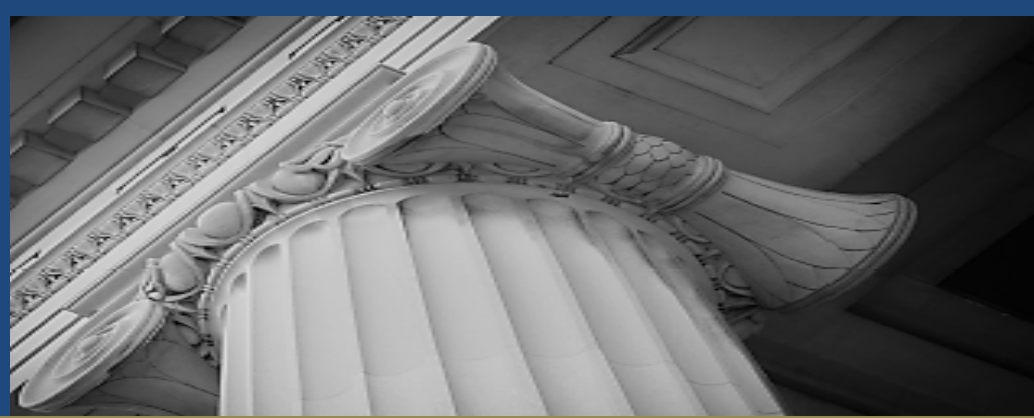


PROFESSIONAL ETHICS FOR WORKERS' COMPENSATION LAWYERS



MARY F. ANDREONI
ARDC ETHICS EDUCATION COUNSEL
FEBRUARY 12, 2016

TOPICS



- Select Illinois Facts & Figures;
 - Recent Rule Changes;
&
 - Regulatory Trends.

FACTS & FIGURES

- Over 97, 000 Illinois lawyers registered on the 2014 Master Roll;
- 69% reported a principal address in Illinois;
- 70% of lawyers are located in Cook County;
- 31% of lawyers are located outside Illinois.

MORE FACTS & FIGURES

Practice Size Breakdown - 2016 (61,383)		
# of Attorneys	Practice Size	
16,836	101+	27%
15,746	2-10	26%
14,462	Solo	24%
7,652	26-100	12%
6,629	11-25	11%

Statistics-2014

Grievances

<i>Area of Law</i>	<i>Number</i>
Criminal/Quasi-Criminal.....	1,283
Domestic Relations	752
Real Estate/Landlord-Tenant.....	600
Tort (Personal Injury/Property Damage).....	490
Probate.....	308
Bankruptcy.....	269
Labor Relations/Workers' Comp.....	215
Contract.....	167
Civil Rights	115
Immigration	114
Debt Collection	110
Corporate Matters.....	68
Local Government Problems.....	56
Social Security	20
Tax	17
Patent and Trademark.....	17
Adoption.....	4
Mental Health	1

*does not include charges classified with no area of law indicated or alleged misconduct not arising out of a legal representation.

2014 Formal Charges

<i>Subject Area</i>	<i>Number of Cases*</i>	<i>% of Cases Filed*</i>	<i>Subject Area</i>	<i>Number of Cases*</i>	<i>% of Cases Filed*</i>
Tort.....	29	25%	Debt Collection.....	4	3%
Domestic Relations.....	22	19%	Immigration.....	3	3%
Real Estate.....	19	16%	Corporate Matters.....	2	2%
Deceptive, threatening or offensive conduct not arising out of a legal representation.....	19	16%	Tax.....	2	2%
Criminal Conduct/Conviction.....	16	14%	Adoption.....	1	1%
Workers' Comp/Labor Relations.....	12	10%	Civil Rights.....	1	1%
Probate.....	11	9%	Local Government.....	1	1%
Contract.....	11	9%	Patent/Trademark.....	1	1%
Criminal.....	7	6%	Social Security.....	1	1%
Bankruptcy.....	5	4%	Failure to Comply with Rule 764.....	1	1%
			Failure to respond to ARDC.....	1	1%

*Totals exceed 118 disciplinary complaints and 100% because many complaints allege several counts of misconduct arising in different areas of practice.

