



Recognizing Incivility and Techniques for Improving Attorney Civility In and Out of the Courtroom

Seminar Topic: This material provides an in-depth examination of the skill set necessary to recognize aggressiveness that has improperly replaced advocacy in the legal practice.

This publication provides the reader with the knowledge and tools necessary to identify incivility and the tools that can be applied in practical situations to return to civility.

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.





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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

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Seminar Learning Objectives

The present program is designed provide the following learning objectives:

- Participants will learn to recognize aggressiveness improperly replacing advocacy.
- Participants will learn to reduce incivility in the legal profession
- Participants will learn to recognize words, actions and situations that increase incivility
- Participants will learn to how to engage in uncomfortable or difficult conversations with new skill sets including conflict identification, reframing/rewording the issue, changing the paradigm by recasting the conflict and the use of avoidance.
- Participants will learn how to defuse highly charged situations in order to engage in substantive discourse on topics of dispute.
- Participant will gain new skill sets including tools for collaboration, working with their peers, ethically serving their clients, and increase awareness of how other perceive their aggressiveness.
- Participants will learn about state supported programs designed to foster civility in the legal profession.

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A. Timed Agenda:

Time	Description
00:00:00	Program Start
00:00:32	Presenter Introduction
00:04:41	Recent Examples of Incivility
00:13:10	A Skillset for Success
00:14:16	Incivility Defined
00:16:38	Trends and Rules
00:20:33	Examples of Incivility
00:23:26	Taking Control of the Situation
00:28:57	Example and Discussion – Attorney Incivility in Actual Deposition
00:35:35	Incivility & Written Communication
00:47:06	Specific Skillsets for Addressing Incivility (identifying; generating; negotiating)
00:49:00	Reframing/Rewording the Issue for Conflict Identification & Reframing of Values
00:58:40	Changing the Paradigm by Recasting – Conflict Strategies
01:03:15	Negotiation Processes and Strategies
01:10:49	Conclusion
01:11:37	End Presentation

Recognizing Incivility and Techniques for Improving Attorney Civility In and Out of the Courtroom

Introduction

Professionalism should be a part of every Illinois lawyer's daily practice. It is not enough to memorize the ABA Model Rules, the Illinois Rules of Professional Responsibility or your local jurisdiction's rules. Creating a legal practice that reflects one's ethical duties and lives up to the high degree of professionalism required by an attorney is a daily task and one that cannot be accomplished without effort. The rules can be unclear and ethical dilemmas can be ambiguous.

However, in many situations there are no excuses; the rules and case law make clear what is required. There are rules that every attorney should know and ethical duties that should always be implemented. Most importantly there is help. If you have an ethical question, there are places to turn to find the answer. This article will highlight an attorney's ethical duties, the Illinois Rules of Professional Responsibility and Support and Programs that are available. Incorporating this information into your daily practice will not only help you avoid future difficulties with clients and inevitably the Illinois ARDC, it will enable you to create a practice that promotes the very fundamentals of attorney professionalism.

Ethics and Professionalism

Before delving too deeply into the rules and case law, it is essential to distinguish between ethics and professionalism. Attorney conduct in Illinois is governed by the Illinois Rules of Professional Conduct. These rules provide the "mandatory, minimum rules to which attorneys are expected to conform."¹ Essentially they "constitute a safe guide for professional conduct..."² While acting within the bounds of the Code may keep an attorney out of trouble; it does not necessarily make the attorney ethical. There are dishonest, untrustworthy individuals that do not break the law. To be truly ethical, one must live beyond the scope of the rules

