notes 256-76 and accompanying text.

26. *In re* Lenz, 108 Ill. 2d 445, 451, 484 N.E.2d 1093, 1096 (1985). *See infra* notes 79-95 and accompanying text.

27. *In re* Williams, 111 Ill. 2d 105, 116, 488 N.E.2d 1017, 1022 (1986) (citing *In re* Lenz, 108 Ill. 2d 445, 485 N.E.2d 1093 (1985)). *See infra* notes 215-34 and accompanying text.

28. *In re* Betts, 109 Ill. 2d 154, 168, 485 N.E.2d 1081, 1086 (1985), *cert. denied*, Betts v. Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, 106 S. Ct. 1949 (1986). *See infra* notes 144-63 and accompanying text.

29. ILL. S. CT. R. 753(c), ILL. REV. STAT. ch. 110A, para. 753(c) (1985).

30. *In re* Betts, 109 Ill. 2d at 175, 485 N.E.2d at 1089 (citing ILL. S. CT. R. 753(c)). *See infra* notes 144-63 and accompanying text. This standard is higher than the preponderance of the evidence standard used in civil cases. *Id.*.

Addressing evidentiary issues, the court reiterated that the common law rules of evidence, including the hearsay rule, are applicable to attorney discipline cases.[31] The court noted that on review, the findings of the Hearing and Review Boards are entitled to virtually the same weight as those of any other trier of fact.[32] Further, the court observed that issues concerning conflicting testimony in attorney disciplinary proceedings are best resolved by the hearing panel because it has the advantage of observing the witnesses.[33]

III. ATTORNEY LICENSING AND ADMISSION TO THE BAR

The court decided one admission case during the *Survey* year.[34] Cases involving the admission of an attorney to the bar reach the court pursuant to Supreme Court Rule 708.[35] Rule 708 provides for a Committee on Character and Fitness in each of the judicial districts of the state.[36] Before admission to the bar, each applicant is required to furnish the Committee with an affidavit "in such form as the Board of Law Examiners shall prescribe concerning his history."[37] Thereafter, each applicant is evaluated by the committee in his district "as to his good moral character and general fitness to practice law."[38]

If the Committee is satisfied that the applicant meets these prerequisites, he or she is certified by the Committee to the Board of Law Examiners,[39] and usually admitted to the bar.[40] If, however, the committee is not satisfied that these qualifications have been

31. *In re* Williams 111 Ill. 2d 105, 113, 488 N.E.2d 1017, 1021 (1986). *See infra* notes 215-34 and accompanying text. The Code of Civil Procedure and Rules of the Supreme Court of Illinois are also applicable. DISC. COMM. R. 273, ILL. REV. STAT. ch. 110A, foll. para. 744 (1985).

32. *In re* Lenz, 108 Ill. 2d 445, 450, 484 N.E.2d 1093, 1095 (1985). *See infra* notes 79-95 and accompanying text.

33. *In re* Betts, 109 Ill. 2d 154, 172, 485 N.E.2d 1081, 1088 (1985). *See infra* notes 144-63 and accompanying text.

34. *In re* DeBartolo, 111 Ill. 2d 1, 488 N.E.2d 947 (1986). *See infra* notes 43-50 and accompanying text.

35. ILL. S. CT. R. 708, ILL. REV. STAT. ch. 110A, para. 708 (1985).

36. ILL. S. CT. R. 708(a), ILL. REV. STAT. ch. 110A, para. 708(a) (1985).

37. ILL. S. CT. R. 708(b), ILL. REV. STAT. ch. 110A, para. 708(b) (1985).

38. *Id.*

39. ILL. S. CT. R. 708(d), ILL. REV. STAT. ch. 110A, para. 708(d) (1985). The Board of Law Examiners consists of five members appointed by the Illinois Supreme Court. ILL. S. CT. R. 702(a), ILL. REV. STAT. ch. 110A, para. 702(a) (1985).

40. ILL. S. CT. R. 708(c), ILL. REV. STAT. ch. 110A, para. 708(c) (1985). Supreme Court Rule 708(c) provides "[i]f the committee is of the opinion that the applicant is of good moral character and general fitness to practice law, it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to admission to the bar." *Id.*

met, it files a report of its findings and conclusions with the Board of Law Examiners.[41] After exercising his or her hearing rights before the Committee on Character and Fitness, an applicant dissatisfied with the determination of the Committee may petition the court for relief.[42]

In *In Re DeBartolo*,[43] the Illinois Supreme Court denied Fredrick Francis DeBartolo's petition for admission to the bar.[44] Following an investigation and hearing, the Committee on Character and Fitness refused to certify DeBartolo to the State Board of Law Examiners.[45] The Committee stated in its report that the application submitted by the petitioner contained inaccurate information regarding his high school education and past residences. Furthermore, the Committee was disturbed that the petitioner had incurred between two hundred and four hundred parking tickets and twice had misrepresented himself to others as a police officer.[46]

DeBartolo petitioned the court for relief.[47] The court's decision emphasized the importance of candor in completing the required application.[48] Moreover, the petitioner's conduct of impersonating a police officer and indifference to the many parking tickets he had received compelled the court to conclude that the petitioner had not demonstrated the good moral character and general fitness necessary to qualify him for admission to the bar.[49] Accordingly, the petition was denied.[50]

IV. The Disciplinary Process

The majority of cases decided during the *Survey* year involved

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Whether "entitled" is to be literally construed is an issue now pending before the court. *In re* Loss, No. 3972 (Ill. filed June 4, 1986).

41. Ill. S. Ct. R. 708(c), Ill. Rev. Stat. ch. 110A, para. 708(c) (1985).
42. Ill. S. Ct. R. 708(d), Ill. Rev. Stat. ch. 110A, para. 708(d) (1985).
43. 111 Ill. 2d 1, 488 N.E.2d 947 (1986).
44. *Id.* at 7, 488 N.E.2d at 949.
45. *Id.* at 2, 488 N.E.2d at 947.
46. *Id.* at 3, 488 N.E.2d at 947.
47. *Id.*
48. *Id.* at 6, 488 N.E.2d at 949.
49. *Id.*
50. *Id.* at 7, 488 N.E.2d at 949. The court analogized its decision to a case resulting in discipline such as disbarment or suspension. When discipline is imposed on an attorney he may seek reinstatement after the passage of the applicable period of time. Similarly, the petitioner was allowed to reapply for admission immediately. The committee evaluating any new application was instructed to consider all matters that would be relevant to his character and fitness to practice law, including his conduct during and after the court's proceedings and his candor in filling out any new application. *Id.* at 6-7, 488 N.E.2d at 949.

attorney discipline imposed after a finding of misconduct.[51] These cases reached the court pursuant to either Supreme Court Rule 753[52] or 761.[53]

The disciplinary process under Rule 753 begins with an investigation by the Inquiry Board.[54] At the conclusion of the investigation, the Inquiry Board votes to dismiss the charge, to close the investigation, or to file a complaint.[55] When the Inquiry Board votes to file a complaint, the complaint is prepared by the Administrator and filed with the Hearing Board.[56]

Either the respondent or the Administrator may file exceptions to a Hearing Board report.[57] If exceptions are filed, the Hearing Board's report is then assessed by the Review Board.[58] If the Review Board concludes that disciplinary action is required, the Review Board's report is then filed with the court.[59] The respondent may file exceptions to this report, and the administrator may petition the court for leave to file exceptions.[60] The court then decides the matter and determines what discipline, if any, is appropriate.[61]

When an attorney has been convicted of a crime, the Administrator proceeds under Rule 761.[62] If the crime involved fraud or

51. *See infra* notes 52-245 and accompanying text.