2014 Types of Grievances

<i>Type of Misconduct</i>	<i>Number*</i>	<i>Type of Misconduct</i>	<i>Number*</i>
Neglect.....	2,306	Failing to preserve client confidences or secrets.....	45
Failing to communicate with client, including failing to communicate the basis of a fee.....	871	Improper commercial speech, including inappropriate written or oral solicitation.....	42
Excessive or improper fees, including failing to refund unearned fees.....	868	Threatening criminal prosecution or disciplinary proceedings to gain advantage in a civil matter.....	39
Fraudulent or deceptive activity, including lying to clients, knowing use of false evidence or making a misrepresentation to a tribunal or non-client.....	668	Failing to supervise subordinates.....	35
Criminal conduct, assisting a client in a crime or fraud, and counseling illegal or fraudulent conduct.....	303	<i>Ex parte</i> or improper communication with judge or juror.....	18
Filing frivolous or non-meritorious claims or pleadings.....	283	Failing to report misconduct of another lawyer or judge.....	14
Improper management of client or third party funds, including commingling, conversion, failing to promptly pay litigation costs or client creditors or issuing NSF checks.....	283	Improper practice after failure to register under Rule 756.....	12
Failing to properly withdraw from representation, including failing to return client files or documents.....	240	Abuse of public office to obtain advantage for client.....	7
Failing to provide competent representation.....	207	Improper division of legal fees/partnership with nonlawyer.....	7
Conflict of Interest:.....	188	Violation of anti-discrimination statute or ordinance.....	7
		False statement in bar admission or disciplinary matter.....	7
		Incapacity due to chemical addiction or mental condition.....	6
		Failing to maintain appropriate attorney-client relationship	

2014 Types of Misconduct-Sanction

Types of Misconduct	Number of Cases in Which Sanctions Were Imposed				
	Disbarment	Suspension ²	Probation ³	Censure	Reprimand ⁴
Total Number of Cases:	25	58	13	9	11
Fraudulent or deceptive activity	21	43	10	5	0
Neglect/lack of diligence	3	13	4	1	3
Criminal conduct/conviction of the lawyer	11	15	3	1	1
Failure to communicate with client, including failure to communicate basis of a fee	5	15	5	1	3
Improper management of client or third party funds, including commingling and conversion	9	10	5	1	4
Excessive or unauthorized legal fees, including failure to refund unearned fees	4	4	1	0	0
False statement or failure to respond in bar admission or disciplinary matter	3	11	0	1	2

Supreme Court Building, Springfield, Ill.



Recent Rule Changes



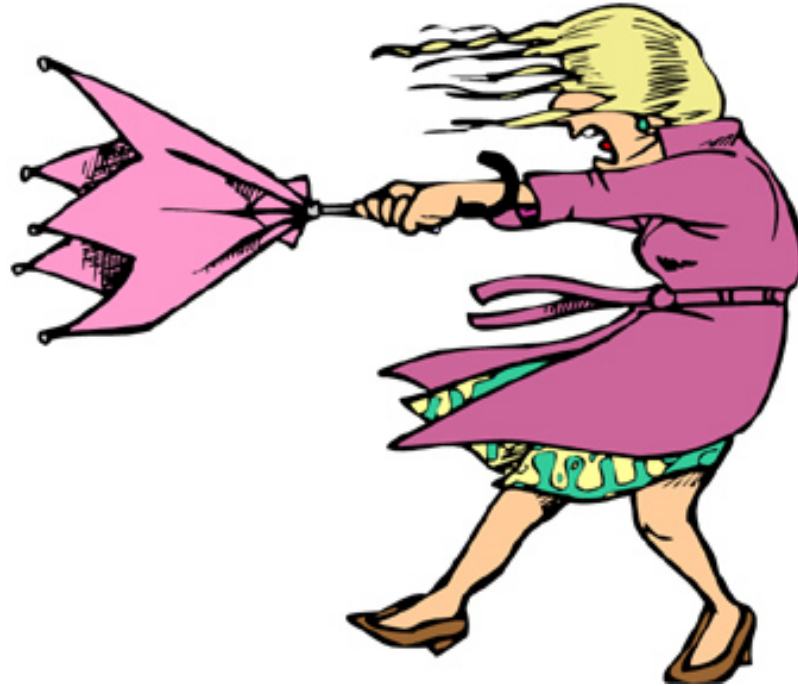
Supreme Court of Illinois

October 15, 2015

SUPREME COURT REVISES RULES IN LIGHT OF TECHNOLOGY ADVANCES AND PRACTICE DEVELOPMENTS

The Illinois Supreme Court announced today the adoption of several rule changes designed to bring attorney ethics rules up to date with advances in technology and developments in global legal practices.