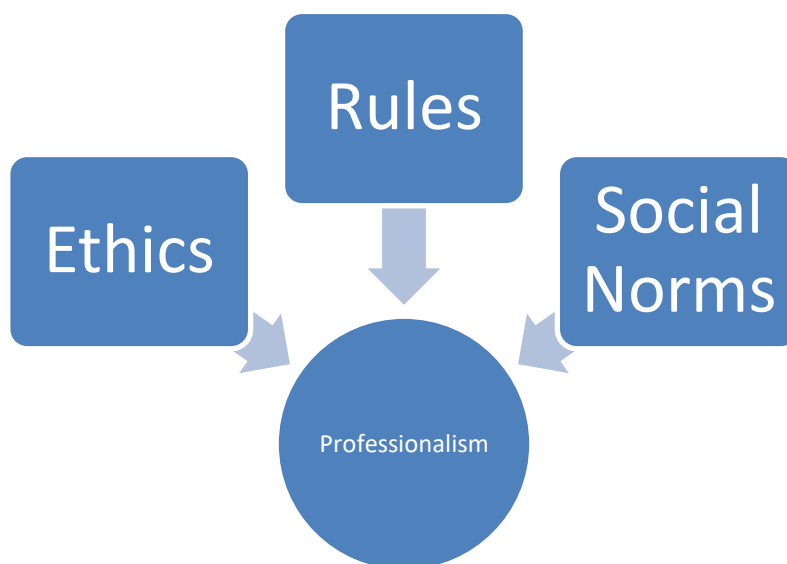
¹ In re Vrdolyak, 137 Ill.2d 407, 560 N.E.2d 840, 845, 148 Ill.Dec. 243 (Ill. 1990).

² In re Yamaguchi, 118 Ill.2d 417, 515 N.E.2d 1235, 1239, 113 Ill.Dec. 928 (Ill.1987).

and instead live by “basic moral principles such as honesty, integrity and fairness.”³

“Ethics” encompasses “the law of lawyering” and the rules which lawyers must follow to maintain their good standing before the bar.⁴ Professionalism includes ethics but expands to also encompass our values as a profession such as competence, civility, integrity, and a commitment to justice and the public good.⁵

When creating the rules, the Illinois Supreme Court clearly intended to create ethical rules but also speak to a standard of professionalism. As the Preamble to the Rules states, “Lawyers ... are responsible for the character, competence and integrity of the persons whom they assist in joining their profession; for assuring access to that system through the availability of competent legal counsel; for maintaining public confidence in the system of justice by acting competently and with loyalty to the best interests of their clients; by working to improve that system to meet the challenges of a rapidly changing society; and by defending the integrity of the judicial system against those who would corrupt, abuse or defraud it.”⁶



³ Commission on Professionalism, Professionalism CLE Guidelines, <http://www.2civility.org>. (Last reviewed January 10, 2015)

⁴ Commission on Professionalism, Professionalism CLE Guidelines, <http://www.2civility.org>. (Last reviewed January 10, 2015)

⁵ Commission on Professionalism, Professionalism CLE Guidelines, <http://www.2civility.org>. (Last reviewed January 10, 2015)

⁶ 134 Ill.2d Preamble

Attorneys can advance lawyer professionalism by adhering to the ethical rules set forth by the governing body in their jurisdiction. To understand what to do to practice within the rules, it is helpful to look at how they are commonly violated.

Recent Examples of Incivility

Many accuse the 45th president of lacking civility. Week after week some form of aggressive, oppressive action seems to be reported. One commentator questioned:

How would Trump do as a Utah lawyer bound by the Standards or as a Utah politician under the Initiative? Let's just examine comments he has made, together with the prattle which flows unceasingly from him on social media, and we'll see it is uncivil. It would subject Trump, if he were a Utah attorney, to disciplinary action. Clearly, such comments do not honor the Initiative. These are Utah values.⁷

Nancy Pritikin recently published an article addressing the apparent increase in incivility and noted that a court attempted to address this issue:

The fact that the other side "started it" usually falls on deaf ears. In Davis v. Los Angeles West Travelodge, for instance, the Central District of California ordered attorneys on both sides of a dispute to participate in 20 hours of continuing legal education for civility and professionalism due to their "uncivil and unprofessional behavior" in filing multiple improper sanctions motions and in engaging in "inappropriate communications" that wasted judicial resources and "clearly distracted from the substantive issues in the case." See Order Denying Mot. for Sanctions, Davis v. Los Angeles West Travelodge, No. 2:08-cv-08279-CBM-CT (C.D. Cal. Nov. 19, 2009), ECF No. 165. When one of the attorneys requested reconsideration, the court acknowledged that although his conduct was "less egregious and less disrespectful" than the other attorneys, he and his peers were all at fault for "allow[ing] their hostility for each other to escalate to a point in which it interrupted the trial and interfered with the orderly and efficient administration of the Court." Davis v. Los Angeles

⁷ <http://www.deseretnews.com/article/865666016/My-view-Civility-and-Donald-Trump.html>. Donald J. Winder is an attorney in Salt Lake City

*West Travelodge, No. 2:08-cv-08279-CBM-CT, 2010 WL 623657, at *3 (C.D. Cal. Feb. 3, 2010).*⁸

Nancy Pritikin, 5 Ways to Manage Unreasonably Aggressive People in Litigation While Maintaining a Healthy Emotional Balance. February 28, 2017.