52. ILL. S. CT. R. 753, ILL. REV. STAT. ch. 110A, para. 753 (1985). *See infra* notes 54-61 and accompanying text.

53. ILL. S. CT. R. 761, ILL. REV. STAT. ch. 110A, para. 761 (1985). *See infra* notes 62-69 and accompanying text.

54. ILL. S. CT. R. 753(a)(2), ILL. REV. STAT. ch. 110A, para. 753(a)(2) (1985).

55. ILL. S. CT. R. 753(a)(3), ILL. REV. STAT. ch. 110A, para. 753(a)(3) (1985).

56. Ill. S. Ct. R. 753(b), ILL. REV. STAT. ch. 110A, para. 753(b) (1985). Proceedings before the Hearing Board generally are conducted according to the practice in civil cases. ILL. S. CT. R. 753(c)(5), ILL. REV. STAT. ch. 110A, para. 753(c)(5) (1985).

57. ILL. S. CT. R. 753(e)(1), ILL. REV. STAT. ch. 110A, para. 753(e)(1) (1985). If neither the respondent nor the Administrator files exceptions to the Hearing Board's report and the report recommends action by the court, the Hearing Board's report is submitted to the court as an agreed matter. *Id.*

58. *Id.* The Review Board may permit or require briefs, oral argument, or both. ILL. S. CT. R. 753(e)(2), ILL. REV. STAT. ch. 110A, para. 753(e)(2) (1985).

59. ILL. S. CT. R. 753(e)(4), ILL. REV. STAT. ch. 110A, para. 753(e)(4) (1985). If the Review Board affirms the findings and recommendations of the Hearing Board without change, the report of the Hearing Board may be transmitted to the court along with the Review Board's order of affirmance. *Id.*

60. ILL. S. CT. R. 753(e)(5), (6), ILL. REV. STAT. ch. 110A, para. 753(e)(5), (6) (1985). The court may permit or require briefs, oral arguments, or both. ILL. S. CT. R. 753(e)(7), ILL. REV. STAT. ch. 110A, para. 753(e)(7) (1985).

61. *See* ILL. S. CT. R. 771, ILL. REV. STAT. ch. 110A, para. 771 (1985). During the *Survey* year, five attorneys were disbarred, fifteen were suspended, and four were censured pursuant to Rule 753 without a written opinion. Per ARDC Records, November 1986.

62. ILL. S. CT. R. 761(b), ILL. REV. STAT. ch. 110A, para. 761(b) (1985). Supreme Court Rule 761 requires an attorney who is convicted of a felony or misdemeanor in any

moral turpitude, the Administrator is required to file a petition with the court requesting that the attorney be suspended until further order of the Illinois Supreme Court.[63] Upon receipt of the petition, the court issues a rule to show cause why the attorney should not be suspended immediately.[64] After consideration of the petition and the respondent's answer to the rule to show cause, the court immediately may suspend the attorney from practice until further order of the court.[65] A hearing and review proceeding as outlined above is then held to determine whether the crime warrants discipline.[66] For purposes of the petition, proof of the conviction is *prima facie* evidence of the attorney's guilt of the crime.[67]

If an attorney is convicted of a crime that does not involve fraud or moral turpitude, the matter is referred by the Administrator to the Inquiry Board.[68] Hence, the court's interpretation of whether a crime involves moral turpitude could be dispositive of whether an attorney convicted of such a crime is subject to immediate suspension pursuant to Rule 761.[69]

Disciplinary measures imposed in any disciplinary proceeding include disbarment, disbarment on consent, suspension,[70] and censure.[71] Alternatively, the court may order that an attorney be placed on probation.[72] For probation, the attorney must demon-

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court to notify the Administrator of the conviction within 30 days. ILL. S. CT. R. 761(a), ILL. REV. STAT. ch. 110A, para. 761(a) (1985).

63. ILL. S. CT. R. 761(b), ILL. REV. STAT. ch. 110A, para. 761(b) (1985).

64. *Id.*

65. *Id.* During the *Survey* year, eleven attorneys were suspended until further order of the court pursuant to Rule 761(b) without a written opinion. Per ARDC Records, November 1986.

66. ILL. S. CT. R. 761(d), ILL. REV. STAT. ch. 110A, para. 761(d) (1985). If the conviction is appealed, the hearing is delayed until the completion of the appellate process unless the attorney requests otherwise. ILL. S. CT. R. 761(d)(2), ILL. REV. STAT. ch. 110A, para. 761(d)(2) (1985).

67. ILL. S. CT. R. 753(b), ILL. REV. STAT. ch. 110A, para. 753(b) (1985). The hearing and review procedure beyond this point is the same as that provided in Rule 753. ILL. S. CT. R. 761(g), ILL. REV. STAT. ch. 110A, para. 761(g) (1985).

68. ILL. S. CT. R. 761(c), ILL. REV. STAT. ch. 110A, para. 761(c) (1985). *See supra* notes 54-61 and accompanying text.

69. The Administrator, however, also may petition the court, or the court may act on its own initiative to suspend an attorney from practice during the pendency of a criminal indictment, criminal information, disciplinary proceeding, or disciplinary investigation. ILL. S. CT. R. 774(a), ILL. REV. STAT. ch. 110A, para. 774(a) (1985). During the *Survey* year, the court suspended two attorneys until further order pursuant to Rule 774(a). ARDC records, November 1986.

70. Suspension may be for a specified period or until further order of the court. ILL. S. CT. R. 771(c), ILL. REV. STAT. ch. 110A, para. 771(c) (1985).

71. ILL. S. CT. R. 771, ILL. REV. STAT. ch. 110A, para. 771 (1985).

72. ILL. S. CT. R. 772, ILL. REV. STAT. ch. 110A, para. 772 (1985).

strate that continued practice will not cause disrepute or harm the public, that he or she has a temporary or minor disability that does not require treatment, and that he or she is not guilty of acts warranting disbarment.[73]

In determining what disciplinary measures are appropriate the court considers various mitigating factors. These include the length of time that the respondent has been in practice, previous misconduct, any restitution made by the respondent, past community service, prior *pro bono* legal work, and the testimony of character witnesses and colleagues.[74]

A. Mishandling of Client Funds

The majority of opinions involving attorney misconduct during the *Survey* year concerned the mishandling of client funds.[75] In none of those cases did the misuse of funds result in the conviction of a crime. Accordingly, they reached the court pursuant to Rule 753.[76] The disciplinary measures imposed in those cases ranged from censure[77] to a suspension for a period of two years.[78]

In *In Re Lenz*,[79] the court imposed censure for the mishandling of client funds.[80] The respondent had deposited $9,000, which he received as a down payment for the sale of his client's house, into his trust account. The attorney later used a portion of the money

73. ILL. S. CT. R. 772(a), ILL. REV. STAT. ch. 110A, para. 772(a) (1985). Potential conditions of probation include that: the attorney be required to report to the Administrator; the attorney's trust be supervised as the court may direct; the attorney complete a course of study; the attorney successfully complete the multistate Professional Responsibility Examination; that the attorney make restitution; the attorney verify his compliance with income tax laws to the Administrator; certain limitations be placed on the attorney's practice; the attorney undergo psychological counseling and treatment; the attorney abstain from alcohol or drugs; and the attorney pay disciplinary costs. ILL. S. CT. R. 772, ILL. REV. STAT. ch. 110A, para. 772 (1985).

74. *In re* Williams, 111 Ill. 2d 105, 117, 488 N.E.2d 1017, 1023 (1986).