During its September Term, the Court approved amendments to the Illinois Rules of Professional



Influences Impacting Rule Changes

- Technology and Confidentiality
- Technology and Client Development
- Lawyer Mobility
- Outsourcing Legal Services
- Globalization
- Changing Culture



Technology and Confidentiality

Why?

- Update language of Rules to include electronic information
- Safeguard client information in an electronic age

ILRPC 1.0 Terminology

Rule 1.0 Terminology

...

(n) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording, and ~~e-mail~~ electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

ILRPC 1.4, Comment [4]

Communicating with Client

...

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. ~~Client telephone calls should be promptly returned or acknowledged.~~ A lawyer should promptly respond to or acknowledge client communications.

- Competence -ILRPC 1.1, Comment [8]
- Confidentiality -ILRPC 1.6, the black letter (e) and Comments [18]-[19]
- Inadvertent Disclosure - ILRPC 4.4, the black letter (b) and Comments [2]-[3]

ILRPC 1.1, Comment [8]

Competence

Maintaining Competence

[~~6~~-8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

ILRPC 1.6(e) Confidentiality

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Comment [18] Acting Competently to Preserve Confidentiality

[18]...The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made **reasonable efforts** to prevent the access or disclosure...

Comment [18] Acting Competently to Preserve Confidentiality

“Reasonable efforts” include:

- How sensitive is the information;
- Likelihood of disclosure if no safeguards taken;
- Costs of employing additional safeguards;
- Client’s instructions; and/or
- State or federal law requirements.

ILRPC 4.4(b) Inadvertent Disclosure

Rule 4.4 Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

Comment [2]

What is “inadvertently sent”?

- “A document or electronically stored information is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted...”
- Includes metadata.



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Information maintained by the Legislative Reference Bureau

Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as [Public Acts](#) soon after they become law. For information concerning the relationship between statutes and Public Acts, refer to the [Guide](#).

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

BUSINESS TRANSACTIONS

(815 ILCS 530/) Personal Information Protection Act.

(815 ILCS 530/1)

Sec. 1. Short title. This Act may be cited as the Personal Information Protection Act.

(Source: P.A. 94-36, eff. 1-1-06.)

(815 ILCS 530/5)

Sec. 5. Definitions. In this Act:

"Data Collector" may include, but is not limited to, government agencies, public and private universities, privately and publicly held corporations, financial institutions, retail operators, and any other entity that, for any purpose, handles, collects, disseminates, or otherwise deals with nonpublic personal information.

"Breach of the security of the system data" or "breach"

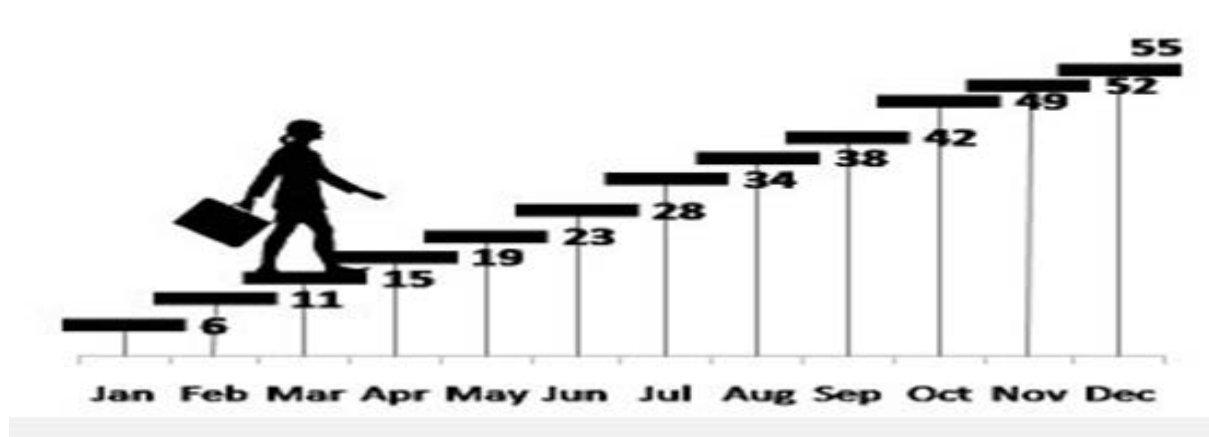


POSTED APR 01, 2015 03:20 AM CDT

BY DAVID L. HUDSON JR.