The Illinois Supreme Court Commission on Professionalism recently posted an article exploring whether young lawyers are less civilized. Marie Sarantakis⁹ identified several reasons why millennials may be at risk of being perceived as, or be vulnerable to, behaving less civilly:

We Were Raised in a Different Era of Cultural Norms – Contemporary society is becoming increasingly informal. As Millennials, many of us have grown up in a world much less structured than our predecessors. It is not that we consider civility to be anachronistic or dispensable, rather we may be wrongly perceived as not paying homage to traditions and etiquette which we don't know to exist. A Millennial may not be aware of what behaviors are expected by prior generations if they have not had much experience and/or mentorship.

We Communicate Differently – Smart phones and e-mail have drastically altered the way all of us communicate. For Millennials, a text message is an acceptable and efficient way to make contact, whereas for a Baby Boomer, this may be perceived as an impersonal and watered-down cop out to a real conversation. While we can debate the merits of what constitutes ideal communication, both sides can agree that there is less accountability and more room for miscommunication when we don't directly talk to and/or see the other party. Accordingly, older lawyers may find a younger lawyer's mode of delivery to be disrespectful due to its form, rather than its content or intention.

We Aim to Zealously Represent Our Clients – According to the Preamble of the Illinois Rules of Professional Conduct, attorneys are to zealously represent their client's interests. Be that as it may, Comment 1 of Model Rule 1.3 clarifies that, "[t]he lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect." Learning to delicately balance zealous representation of a client with maintaining civility and politeness towards an opponent can be a challenging task in the early stages of one's legal career.

We are Inundated with Dramatic Impressions in the Media – There is no shortage of legal dramas on television or the big screen. These sensationalized

⁸ <http://www.therecorder.com/id=1202780188189/5-Ways-to-Manage-Unreasonably-Aggressive-People-in-Litigation-While-Maintaining-a-Healthy-Emotional-Balance?mcode=0&curindex=0&curpage=ALL>

⁹ <https://www.2civility.org/young-lawyers-less-civilized/>

portrayals can have an influence on an impressionable student navigating what it means to be a good attorney.¹⁰

Whether these reasons are a changing norm or what was once simply called immaturity remains to be determined. None the less, younger attorneys will either need to conform to the expected norm or the older attorneys will soon be displaced as more attorneys join the profession.

Most Common Types of Attorney Misconduct Alleged:

- Neglect
- Failing to communicate with client, including failing to communicate the basis of a fee
- Excessive or improper fees, including failing to refund unearned fees
- Fraudulent or deceptive activity, including lying to clients, knowing use of false evidence or making a misrepresentation to a tribunal or non-client
- Improper trial conduct, including using means to embarrass, delay or burden another or suppressing evidence where there is a duty to reveal
- Improper management of client or third party funds, including commingling, conversion, failing to promptly pay litigation costs or client creditors or issuing NSF checks
- Conduct prejudicial to the administration of justice, including conduct that is the subject of a contempt finding or court sanction
- Filing frivolous or non-meritorious claims or pleadings
- Conflict of Interest
- Rule 1.7: Concurrent conflicts
- Rule 1.8(a) Improper business transaction with client
- Rule 1.9: Successive conflicts
- Failing to properly withdraw from representation, including failing to return client files or documents

¹⁰ <https://www.2civility.org/young-lawyers-less-civilized/>

- Criminal activity, including criminal convictions, counseling illegal conduct or public corruption
- Failing to provide competent representation
- Not abiding by a client's decision concerning the representation or taking unauthorized action on the client's behalf
- Improper commercial speech, including inappropriate written or oral solicitation

Each of these violations is due to the failure of an attorney to live up to his or her professional and ethical duty and a violation of the Rules of Professional Conduct.