75. *In re* Cutrone, 112 Ill. 2d 261, 492 N.E.2d 1297 (1986); *In re* Fogel, 112 Ill. 2d 501, 493 N.E.2d 1078 (1986); *In re* Young, 111 Ill. 2d 98, 488 N.E.2d 1014 (1986); *In re* Lenz, 108 Ill. 2d 445, 484 N.E.2d 1093 (1985); and *In re* Stone, 109 Ill. 2d 253, 486 N.E.2d 915 (1985). These cases involve violations of Canon 9 of the Code of Professional Responsibility. Rule 9-102 specifically deals with the preservation of the identity of client property and funds. CODE OF PROFESSIONAL RESPONSIBILITY Rule 9-102, ILL. REV. STAT. ch. 110A, CANON 9 (1985).

76. ILL. S. CT. R. 753, ILL. REV. STAT. ch. 110A, para. 753 (1985). *See supra* notes 54-61 and accompanying text.

77. *See In re* Young, 111 Ill. 2d 98, 488 N.E.2d 1014 (1986); *In re* Lenz, 108 Ill. 2d 445, 484 N.E.2d 1093 (1985).

78. *See In re* Cutrone, 112 Ill. 2d 261, 492 N.E.2d 1297 (1986).

79. 108 Ill. 2d 445, 484 N.E.2d 1093 (1985).

80. *Id.* at 455, 484 N.E.2d at 1098.

to pay for a used van with a wheelchair lift for a disabled client.[81] The trust account dropped below the amount of the down payment for approximately six weeks.[82]

The Hearing Board recommended that the respondent be censured.[83] The Review Board, however, recommended a suspension for one year.[84] The court upheld the recommendation of the Hearing Board and the respondent was censured.[85]

The court relied upon several mitigating factors in determining the proper discipline to be imposed.[86] This misuse of funds had been the respondent's only act of professional misconduct during a twenty-year career.[87] Restitution was made promptly after inquiry from the Commission,[88] and the account contained insufficient funds for only six weeks.[89] Further, the respondent had performed an extraordinary amount of *pro bono* work,[90] and had assisted in the drafting of certain banking legislation.[91] Finally, several witnesses testified regarding the respondent's good moral character, and the respondent openly had admitted his guilt and fully cooperated with the Commission throughout the proceedings.[92]

Despite these mitigating factors, the court held that discipline was warranted.[93] The court noted that it is the risk of the loss of the funds, and not simply their actual loss, which Rule 9-102(a) of the Code of Professional Responsibility is designed to eliminate.[94] Thus, the court concluded that the appropriate sanction was censure.[95]

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81. *Id.* at 448, 484 N.E.2d at 1094-95. The respondent originally withdrew the money from his trust account as a favor to the injured party's husband who promised to return the money to the respondent in two days. The husband, however, did not repay the money, and the respondent did not replace the funds. *Id.* at 448-49, 484 N.E.2d at 1094-95.

82. *Id.* at 449, 484 N.E.2d at 1095.

83. *Id.* at 450, 484 N.E.2d at 1095.

84. *Id.*

85. *Id.* at 455, 484 N.E.2d at 1098.

86. *Id.* at 454-55, 484 N.E.2d at 1097-98.

87. *Id.* at 454, 484 N.E.2d at 1097.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 455, 484 N.E.2d at 1097-98.

93. *Id.* at 455-56, 484 N.E.2d at 1098.

94. *Id.* Rule 9-102(a) provides that all funds belonging in whole or in part to a client that are paid to a lawyer or law firm must be deposited in one or more separate identifiable trust accounts. Further, these accounts must be 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 (1985).

95. *Id.*

In Re Young[96] also involved the mishandling of client funds and the censuring of an attorney.[97] Again, the mismanaged funds belonged to clients represented by the respondent in the sale of a house.[98] The respondent deposited $3,000 into a personal business account rather than into a separate identifiable trust account as required by Rule 9-102(a).[99] The balance dropped below $3,000 for over fifteen months, and the account was overdrawn at one point.[100] The clients made several requests for a return of their money, but the respondent refused to relinquish the funds before the title cleared.[101]

Both the Hearing and Review Boards recommended censure.[102] The Hearing Board concluded that there was no dishonest motive involved in the misconduct and there had been a bona fide title problem with the client's property which justified the respondents retention of the funds.[103] Furthermore, the respondent had sufficient other assets to repay his clients.[104] The Review Board affirmed these findings.[105]

In determining the proper discipline to be imposed, the Illinois Supreme Court looked at the Hearing and Review Boards' findings, the respondent's candor and cooperation during the proceedings, his twenty-five-year unblemished career and considerable pro bono work. Finally, the court stated that censure was the appropriate sanction because the respondent no longer maintained an active practice.[106]

In *In Re Cutrone*,[107] *In Re Stone*,[108] and *In re Fogel*[109] the court imposed suspension for the commingling and conversion of client funds. In *In Re Cutrone*,[110] the respondent received $50,000 from his client's mother and friend to effectuate his client's release from

96. 111 Ill. 2d 98, 488 N.E.2d 1014 (1986).
97. *Id.* at 105, 488 N.E.2d at 1017.
98. *Id.* at 100, 488 N.E.2d at 1015. Due to an exception on the title insurance report, the respondent was required to hold over $3,000 in escrow until the title was cleared. *Id.*
99. *Id.* at 101, 488 N.E.2d at 1015. *See supra* note 94.
100. *Young*, 111 Ill. 2d at 101, 488 N.E.2d at 1015.
101. *Id.* at 101-02, 488 N.E.2d at 1015-16.
102. *Id.* at 100, 488 N.E.2d at 1015.
103. *Id.* at 104, 488 N.E.2d at 1017.
104. *Id.* at 104-05, 488 N.E.2d at 1017.
105. *Id.* at 105, 488 N.E.2d at 1017.
106. *Id.*
107. 112 Ill. 2d 261, 492 N.E.2d 1297.
108. 109 Ill. 2d 253, 486 N.E.2d 915 (1985).
109. 112 Ill. 2d 501, 493 N.E.2d 1078 (1986).
110. 112 Ill. 2d 261, 492 N.E.2d 1297.

a California jail.[111] The respondent, however, used only a portion of the money to obtain the release of his client.[112] He then kept the balance of the money, informing his client's friend and mother that they would receive a refund for any amount remaining after his fee was deducted.[113]

The Hearing Board found that the money deposited with the respondent was intended to be used to post his client's bail and not as a fee.[114] The Hearing Board recommended disbarment. The Review Board affirmed the Hearing Board's findings.[115]

The Illinois Supreme Court held that the record did not contain clear and convincing evidence that the respondent was not authorized to employ a bonding company or that he made no mention of a fee.[116] On the issues of commingling and conversion, however, the court found that the Administrator had proven that the funds were not deposited in an identifiable trust as required by Rule 9-102(a), and that the account used was frequently depleted and occasionally overdrawn.[117]

The following mitigating factors were considered in determining the proper discipline: the respondent's personal and financial pressures, his vigorous representation of his client, and the restitution he made to the complaining parties.[118] The court concluded that a two-year suspension was appropriate.[119] Justice Moran, however, wrote a vigorous dissent, emphasizing that predictability and fairness required the court to order the respondent's disbarment.[120]

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111. *Id.* at 264, 492 N.E.2d at 1298.

112. *Id.* at 264-65, 492 N.E.2d at 1298-99. The client's mother and friend testified that they gave the respondent $50,000 because they were advised that the client would be released and the full amount refunded, whereas, if they paid only $5,000, there would have been no refund. Both also testified that they did not authorize the respondent to use a bonding company, and that no fee had been discussed. The respondent, however, did employ a bonding company, to which he paid a $7,000 fee. *Id.*

113. *Id.* at 265, 492 N.E.2d at 1299.

114. *Id.* at 266, 492 N.E.2d at 1299.