Cyber liability insurance is an increasingly popular, almost necessary choice for law firms

It is no secret that law firms handle loads of sensitive, private data of clients, third parties and others in the course of conducting business. Unfortunately, there are many ways that health information, Social Security numbers, credit card numbers and other personally identifiable information can be compromised —whether by a lost laptop, cellphone or iPad; a coordinated insidious attack by hackers; simple human error; a rogue employee; or other causes.



Technology and Client Development

- Prospective Clients

 - ILRPC 1.18, the black letter (a) & (b) and Comments [2], [4]-[5]

- Advertising

 - ILRPC 7.2, the Comments [2]-[3], [5]-[7]

- Solicitation

 - ILRPC 7.3, the title, black letter (b) & (c), and Comments [1]-[9]

ILRPC 1.18(a) & (b) - Prospective Clients

Rule 1.18: Duties to Prospective Client

(a) A person who ~~discusses~~ consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has ~~had discussions with~~ learned information from a prospective client shall not use or reveal that information ~~learned in the consultation~~, except as Rule 1.9 would permit with respect to information of a former client.

~~[2] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. Not all persons who communicate information to a lawyer are prospective clients. A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client," within the meaning of paragraph (a). Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."~~

...


Comment [2] - who is a "prospective" client and what constitutes a "consultation".

What is a “recommendation”?

ILRPC 7.2, Comment [5]

...a “communication . . . [that] endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities.”

ILRPC 7.3, title change Solicitation

“Direct Contact with Prospective
Clients”  “Solicitation of
Clients”

ILRPC 7.3, Comment [1]

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.



ILRPC 1.6(b)

Limited Disclosure of Confidential Information to Detect Conflicts

ILRPC 1.6(b). A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(7) to detect and resolve conflicts of interest if the revealed information would not prejudice the client.

- Comments [13]-[14]

Outsourcing



- **Competence in Hiring Outside Counsel** - ILRPC 1.1, the Comments [6]-[7]
- **Supervision of Nonlawyers** - ILRPC 5.3, the title and Comments [1]-[4]

ILRPC 1.1, Comment [6] Hiring Outside Lawyers

Retaining Or Contracting With Other Lawyers

...

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2(e) and Comment [14], 1.4, 1.5(e), 1.6, and 5.5(a). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

ILRPC 5.3 Supervision of Nonlawyers

- Title change from “Nonlawyer Assistants” to “Nonlawyer Assistance”.
- Additional guidance on use of nonlawyers outside the firms.

[21] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts ~~to establish internal policies and procedures designed to provide to ensure that the firm has in effect measures giving~~ reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters will act in a way compatible with the professional obligations of the lawyer, ~~with the Rules of Professional Conduct.~~ See Comment [6] to Rule 1.1 and Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over ~~the work of a nonlawyer.~~ such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of ~~a nonlawyer~~ such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

ILRPC 5.3, Comments [2] & [3]

- Comment [2] identifies the considerations that apply when the services are performed *within* the firm.
- Comment [3] identifies the considerations *outside* the firm.

Globalization



Foreign-Licensed In-House Counsel

Foreign-licensed lawyers permitted in Illinois to practice as in-house under limited license.

- SCR 716 Limited Admission of House Counsel
- ILRPC 5.5(d)

Foreign-Licensed In-House Counsel – SCR 716

- Meet educational requirements of SCR 715.
- Pass ethics course approved by Com. on Professionalism.
- Be in good standing in home jurisdiction.
- No *pro bono*.