Recognize Aggressiveness Improperly Replacing Advocacy

When discussing civility, it is important to understand the broad scope of the topic. Attorney civility encompasses any escalating of discourse for the purpose of angering or emotionally overpowering the other party. Escalation starts with anger and frustration. Those may come about for many reasons including a weakening position, perceived improper conduct by the other side or simple frustration due to the other counsel not stating the law correctly, knowingly or unknowingly.

Civility has grown as a goal unto itself in the last decade. The United States District Court, Central District of California advocates civility within its Civility and Professionalism Guidelines.¹¹ The Guidelines provide that:

- We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. We will endeavor to achieve our clients' lawful objectives in legal transactions and in litigation as quickly and economically as possible.
- We will be loyal and committed to our clients' lawful objectives, but we will not permit that loyalty and commitment to interfere with our duty to provide objective and independent advice.
- We will advise our clients that civility and courtesy are expected and are not a sign of weakness.

¹¹ www.cacd.uscourts.gov/attorneys/admissions/civility-and-professionalism-guidelines (last reviewed January 11, 2015)

- We will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that we act in an abusive manner or indulge in any offensive conduct.
- We will advise our clients that we will not pursue conduct that is intended primarily to harass or drain the financial resources of the opposing party.
- We will advise our clients that we reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect our clients' lawful objectives. Clients have no right to instruct us to refuse reasonable requests made by other counsel.
- We will advise our clients regarding availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.
- We will advise our clients of the contents of this creed when undertaking representation.
- As lawyers, judges and court employees, we are all essential participants in the judicial process. That process cannot work effectively to serve the public unless we first treat each others with courtesy, respect and civility.¹²

Recognizing Words, Actions and Situations that Increase Incivility

Empathy is the first step in recognizing words, actions or situations that increase incivility. Incivility may arise from any communication, email, pleading, phone call or discussion. The first step is to take control of the escalating emotions by:

- Staying calm
- Listening for the purpose of understanding
- Find a starting point where there is common ground
- State your position calmly, based upon accurate facts and law

¹² www.cacd.uscourts.gov/attorneys/admissions/civility-and-professionalism-guidelines (last reviewed January 11, 2015)

- Identify the legal issue or factual issue that is the problem and restate it
 - Is the incivility due to a personal conflict or a conflict about the goal
 - Avoid attacking the person or their view, attack the problem
- Reducing Incivility in the Legal Profession

Effective Communication

The California Guidelines provide us with succinct direction that assists with reducing incivility when it comes to communicating with opposing counsel.

The guidelines encourage counsel to:

- Adhere to all express promises and to agreements with other counsel, whether oral or in writing, and adhere in good faith to all agreements implied by the circumstances or local customs.
- When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the other counsel with the opportunity to review the writing. A client has no right to demand that we act in an abusive manner or indulge in any offensive conduct.
- We will not write letters for the purpose of ascribing to opposing counsel a position he or she has not taken, or to create "a record" of events that have not occurred. Letters intended only to make a record should be used sparingly and only when thought to be necessary under all of the circumstances. Unless specifically permitted or invited by the court, letters between counsel should not be sent to judges.¹³

Skill Sets to Reduce Incivility in the Legal Profession

Conflict Identification

¹³ www.cacd.uscourts.gov/attorneys/admissions/civility-and-professionalism-guidelines (last reviewed January 11, 2015)

Be perceptive of the tone, body language and statements of other counsel, judges and clients. If conflict is detected, there are many tools available for the resolution of the conflict.

Tools for identification and resolution

Clarifying tools

Chunking - breaking the problem into smaller parts.

Researching - more information; extent of resources: constraints.

Goal-setting - what is the outcome we want?¹⁴

Generating tools

The obvious solution - to which all parties say "yes".

Brainstorming- no censoring, no justifying, no debating Consensus
- build a solution together

Lateral thinking - have we been practical, creative?¹⁵

Negotiating tools

Maintain current arrangements - with trade-offs or sweeteners. Currencies - what is it easy for me to give and valuable for you to receive? Trial and error - try one option, then another

Establishing alternatives - what will happen if we can't agree? Consequences confrontation - what I will do if we don't agree.¹⁶

¹⁴ Conflict Resolution Network, www.crnhq.org/pages.php?PID=12

¹⁵ Conflict Resolution Network, www.crnhq.org/pages.php?PID=12

¹⁶ Conflict Resolution Network, www.crnhq.org/pages.php?PID=12

Reframing/Rewording The Issue for Conflict Identification

Generally speaking, it is easier to help reframe interest disputes than reframing value conflicts over issues such as guilt, rights, or facts. The goal of reframing is to develop a mutually acceptable definition of the problem.