115. *Id.* at 267, 492 N.E.2d at 1300.

116. *Id.* at 268, 492 N.E.2d at 1300. The court found it unlikely that an experienced criminal lawyer accepting a substantial sum of money from an incarcerated defendant's mother and good friend failed to discuss with them the amount of his fee and the method of payment. *Id.* at 269, 492 N.E.2d at 1300-01.

117. *Id.* at 268, 492 N.E.2d at 1300.

118. *Id.* at 269-70, 492 N.E.2d at 1301.

119. *Id.* at 271, 492 N.E.2d at 1302.

120. *Id.* at 273, 492 N.E.2d at 1302 (Moran, J., dissenting). Justice Moran compared the case at bar to *In re* Smith, 63 Ill. 2d 250, 347 N.E.2d 133 (1976). In *Smith*, the attorney made unauthorized use of funds from a settlement held for his client. Although the court recognized similar mitigating factors, the attorney in *Smith* was disbarred. *Id.* at 250-56. 347 N.E.2d at 135.

A lesser suspension was imposed in *In Re Stone*,[121] though commingling and conversion charges accompanied charges of conduct involving fraud, deceit, misrepresentation, and moral turpitude in violation of Rule 1-102(a) of the Code of Professional Responsibility,[122] and failure to carry out a contract of employment in violation of Rule 7-101(a)(2) of the Code of Professional Responsibility.[123] In *Stone*, the respondent cashed a check issued to him by his client to cover the costs of an adoption. He placed the unused portion of the funds in his pocket and later discovered the money missing.[124] Consequently, the respondent issued a check from a personal account, which he knew contained insufficient funds, to the hospital to cover the adoption costs.[125] Also, he issued paychecks drawn from an account containing insufficient funds to his secretary.[126] Finally, the respondent failed to complete two adoption proceedings in which he was involved.[127]

The Hearing Board found that the issuance of bad checks constituted conduct involving dishonesty, fraud, deceit, misrepresentation, and moral turpitude.[128] The Hearing Board recommended a one-year suspension, and the Review Board affirmed.[129]

The Illinois Supreme Court concurred with the Hearing Board's findings of fact concerning the respondent's misconduct,[130] but imposed a lesser suspension of six months.[131] In determining the appropriate discipline, the court considered that there had been no evil motive with regard to the disappearing funds; the respondent was admitted to practice in 1962 and had no disciplinary problems until 1981; and finally, the respondent paid the hospital bill and reimbursed his former clients for the extra costs and fees they incurred.[132]

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121. 109 Ill. 2d 253, 486 N.E.2d 915 (1985).

122. Rule 1-102(a)(4) provides "an attorney may not engage in illegal conduct involving dishonesty, fraud, deceit, or misrepresentation." CODE OF PROFESSIONAL RESPONSIBILITY Rule 1-102(a)(4), ILL. REV. STAT. ch. 110A, CANON 1 (1985).

123. *Stone*, 109 Ill. 2d at 260, 486 N.E.2d 917-18. Rule 7-101(a)(2) provides that an attorney may not fail to fulfill a contract of employment unless he withdraws as permitted by Rules 2-110, 5-102, or 5-105, CODE OF PROFESSIONAL RESPONSIBILITY Rule 7-101(a)(2), ILL. REV. STAT. ch. 110A, CANON 7 (citing Rules 2-110, 5-102, 5-105).

124. *Stone*, 109 Ill. 2d at 256-57, 486 N.E.2d 916.

125. *Id.* at 257, 486 N.E.2d 916.

126. *Id.* at 259, 486 N.E.2d 917.

127. *Id.* at 258, 486 N.E.2d 916.

128. *Id.* at 261, 486 N.E.2d 918.

129. *Id.*

130. *Id.*

131. *Id.* at 266, 486 N.E.2d 921.

132. *Id.* at 265, 486 N.E.2d 920.

The case of *In re Fogel*[133] resulted in the imposition of a three-month suspension.[134] In *Fogel*, the respondent negotiated an agreement for the satisfaction of a judgment against his client with his client's creditor.[135] The client gave $1,000 to the respondent to pay the creditor. The checks that the respondent sent to the creditor were returned, however, because of insufficient funds in the respondent's account.[136] The creditor's attorney filed a complaint with the ARDC. The respondent then furnished the attorney with $1,000 in cash.[137]

The Hearing Board recommended an eighteen-month suspension.[138] The Review Board, however, recommended a three-month suspension.[139]

The respondent argued that censure was appropriate because there was no dishonest motive or personal use of the client's funds.[140] The court held, however, that censure was not an appropriate sanction.[141] The court observed that misconduct of this character continues to recur despite repeated holdings that misuse of a client's funds violates standards of the profession.[142] The court thus imposed the three-month suspension recommended by the Review Board.[143]

B. Misconduct Involving Fraud in Judicial Proceedings

Two additional opinions during the *Survey* year involved misconduct which did not result in the conviction of a crime, but for which a suspension was imposed.[144] In both instances the fraudulent misconduct occurred in conjunction with judicial proceedings.[145]

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133. 112 Ill. 2d 501, 493 N.E.2d 1078 (1986).

134. *Id.* at 502-03, 493 N.E.2d at 1079.

135. *Id.* at 502, 493 N.E.2d at 1079. The respondent did not maintain a separate identifiable trust account for his client. Instead, he deposited his client's funds in his law office account. *Id.*

136. *Id.* at 502-03, 493 N.E.2d at 1079.

137. *Id.* at 503, 493 N.E.2d at 1079.

138. *Id.* at 502, 493 N.E.2d at 1079.

139. *Id.*

140. *Id.* at 504, 493 N.E.2d at 1080.

141. *Id.*

142. *Id.*

143. *Id.* at 504-05, 493 N.E.2d at 1080.

144. *In re* Thebeau, 111 Ill. 2d 251, 489 N.E.2d 877 (1986); *In re* Betts, 109 Ill. 2d 154, 485 N.E.2d 1081 (1985), *cert. denied*, Betts v. Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, 106 S. Ct. 1949 (1986).

145. *In re* Thebeau, 111 Ill. 2d 251, 489 N.E.2d 877 (1986); *In re* Betts, 109 Ill. 2d 154, 485 N.E.2d 1081 (1985), *cert. denied*, Betts v. Attorney Registration and Disciplinary Comm'n of the Supreme Court of Illinois, 106 S. Ct. 1949 (1986).

In re Betts[146] involved fraud in the filing of a conservatorship petition.[147] Prior to filing the petition, the respondent purchased land on behalf of himself and his clients.[148] The transaction was completed even though the seller had relatives who also owned an interest in the land.[149] The deed provided for the seller to retain use of a portion of the land for his lifetime or until his abandonment of the premises.[150]

Following many complaints from neighbors regarding the seller's substandard living conditions and lack of self sufficience, the county state's attorney suggested a conservatorship for the seller.[151] The respondent subsequently arranged for a conservator and a doctor to examine the seller.[152]

The complaint against the respondent alleged that he made a false statement in his verified petition for a conservator, and that he knowingly created false evidence.[153] In his verified petition, the respondent stated that to the best of his knowledge, the seller had no living relatives or property interests. The respondent, however, knew of the seller's relatives and the seller's partial retention of the use of the property sold.[154] The false evidence allegation concerned the physician's affidavit. The affidavit stated that the physician examined the seller, although he only visited the seller with the respondent, and observed the seller's condition from across the room.[155]

The Hearing Board found the respondent guilty of the charges, and recommended that he be suspended for one year.[156] The Review Board, however, concluded that the charges were not proved by clear and convincing evidence, and recommended that the complaint be dismissed.[157]