Duties of Prosecutors



ILRPC 3.8, adding (g), (h) and (i), and Comments [7]-[8]

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

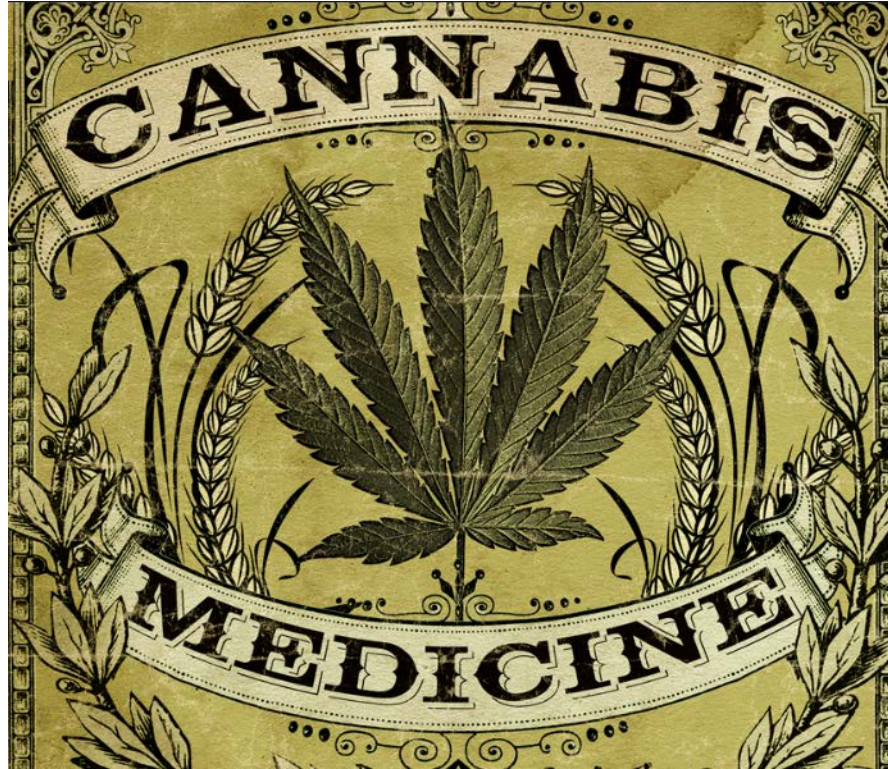
(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further reasonable investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

(i) A prosecutor's judgment, made in good faith, that evidence does not rise to the standards stated in paragraphs (g) or (h), though subsequently determined to have been erroneous, does not constitute a violation of this rule.

Illinois Cannabis Law



IRPC 1.2(d)

A lawyer shall not counsel a client
to engage,
or assist a client,
in conduct that the lawyer knows is
criminal or fraudulent...



Illinois Law vs. Federal Law

The Fix – ILRPC 1.2(d)(3)

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

...

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may

(1) discuss the legal consequences of any proposed course of conduct with a client,

(2) ~~and may~~ counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning or application of the law, and

(3) counsel or assist a client in conduct expressly permitted by Illinois law that may violate or conflict with federal or other law, as long as the lawyer advises the client about that federal or other law and its potential consequences.

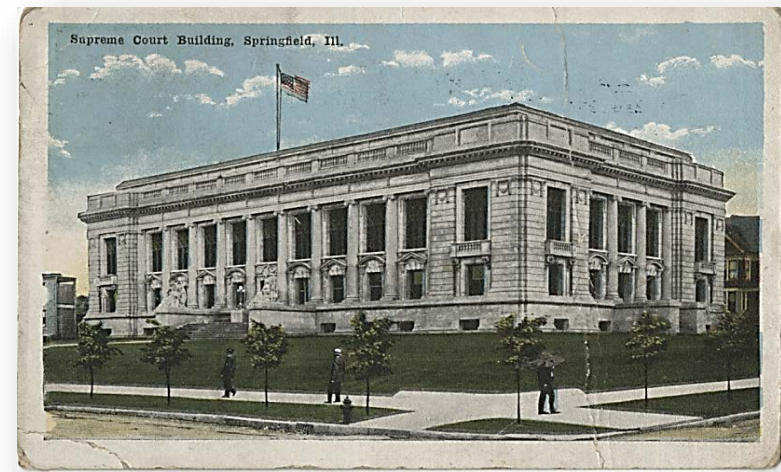
...

Beyond Pot....