Listen carefully to the parties' position statements and identify the underlying interests of those positions.¹⁷

Explore more options for settlement by shifting from specific interests, such as a pay increase, to more general interests such as overall employment benefits.¹⁸

Reframing Value Conflicts

Value conflicts are normally more difficult to reframe. These conflicts have a tendency to polarize the disputants. When parties possess strictly opposed value-based viewpoints there are a few techniques to reframe the issues so they will be more ripe for resolution.

The first technique is to translate values into interests. For example, if there is a dispute between people about the value of wilderness as opposed to jobs, it would be very hard to resolve which is more important. The question always develops: for whom? Wilderness will be more important for some; jobs for others. But if the particular dispute is reframed in terms of interests: some groups want a particular piece of land preserved as wilderness, and others want jobs, there might be a way to provide jobs serving people going into or coming out of the wilderness. Or development might be allowed to take place somewhere else in exchange for a wilderness designation on the contested land. By trading off interests, not values, agreement can sometimes be reached.¹⁹

¹⁷ Spangler, Brad. "Reframing." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: November 2003 <<http://www.beyondintractability.org/essay/joint-reframing>>.

¹⁸ Spangler, Brad. "Reframing." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: November 2003 <<http://www.beyondintractability.org/essay/joint-reframing>>.

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A second strategy for dealing with value conflicts is to identify overarching, superordinate goals that all parties can accept and cooperatively work toward. In the abortion controversy in the United States, for example, the two sides are probably never going to agree about whether abortion is moral or not. But they can agree on the idea that women should be helped to avoid having unwanted babies. They can work together to try to prevent unwanted pregnancies and to provide options to abortion (such as adoption) for women who still are faced with that dilemma.²⁰

Reframing Through Stories

People often explain their circumstances, emotions, and ideas through the use of metaphors, analogies, proverbs and other imagery. Another approach to reframing is using new metaphors to describe the situation. Using metaphors that both parties relate to can help open up communication and increase understanding of the conflict and possibilities for resolution.²¹

For example, some people who were writing essays for this system did not understand why they could not write whatever they wanted. Their metaphor for this system was an edited book, and in most edited books, the chapters are on topics of the authors' choice (or at least they have a fair amount of leeway.) But when explained to them that another way to think of this system was as a Lego building block kit, and that they were writing a piece that would fit together with other pieces around it to form a whole, they better understood their role in the bigger project.²²

Lastly, parties must be explicit about the issues that divide them in order to successfully help reframe the problem in terms that facilitate agreement. Often there is a cycle of exchanges between the parties and the mediator. As parties become more comfortable with the conflict resolution process they become more explicit about their issues. Ultimately, the acceptance of the reframing of an issue "is a result of timing and the psychological readiness of the parties to accept the definition of the situation."²³

²⁰ Id.

²¹ Id.

²² Spangler, Brad. "Reframing." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: November 2003 <<http://www.beyondintractability.org/essay/joint-reframing>>.

²³ Spangler, Brad. "Reframing." Beyond Intractability. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: November 2003 <<http://www.beyondintractability.org/essay/joint-reframing>>.

Changing The Paradigm By Recasting – Conflict Strategies

Civility increases with understanding and negotiation, not aggression. Negotiation should focus on:

- Focus on the problem, not the person
- Focus on needs and goals, not positions or unsupported positions
- Emphasize and acknowledge common ground
- Be creative about options and potential resolutions
- Make clear agreements and confirm them in writing
- Focus on steering the negotiation in a positive direction regardless of the actions of the other person
- Let some accusations, attacks, threats or ultimatums pass
- Always attempt to leave a path out for the other party. Make it possible for the other party to retreat without being humiliated, angered or lose face to their client or the judge. Have there been any changed circumstances that justify a change of position²⁰

Fight to the end – Win, Lose

Premise: “Damn the torpedoes, full speed ahead”²⁴ adversarial attack. My case is strong enough to withstand any onslaught.