The Illinois Supreme Court concurred with the Hearing Board concerning the respondent's statements in his verified petition.[158] Thus, the court asserted that the respondent should have reported

146. 109 Ill. 2d 154, 485 N.E.2d 1081 (1985).
147. *Id.* at 159, 485 N.E.2d at 1082.
148. *Id.* at 160, 485 N.E.2d at 1082.
149. *Id.* at 161, 485 N.E.2d at 1083.
150. *Id.*
151. *Id.* at 162-63, 485 N.E.2d at 1083-84.
152. *Id.* at 163, 485 N.E.2d at 1084.
153. *Id.* at 165, 485 N.E.2d at 1085.
154. *Id.* at 166, 485 N.E.2d at 1085.
155. *Id.*
156. *Id.* at 159, 485 N.E.2d at 1082.
157. *Id.*
158. *Id.* at 173, 485 N.E.2d at 1088.

the existence of the seller's relatives. Further, the respondent should have reported the seller's retention of the use of the property sold as an interest in land, albeit only a life estate.[159]

Regarding the physician's affidavit, the court did not agree with the Hearing Board.[160] Because the physician's affidavit did not claim that there had been a physical examination of the seller, the court held that the physician's statement was not proven false by clear and convincing evidence.[161]

Because the respondent's untrue statements did not directly concern the seller's competency, the court concluded that the respondent's actions did not constitute fraud upon the court.[162] Furthermore, the court considered the fact that the respondent, who had practiced for only two years at the time of his misconduct, was unfamiliar with the procedures required in filing conservatorship petitions. Therefore, the court determined that a six-month suspension was appropriate.[163]

The court took a harsher view of fraud in the context of a judicial proceeding in *In Re Thebeau*.[164] In *Thebeau*, the respondent was retained by three sons to probate their mother's estate.[165] The sons agreed that one of them would purchase the decedent's house from the other two.[166] The respondent allowed the sale to be represented as a sale in a single payment though it was an installment sale.[167] Also, the respondent, acting as a notary public, acknowledged signatures of two of the brothers on the contract, though he had not actually seen the two sign the document.[168] Finally, the respondent allowed the two brothers' signatures to be forged by the third brother on the quitclaim deed.[169] These actions resulted in a bitter dispute between the brothers and the loss of a year's interest on the assets of the estate.[170]

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159. *Id.* at 173-74, 485 N.E.2d at 1088-89.

160. *Id.* at 175, 485 N.E.2d at 1089.

161. *Id.* In *In re* Estate of Knutson, 83 Ill. App. 3d 907, 912, 404 N.E.2d 1003, 1007 (1980), the physician's statement was found to be false. The court in *Betts* noted, however, that the standard of proof in that case was a preponderance of the evidence, whereas charges of attorney misconduct must be proved by the higher standard of clear and convincing evidence. 109 Ill. 2d at 174-75, 485 N.E.2d at 1089.

162. *In re* Betts, 109 Ill. 2d at 176, 485 N.E.2d at 1090.

163. *Id.* at 177, 485 N.E.2d at 1090.

164. 111 Ill. 2d 251, 489 N.E.2d 877 (1986).

165. *Id.* at 253, 489 N.E.2d at 877.

166. *Id.*

167. *Id.* at 253-54, 489 N.E.2d at 878.

168. *Id.* at 254, 489 N.E.2d at 878.

169. *Id.*

170. *Id.* at 255, 489 N.E.2d at 878.

The Hearing Board recommended a one-year suspension, but the Review Board recommended a suspension for two years.[171] The respondent argued that the Boards' recommendations were overly severe because the Boards did not appropriately consider his innocent motive, his acknowledgement of misconduct, his cooperation in the proceedings, and his prior unblemished record.[172]

Although the court recognized these factors, and also noted that the fraud was not carried out for personal gain, the court concluded that it was of an even more aggravated character because it was practiced on the judicial system.[173] Moreover, the court observed that the misconduct did not involve a quick failure of judgment, but rather a deliberate ongoing course of conduct.[174] The court held a two-year suspension was proper.[175]

C. Incompetent Representation of Clients

In *In re Hogan*,[176] the Administrator filed a petition seeking the interim suspension of the respondent, alleging that the respondent failed to provide competent representation for his clients.[177] The court denied the Administrator's motion, but, on its own petition, transferred the respondent to inactive status pursuant to Supreme Court Rule 758(c).[178]

The Illinois Supreme Court ordered mental and physical examinations of the respondent pursuant to Rule 760.[179] The tests, however, revealed nothing of significance.[180] Moreover, the respondent appeared to have practiced law for a number of years, preparing pleadings and other documents, before evidence of his incompe-

171. *Id.* at 253, 489 N.E.2d at 877.

172. *Id.* at 255, 489 N.E.2d at 878.

173. *Id.* at 256, 489 N.E.2d at 879.

174. *Id.*

175. *Id.* Because the respondent already had ceased practicing law for a year, the suspension was reduced to one year. *Id.*

176. 112 Ill. 2d 20, 490 N.E.2d 1280 (1986).

177. *Id.* at 22, 490 N.E. 2d at 1280.

178. *Id.* Illinois Supreme Court Rule 758 concerns mental disability and drug or narcotic addiction. Rule 758(c) specifically provides for the court to transfer an attorney to inactive status until further order of the court if the court determines that the attorney is incapable of continuing his practice. ILL. S. CT. R. 758(c), ILL. REV. STAT. ch. 110A, para. 758(c) (1985).

179. *Id.* Illinois Supreme Court Rule 760 permits the court to order mental and physical examinations of an attorney. The examining physician then prepares a report of his examination; copies of that report are given to the court, the Hearing Board, the Administrator, and the attorney. ILL. S. CT. R. 760, ILL. REV. STAT. ch. 110A, para. 760 (1985).

180. *In re* Hogan, 112 Ill. 2d at 24, 490 N.E.2d at 1282.

tence developed.[181] Nevertheless, portions of the pleadings and briefs offered in evidence were described by the court as adequately clear, while other portions were "incomprehensible".[182]

The Administrator filed a complaint against the respondent for the "repeated failure to act competently" in violation of Rule 6-101(a)1 of the Code of Professional Responsibility,[183] and "intentional or habitual violation of established rules of procedure" in violation of Rule 7-106(c) of the Code of Professional Responsibility.[184] The Hearing Board found that the respondent lacked the fundamental skill necessary to draft pleadings and briefs, and although the respondent's deficiencies were remediable, he was incompetent to practice law.[185] The Hearing Board recommended that the Respondent be disbarred and permitted to apply for reinstatement upon a demonstration of competence.[186] The Review Board affirmed the Hearing Board's recommendation of disbarment.[187]

The court noted that "the purpose of disciplinary proceedings is to safeguard the public and maintain the integrity of the profession."[188] Although the respondent was incapable of adequately serving the public, the court stated that disbarment is ordinarily an appropriate sanction only when there is a finding of a corrupt motive or moral turpitude.[189] The respondent was guilty of no such corrupt motive, but rather had a remediable disability.[190] Accordingly, the court ordered that the respondent remain on inactive status until he was rehabilitated.[191]

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181. *Id.*

182. *Id.* at 24-25, 490 N.E.2d at 1282.

183. *Id.* at 22, 490 N.E.2d at 1280-81. Illinois Supreme Court Rule 6-101(a)(1) provides that a lawyer may not handle a legal matter when he knows or should know that he is not competent to handle it unless he associates himself with a lawyer who is competent to handle it. CODE OF PROFESSIONAL RESPONSIBILITY Rule 6-101(a)(1), ILL. REV. STAT. ch. 110A, CANON 6 (1985).