Comment [10]

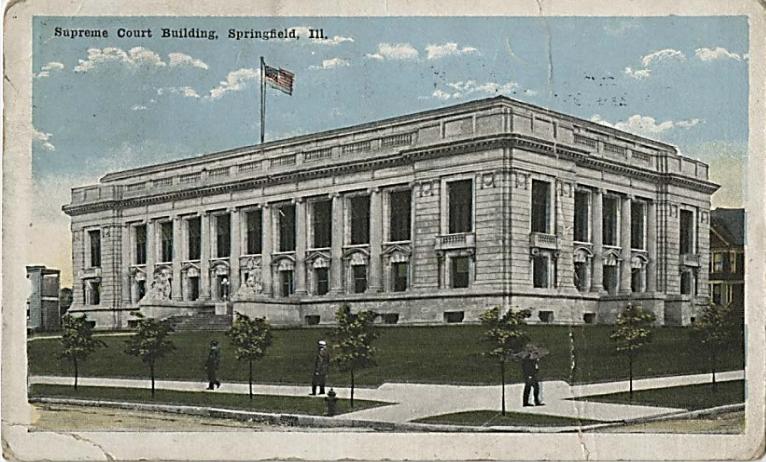
“Paragraph (d)(3) is not restricted in its application to the marijuana law conflict. A lawyer should be especially careful about counseling or assisting a client in other contexts that may violate or conflict with federal, state, or local law.”

RULE 756



Beginning with 2016 Registration:

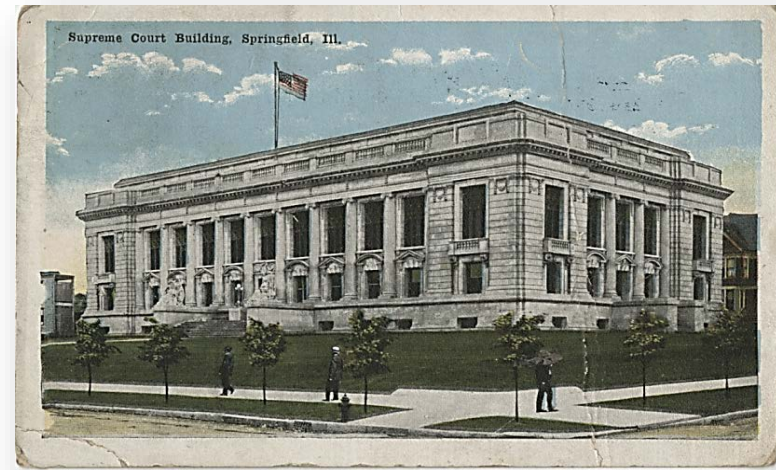
- Lawyers Must Register On-Line;
- Lawyers Must Report Changes Within 30 Days;&
- Lawyers Required to Supply Detailed Practice Information and Whether They Have Written Succession Plan.



RULE 763

For Reciprocal Disciplinary Purposes, expands Definition of 'Another Jurisdiction' to Include: D.C., a Country other than the U.S., as well as a State, Province, Territory or Commonwealth of the United States.

IRPC 1.15



- Provides Guidance to Lawyers who have Unidentified Funds Contained in any IOLTA Trust Account;
- Unidentified Funds can be Remitted to LTF;
- Changes Concern Unidentified, not Unclaimed Funds; &
- Unclaimed Funds Still Escheat via Illinois Uniform Disposition of Unclaimed Property Act

- Commission CPP Rules 501, 504, 505, 506, 507, 510, and 512, Amended eff. Feb.9, 2015;
- Maximum Payment to Any One CPP Claimant Raised to \$100,000;
- CPP Aggregate Payments Arising from Conduct of any One Lawyer shall not Exceed \$1,000,000



**ARDC
RULES**



RECENT CASES OF INTEREST

Fraud and Dishonesty

THE
MADISON-ST. CLAIR  RECORD
Metro East's Legal Journal

Thursday, March 26, 2015 Last Update: 03/26/15 12:09 pm

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Alton attorney surrenders law license amid ARDC charges of conversion, pattern of misconduct

November 18, 2014 9:47 AM

The Events

- Lawyer represents State employee in comp. claim;
- Lawyer gets Client lifetime award of \$1,554.11 per month;
- CMS sends monthly check to Client c/o Lawyer;
- Client dies unexpectedly. Benefits terminated;
- CMS does not timely learn of Client's death and keeps sending benefit checks to Lawyer;
- Checks for 6 months total \$9,324.66;
- Lawyer forges signature of Client on each check;
- Uses proceeds for his own personal and business purposes, without authority;

More Events

- **AG's Office represents CMS in suit against Lawyer;**
- **Lawyer tells an AAG that Client's Estate Rep authorized him to negotiate checks and that he gave funds to Rep.**
- **Rep. had no knowledge of situation;**
- **Lawsuit dismissed on jurisdictional grounds-AG appeals;**
- **Before Appellate Court, Lawyer falsely tells Justices that he notified AG's Office of Client's death, that Rep. endorsed dead Client's name to checks, that Rep. took money;**
- **Case remanded. In answers to verified discovery, Lawyer repeats lies;**
- **ARDC notified of scenario.**

Unauthorized Practice of Law

FOLEY & MANSFIELD

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J. Scott Wood, Managing Partner, Seattle/Portland

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In re Robert S. Sanderson

M.R. 27108, 2014PR00040 (Jan. 16, 2015)



IN RE JEANNETTE M. CONRAD

M.R. 27327, 2014PR00063 (Sept. 21, 2015)

In re
Aleman
&
Macey

M.R. 27212,
2012PR00057
2012PR00058
(May 14, 2015)



ISN'T IT TIME YOU LET
LEGAL HELPERS DEBT
RESOLUTION
HELP YOU GET BACK ON TRACK

Responding to Negative Publicity





Have no legal fear

“This is simply false. The person did not reveal all the facts of his situation up front in our first and second meeting...I feel badly for him but his own actions in beating up a female coworker are what caused the consequences he is now so upset about.”

In re 2013PR00095

(ARDC Hg.Bd. Jan. 14, 2014)

Criminal Conduct



Former lawyer turned bank robber gets 45 more years in prison



Warren Gladders, of Wentzville, was sentenced on charges related to three bank robberies and the shooting of a Missouri Highway Patrol trooper who arrested him.

WARRENTON • A former lawyer and police officer whose 2013 spree of bank robberies ended in a shootout with a Missouri state trooper, was sentenced to 45 years in prison on state charges Thursday.

Earlier this month, Warren J. Gladders, now 65, was sentenced to 24 years and five months in prison for the same robberies in federal court. The sentences will run consecutively, nearly 70 years.

Since Gladders was first arrested, his motivation for the crimes has been a mystery.

A former lawyer and St. Louis police officer, Gladders is a graduate of John Burroughs School, Colgate University and Washington University law school. He co-owned a laundry

In re Gladders, M.R. 27194, 2014PR00131 (March 12,

In re Peteet

M.R. 27242, 2013PR00086 (May 14, 2015)



Client Fund Issues & Conversion



0:37 / 6:21

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🔍 📄 ⚙️ 🗑️ 📺



Tired of lame excuses? Excuseman to the rescue

One Chicago lawyer is battling the world of pathetic excuses by taking the excuse one step further

August 02, 2011 | Jen Weigel | Lessons for life



Recommend



Tweet



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205



G+ 0

Do you make excuses? Has it become a bad habit? If Jordan Margolis had his way, he would use his "Power of Reverse Apology," a pseudoscience he created for his alter ego, Excuseman to rid the world of useless excuses.

\$\$\$\$\$\$\$\$\$Big

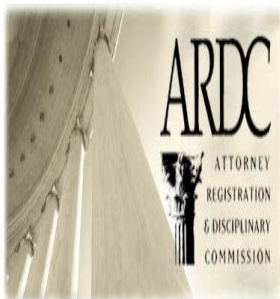
Numbers\$\$\$\$\$\$\$\$

\$4,318,150.00

- **\$1,034,850** in settlement funds in ten separate matters. *In re Margolis*, M.R. 27003, 2013PR00070 (Jan. 16, 2015);
- **\$900,000** in client funds. *In re Evola*, M.R. 26987, 2014PR00060 (Jan. 16, 2015);
- **\$900,000** in trust funds where he was lawyer for trust. *In re Lippner*, M.R. 27534, 2015PR00063 (Sept. 21, 2015);
- **\$644,000** from two estates. *In re Rehberg*, M.R. 27025, 2013PR00113 (Jan. 16, 2015);
- **\$500,000** in client and third party funds. *In re Flynn*, M.R. 26961, 2012PR00077 (Jan. 16, 2015);
- **\$339,300** in his children's trust funds, *In re Stephenson*, M.R. 27384, 2014PR00073 (Sept. 21, 2015);

Resources





ARDC Ethics Inquiry Hotline

312-565-2600 (Chicago)

217-546-3523 (Springfield)

IL Rules of Professional Conduct & Disciplinary Law

ARDC website at: *www.iardc.org*

FREE online CLE seminars at ARDC web site

<https://www.iardc.org/CLEseminars.html>