184. 112 Ill. 2d at 22, 490 N.E.2d at 1281. Rule 7-106(c)(7) provides that an attorney may not "intentionally or habitually violate any established rule of procedure or of evidence" when appearing before a tribunal in his professional capacity as a lawyer. CODE OF PROFESSIONAL RESPONSIBILITY Rule 7-106(c)(7), ILL. REV. STAT. ch. 110A, CANON 7 (1985).

185. *In re* Hogan, 112 Ill. 2d at 22-23, 490 N.E.2d at 1281.

186. *Id.*

187. *Id.*

188. *Id.* at 24, 490 N.E.2d at 1281.

189. *Id.*

190. *Id.* at 25, 490 N.E.2d at 1282.

191. *Id.* The Administrator was directed to confer with the respondent and the respondent's attorney for the implementation of a remedial plan. The respondent, the Ad-

D. Misconduct Resulting in the Conviction of a Crime

The remaining disciplinary opinions written during the *Survey* year concerned attorneys convicted of crimes.[192] In *In Re Thebus*,[193] the Illinois Supreme Court censured the attorney as a result of his criminal conviction.[194] Respondent Thebus had withheld funds from his employees' wages to pay their federal income taxes and their FICA contributions, but failed to remit the amount withheld to the IRS.[195] The respondent pled guilty to a charge of willful failure to file an employer's quarterly tax return.[196]

The Hearing Board found that the respondent's conviction demanded discipline, and recommended censure.[197] The Review Board agreed with the Hearing Board's findings and recommendation.[198]

The court also agreed that the respondent's conviction alone established grounds for discipline.[199] The court analogized the respondent's misconduct to another case involving the willful failure of an attorney to file an income tax return.[200] In the earlier case, the court held that proof of the conviction did not necessarily establish moral turpitude, but did constitute misconduct warranting discipline.[201] Accordingly, the court in *Thebus* concluded that discipline was appropriate, and concurred with the recommendations of censure.[202]

In Re Scarnavack[203] presented a case of first impression.[204] In

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ministrator, or both, may petition the court for an order of probation after the respondent demonstrates the requisite competence to practice law. *Id.* at 25-26, 490 N.E.2d at 1282.

192. *See supra* notes 62-69 and accompanying text.

193. 108 Ill. 2d 255, 483 N.E.2d 1258 (1985).

194. *Id.* at 265, 483 N.E.2d at 1263.

195. *Id.* at 257, 483 N.E. at 1259.

196. *Id.* Although the Administrator could have proceeded under Illinois Supreme Court Rule 761(b), taking the position that the respondent's conviction involved moral turpitude, the Administrator proceeded under Rule 753.

197. *Id.* at 258, 483 N.E.2d at 1259.

198. *Id.* at 258, 483 N.E.2d at 1260.

199. *Id.* at 265, 483 N.E.2d at 1263. Another issue facing the court in *Thebus* was whether the attorney's failure to file an employer's quarterly tax return amounted to a conversion of funds. The court rejected this notion. *Id.* at 264, 483 N.E.2d at 1262.

200. *Id.* at 264, 483 N.E.2d at 1262-63 (citing *In re* O'Hallaren, 64 Ill. 2d 426, 356 N.E. 520 (1976)).

201. *Thebus*, 108 Ill. 2d at 264, 483 N.E.2d 1262-63.

202. *Id.* at 265, 483 N.E.2d at 1263. The Illinois Supreme Court disbarred Thebus on consent on June 2, 1986, pursuant to Illinois Supreme Court Rule 762. During the *Survey* year, the Court disbarred three other lawyers on consent pursuant to Supreme Court Rule 762. Per ARDC records, November, 1986.

203. 108 Ill. 2d 456, 485 N.E.2d 1 (1985).

204. *Id.* at 460, 485 N.E.2d at 2.

Scarnavack, the respondent was convicted in a United States district court of knowingly and intentionally possessing cocaine.[205] The Administrator argued that the attorney's unlawful possession of a controlled substance constituted conduct involving moral turpitude.[206]

The Hearing Board found that the misconduct did involve moral turpitude.[207] The Hearing Board recommended that the respondent be suspended, that the suspension be stayed, and that the respondent be placed on probation to run concurrently with the probation imposed by the district court.[208] The Review Board, however, concluded that discipline was not warranted, and recommended that the matter be dismissed.[209]

The Illinois Supreme Court noted that this issue had not been decided in any other jurisdiction.[210] The court, however, did not decide whether moral turpitude was involved, stating that an attorney may be disciplined for the conviction of a crime even if it did not involve moral turpitude.[211] Thus, the court held that censure was the appropriate sanction.[212]

In declining to determine whether the unlawful possession of drugs involved moral turpitude, the court left unanswered whether the Administrator should seek immediate suspension for this type of offense pursuant to Supreme Court Rule 761(b).[213] It is apparent, however, that these offenses can still result in the imposition of discipline.[214]

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205. *Id.* at 457, 485 N.E.2d at 1. The mixture had a "street value" of approximately $35 to $40. *Id.* at 459, 485 N.E.2d at 2. Although the respondent was sentenced to six months imprisonment, his sentence was suspended and he was placed on three years probation. *Id.* at 457, 485 N.E.2d at 1.

206. *Id.* at 460, 485 N.E.2d at 2. The Administrator filed a petition requesting that the respondent be suspended immediately pursuant to Illinois Supreme Court Rule 761(b). The court declined to rule on the petition and directed the Administrator to institute proceedings against the respondent before the Hearing Board pursuant to Supreme Court Rule 753. The Administrator's petition was ultimately discharged when the court filed its opinion imposing discipline. *In re* Scarnavack, No. M.R. 3222 (Ill. October 18, 1985) (order discharging rule to show cause).

207. Scarnavack, 108 Ill. 2d at 459, 485 N.E.2d at 2.

208. *Id.*

209. *Id.*

210. *Id.* at 460, 485 N.E.2d at 2.

211. *Id.*

212. *Id.* at 462, 485 N.E.2d at 3. Justice Moran dissented, adopting the Hearing Board's recommendation of discipline. *Id.* (Moran, J., dissenting).

213. Interim suspension remains possible, even if the conduct does not involve moral turpitude. *See supra* note 69.

214. *In re* Scarnavack, 108 Ill. 2d at 460, 485 N.E.2d at 2 (1985).

In Re Williams[215] and *In re Reagan*[216] involved convictions for mail fraud,[217] conduct generally held to involve moral turpitude.[218] In *Williams*, the court determined that a two-year suspension was appropriate.[219] The court also addressed whether certain testimony refuting the respondent's conviction was admissible in the disciplinary proceedings, and whether findings made by the Hearing and Review Boards were contrary to the respondent's conviction.[220]

The respondent's trial established that the respondent arranged for his car to be delivered to his codefendant who then sold it to an undercover FBI agent.[221] Later, the respondent received over $10,000 dollars from his insurance company in conjunction with the claim he subsequently filed for the theft of his car.[222] At his trial, the respondent stated that he thought his car was stolen while it was being repaired, and that he was unaware that the car had been transferred to his co-defendant to be sold.[223] This testimony was admitted into evidence by the Hearing Board.[224]

The Hearing and Review Boards found that the respondent believed his car was stolen, and that his only illegal conduct involved misrepresenting to the police the location from which his car was stolen.[225] The Hearing Board recommended a four-year suspension that would be stayed, and a probationary period to run concurrently with the respondent's federal probation.[226] The Review Board recommended a suspension for two years, or until the respondent was released from federal probation, whichever was shorter.[227]

The Illinois Supreme Court held that the mechanic's testimony

215. 111 Ill. 2d 105, 488 N.E.2d 1017 (1986).

216. 112 Ill. 2d 511, 493 N.E.2d 1080 (1986).

217. *In re* Williams, 111 Ill. 2d at 108, 488 N.E.2d at 1018; *In re* Reagan, 112 Ill. 2d at 512, 493 N.E.2d at 1081.

218. *In re* Williams, 111 Ill. 105, 113, 488 N.E.2d 1017, 1020 (citing *In re* Needham, 364 Ill. 65, 4 N.E.2d 19 (1936)). In *Williams*, the Administrator proceeded under Illinois Supreme Court Rule 761(b) and the respondent was suspended until further order of the court on October 5, 1983 when the Administrator filed charges against him. *In re* Williams, 111 Ill. 2d at 109, 488 N.E.2d at 1018-19.

219. *Williams*, 111 Ill. 2d at 109, 488 N.E.2d at 1018-19.

220. *Id.* at 110, 488 N.E.2d at 1018-19.

221. *Id.*

222. *Id.* at 110, 488 N.E.2d at 1019.

223. *Id.* at 110-11, 488 N.E.2d at 1019-20.

224. *Id.* at 112, 488 N.E.2d at 1019-20.

225. *Id.* at 115, 488 N.E.2d at 1021-22.

226. *Id.* at 109, 488 N.E.2d at 1019.

227. *Id.* at 109-10, 488 N.E.2d at 1019.

should not have been admitted into evidence by the Hearing Board because it was hearsay.[228] Moreover, the court held that the testimony was irrelevant because it related to the respondent's guilt.[229] The court stated that the respondent's conviction was conclusive evidence of his guilt, and accordingly, it was not up to the Hearing or Review Boards to retry the respondent's case.[230] The court held that the Hearing and Review Boards' findings were contrary to the findings in the respondent's criminal trial, and were therefore improper.[231]

Despite the court's disagreement with the lower boards' findings, it concurred with the Review Board's recommendation of discipline.[232] The court noted that dishonest conduct warrants disbarment, but relied on the Review Board's recommendation of a two year suspension as well as several mitigating factors[233] in imposing a more lenient sanction.[234]

In re Reagan[235] also involved a conviction for mail fraud, but resulted in a longer suspension. The respondent in *Reagan*, was convicted of mail fraud in the United States district court.[236] The court suspended the respondent for five years from the date of his interim suspension.[237]

Over a period of ten years, the respondent aided and abetted a real estate representative for Union Oil Company in a scheme to defraud Union Oil.[238] The scheme consisted of eight to ten transactions whereby property was purchased for the real estate representative and then resold to Union Oil at a higher price.[239]

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228. *Id.* at 114-15, 488 N.E.2d at 1021.

229. *Id.* at 115, 488 N.E.2d at 1021.

230. *Id.* at 115, 488 N.E.2d at 1022.

231. *Id.*

232. *Id.* at 119, 488 N.E.2d at 1024.

233. *Id.* at 117-19, 488 N.E.2d at 1023. This conviction had been the only mark on the respondent's record in a sixteen-year career; he offered to make restitution; he participated in the community service work required for his probation and did much *pro bono* work. Finally, the court noted the testimony of eight character witnesses. *Id.*

234. *Id.* at 119, 488 N.E.2d at 1023-24. Because the respondent already had been released from federal probation and already had been suspended for over two years, the court ended the respondent's suspension with the filing of its opinion. *Id.* at 119-20, 488 N.E.2d at 1024.

235. *In re* Reagan, 112 Ill. 2d 511, 493 N.E.2d 1080 (1986).

236. *Id.* at 514, 493 N.E.2d at 1081.

237. *Id.* at 512, 493 N.E.2d at 1081. Shortly after his conviction, the respondent was suspended until further order of the court, pursuant to Supreme Court Rule 761. *Id. See supra* notes 62-65 and accompanying text.

238. *Id.* at 513, 493 N.E.2d at 1081.

239. *Id.* The respondent handled the closings on these transactions, collateralized a loan for the real estate representative, and funneled money from the transactions through

The Hearing Board recommended that the respondent be suspended for a period of five years from March 21, 1982, the date of his interim suspension.[240] The Review Board affirmed the Hearing board's findings and recommendations.[241]

The Administrator argued that the respondent's conduct warranted disbarment, but the Illinois Supreme Court adopted the recommendation of the lower boards.[242] The court acknowledged that the respondent's conduct involved moral turpitude and had continued over an extended period.[243] Nevertheless, the court emphasized that the respondent profited very little from his misconduct, and the respondent satisfied the civil judgment against him in the amount of $287,000.[244] Thus, the court held that a five-year suspension from the date of interim suspension was appropriate.[245]

V. ATTORNEY REINSTATEMENT

The final category of opinions written by the court during the *Survey* year involved petitions for reinstatement.[246] Those cases reached the court pursuant to Illinois Supreme Court Rule 767.[247] The Rule provides that an attorney who has been disbarred,[248] disbarred on consent,[249] or suspended until further order of the court,[250] may petition the court to be reinstated.[251] The hearing and review procedures for reinstatement are the same as those set forth in Illinois Supreme Court Rule 753.[252]

Rule 767(f) sets forth numerous factors for the court to consider

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his trust account. As compensation for these services, he received attorney fees of $8,500 over the ten-year period. *Id.* at 513, 493 N.E.2d at 1081.

240. *Id.*

241. *Id.*

242. *Id.* at 516-17, 493 N.E.2d at 1083.

243. *Id.* at 516, 493 N.E.2d at 1082.

244. *Id.*

245. *Id.* at 517, 493 N.E.2d at 1083.

246. *In re* Rothenberg, 108 Ill. 2d 313, 484 N.E.2d 289 (1985); *In re* Gottlieb, 109 Ill. 2d 267, 486 N.E.2d 921 (1985).

247. ILL. S. CT. R. 767, ILL REV. STAT. ch. 110A, para. 767 (1985).

248. *See* ILL. S. CT. R. 771(a), ILL. REV. STAT. ch. 110A, para. 771(a) (1985).

249. *See* ILL. S. CT. R. 762, ILL. REV. STAT. ch. 110A, para. 762 (1985).

250. *See* ILL. S. CT. R. 771(e), ILL. REV. STAT. ch. 110A, para. 771(e) (1985).

251. ILL. S. CT. R. 767(a), ILL. REV. STAT. ch. 110A, para. 767(a) (1985). This rule states that an attorney must wait two years to file a petition for reinstatement after one is rejected by the court. If an attorney withdraws his petition on his own, however, he may file again after a single year. *Id.* During the *Survey* year, two petitions for reinstatement were decided by the court without a written opinion; one was allowed and one was denied. Two other petitions for reinstatement were withdrawn during the *Survey* year. ARDC records, November, 1986.

252. ILL S. CT. R. 767(h), ILL. REV. STAT. ch. 110A, para. 767(h) (1985).

in evaluating a petition for reinstatement. These include the nature of the misconduct for which the petitioner was suspended, the maturity and experience of the petitioner at the time discipline was imposed, whether the petitioner recognizes the nature and seriousness of the misconduct, when applicable, whether the petitioner has made restitution, the petitioner's conduct since discipline was imposed, and the petitioner's candor and forthrightness in presenting evidence in support of the petition.[253] These factors are considered in reinstatement proceedings to determine if the petitioner has demonstrated his rehabilitation.[254] Rehabilitation is the most important consideration in reinstatement proceedings and has been defined by the court as one's "return to a beneficial, constructive and trustworthy role."[255]

In *In Re Rothenberg*,[256] the Illinois Supreme Court denied a petition for reinstatement.[257] The petitioner had been disbarred on consent shortly after his conviction of conspiracy to transport over $100,000 worth of stolen jewelry in interstate commerce and aiding and abetting in the transportation of stolen jewelry.[258] The petitioner received a three and one-half year sentence on the first count, to be followed by a three year probation for the second count.[259] Probation ended in June 1983, the same month the petition for reinstatement was filed.[260]

Prior to his disbarment, the petitioner engaged in activities which resulted in criminal indictments, including an indictment for murder.[261] A jury found him guilty of conspiracy to commit murder, but the judge granted a judgment of acquittal notwithstanding the verdict.[262] After his disbarment, the petitioner was indicted for obstruction of justice and conspiracy to obstruct justice, but was found not guilty on both counts.[263]

Several witnesses testified in opposition to the petitioner's reinstatement,[264] and some presented letters to the effect that various

253. ILL. S. CT. R. 767(f)(1-6), ILL. REV. STAT. ch. 110A, para. 767(f) (1-6) (1985).
254. *In re* Rothenberg, 108 Ill. 2d 313, 323, 484 N.E.2d 289, 293 (1985).
255. *In re* Wigoda, 77 Ill. 2d 154, 159, 395 N.E.2d 571, 574 (1979).
256. 108 Ill. 2d 313, 484 N.E.2d 289 (1985).
257. *Id.* at 326, 484 N.E.2d at 294.
258. *Id.* at 315, 484 N.E.2d at 289.
259. *Id.* at 317, 484 N.E.2d at 290.
260. *Id.*
261. *Id.* at 316, 484 N.E.2d at 290.
262. *Id.*
263. *Id.* at 317, 484 N.E.2d at 290.
264. *Id.* at 319, 484 N.E.2d at 291. Supreme Court Rule 767(d)(2) provides for notice of a petition for reinstatement to be sent to the president of each local or county bar

bar associations had voted against reinstatement of the petitioner.[265] The petitioner, on the other hand, presented letters in support of his petition.[266]

In opposition to the petition, the Administrator argued that the petitioner failed to notify his clients that he would be unable to represent them after his disbarment, in violation of Supreme Court Rule 764.[267] Additionally, the Administrator raised several objections based on the petitioner's failure to comply with various requirements regarding the form and content of petitions for reinstatement as established by ARDC Rule 402.[268] Finally, the Administrator argued that the letters introduced by the petitioner in support of his petition for reinstatement were improperly admitted.[269] The petitioner asserted that the letters opposing the petition were improperly admitted into evidence.[270]

The Hearing and Review Boards recommended that the petition be denied.[271] The court noted initially that a disbarred attorney petitioning for reinstatement has the burden of introducing clear and convincing evidence of rehabilitation.[272] The court examined the petition in light of the factors provided in Illinois Supreme Court Rule 767(f), focusing on the factor concerning the petitioner's conduct since discipline was imposed.[273] The court concluded that the petitioner had not ended the pattern of behavior that led to his disbarment, and that reinstatement was improper.[274]

Regarding the introduction of the supporting and opposing letters, the court held that the letters properly were admitted, although they may have been hearsay.[275] Because Commission Rule 273 regarding the admissibility of evidence in disciplinary proceedings had not yet been amended, it was within the discretion of the Hearing Board to admit them.[276]

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association in which the petitioner practiced. ILL. S. CT. R. 767(d)(2), ILL. REV. STAT. ch. 110A, para. 767(d)(2) (1985).

265. *In re* Rothenberg, 108 Ill. 2d at 319, 484 N.E.2d at 291.

266. *Id.*

267. *Id.* at 320, 484 N.E.2d at 292.

268. *Id.* ARDC Rule 402 sets forth twenty-five separate requirements for the content of a petition for reinstatement. *See* DISC. COMM. R. 402, ILL. REV. STAT. ch. 110A, foll. para. 774 (1985).

269. *Rothenberg*, 108 Ill. 2d at 327, 484 N.E.2d at 295.

270. *Id.* at 328, 484 N.E.2d at 295.

271. *Id.* at 315-16, 484 N.E.2d at 290.

272. *Id.* at 323, 484 N.E.2d at 293.

273. *Id.* at 326, 484 N.E.2d at 294.

274. *Id.* at 326, 484 N.E.2d at 294.

275. *Id.* at 327, 484 N.E.2d at 295.

276. *Id.* at 327-28, 484 N.E.2d at 295. Subsequent to the filing of Rothenberg's peti-

In Re Gottlieb[277] also involved a petition for reinstatement after a disbarment on consent.[278] The petitioner's disbarment was a result of his conviction on two counts of mail fraud involving the payment of $70,000 in bribes to public officials.[279] The petitioner's participation arose out of his connection as attorney, member, officer, and employee of the Community Currency Exchange Association.[280]

The Hearing Board recommended that the petition be denied.[281] The Review Board affirmed the Hearing Board's recommendation.[282] The Illinois Supreme Court noted the factors necessary to consider in determining whether reinstatement is proper,[283] but based its denial of the petition primarily on the petitioner's failure to recognize the nature and seriousness of the offense he committed.[284]

In his verified petition for reinstatement, the petitioner contended that his misconduct did not entail a breach of a fiduciary obligation to his client, but resulted from being overprotective of his client.[285] Also, the petitioner characterized his participation in the bribery scheme as that of a "delivery boy".[286] The court, however, stated that an attorney who admits he was guilty of misconduct cannot show rehabilitation unless he also shows repentance. The court observed that these statements reflected the petitioner view of himself as a victim rather than a participant in the misconduct.[287] Because the petitioner failed to demonstrate any repentance, his petition was denied.[288]

VI. CONCLUSION

It is apparent from the Illinois Supreme Court decisions during the *Survey* year that the court's objective in the professional responsibility area was to assure that members of the Illinois bar pos-

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tion, ARDC Rule 273, which prohibits the admission of a letter or affidavit attempting to establish the character or reputation of a respondent or petitioner, became effective. DISC. COMM. R. 273. ILL. REV. STAT. ch. 110A, foll. para. 774 (1985).

277. 109 Ill. 2d 267, 486 N.E.2d 921 (1985).
278. *Id.* at 268, 486 N.E.2d at 921.
279. *Id.* at 270, 486 N.E.2d at 922.
280. *Id.* at 269, 486 N.E.2d at 922.
281. *Id.* at 269-70, 486 N.E.2d at 922.
282. *Id.* at 269, 486 N.E.2d at 921-22.
283. *Id.* at 269, 486 N.E.2d at 922.
284. *Id.* at 271, 486 N.E.2d at 923.
285. *Id.* at 270, 486 N.E.2d at 922.
286. *Id.* at 271, 486 N.E.2d at 922-23.
287. *Id.* at 271, 486 N.E.2d at 923.
288. *Id.* at 273, 486 N.E.2d at 923.

sess the moral fitness necessary for the practice of law. This objective was discernible whether the matter before the court concerns admission, discipline, or reinstatement.

In a petition for admission to the bar, the court stressed the necessity for applicants to demonstrate good moral character. In determining whether this showing has been made, the court placed considerable emphasis on the applicant's candor in completing the required application.

In disciplinary matters, the court looked to the respondent's ability to serve the public faithfully. Although innocent motivations and relative inexperience were considered by the court in making this determination, the court strongly held that mishandling of client funds will not be tolerated. Moreover, the court indicated that deliberate and ongoing fraudulent acts in the context of judicial proceedings will result in harsh sanctions. Furthermore, criminal convictions are likely to result in sanctions regardless of whether the crimes committed involved moral turpitude.

Finally, in petitions for reinstatement, the court's focus was on rehabilitation. The court stressed that a petitioner for reinstatement is required to prove his rehabilitation by clear and convincing evidence. The opinions during the *Survey* year suggest that motivations for conduct are of greater importance when reinstatement is sought than when admission is sought or discipline is to be applied.