Strategy: The process of scorched earth will prevail in the end.

- No negotiation
- Unyielding position
- Attacking the case and the person.

Best to Use When:

- Criminal prosecution
- When you can vilify the other parties’ representative

²⁴ David Glasgow Farragut, Battle of Mobile Bay, August 5, 1864

- When you are sure that your case has no weaknesses
- When you are sure that you will never need to ask for an extension or professional courtesy

May Not be the Best to Use When:

- You may need to request a favor from opposing counsel
- You may discover a weakness in your case

Collaborating – Win Win

Premise: The win/win approach is about changing the conflict from adversarial attack and defense, to co-operation. Teamwork and cooperation help everyone achieve their goals while also maintaining relationships.

Strategy: The process of working through differences will lead to creative solutions that will satisfy both parties' concerns.

- Underlying needs
- Recognition of individual differences
- Openness to adapting a position in light of shared information and attitudes
- Attacking the problem, not the people Best to Use When:
- When there is a high level of trust
- When you don't want to have full responsibility
- When you want others to also have "ownership" of solutions
- When the people involved are willing to change their thinking as more information is found and new options are suggested
- When you need to work through animosity and hard feelings May Not be the Best to Use When:
- The process takes lots of time and energy
- Some may take advantage of other people's trust and openness ²⁵

²⁵ <http://home.snu.edu/~hculbert/conflict.htm>

Creative Response – Win, Win

Premise: Turning problems into solutions. Exploring what can be done, rather than focusing on how bad it is. It is affirming that you will choose to extract the best from the situation.

Strategy: The process of asking what are the possibilities opens the door to resolutions unseen by other attorneys.

- Exploration
- Enthusiasm
- What are the possibilities?
- Acceptance
- Inquiry
- Experiment

How else can we look at this?. Best to Use When:

- When there is a high level of trust
- When there are multiple options for what is considered a win
- When you want others to also have "ownership" of solutions
- When the people involved are willing to change their thinking when new options are suggested

May Not be the Best to Use When:

- The process takes lots of time and energy
- There are limited options for a win, a win is money only²⁶

Accommodating – I Lose, You Win

Premise: Working toward a common purpose is more important than any of the peripheral concerns; the trauma of confronting differences may damage fragile relationships

Strategy: Appease others by reducing conflict and focusing on the relationship

²⁶ <http://home.snu.edu/~hculbert/conflict.htm>

Best to Use When:

- When an issue is not as important to you as it is to the other person
- When you realize you are wrong
- When you are willing to let others learn by mistake
- When you know you cannot win
- When it is not the right time and you would prefer to simply build credit for the future
- When harmony is extremely important
- When what the parties have in common is a good deal more important than their differences

May Not be the Best to Use When:

- One's own ideas don't get attention
- Credibility and influence can be lost²⁷

Competing – I Win, You Lose

Premise: Associates “winning” a conflict with competition

Strategy: When goals are extremely important, one must sometimes use power to win

Best to Use When:

- When you know you are right
- When time is short and a quick decision is needed
- When a strong personality is trying to steamroller you and you don't want to be taken advantage of
- When you need to stand up for your rights May Not be the Best to Use When:
- Can escalate conflict

²⁷ <http://home.snu.edu/~hculbert/conflict.htm>

- Losers may retaliate²⁸

Avoidance – No Winner, No Loser

Premise: This isn't the right time or place to address this issue Strategy: Avoids conflict by withdrawing, sidestepping, or postponing

Best to Use When:

- When the conflict is small and relationships are at stake
- When you're counting to ten to cool off
- When more important issues are pressing and you feel you don't have time to deal with this particular one
- When you have no power and you see no chance of getting your concerns met
- When you are too emotionally involved and others around you can solve the conflict more successfully
- When more information is needed May Not be the Best to Use When:
- Important decisions may be made by default
- Postponing may make matters worse²⁹

The Attorney's Duties

Duties to Clients

The Duty To Practice Competently

Rule 1.1 of the Illinois Rules of Professional Conduct requires lawyers to provide competent representation.³⁰ “Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the

²⁸ <http://home.snu.edu/~hculbert/conflict.htm>

²⁹ <http://home.snu.edu/~hculbert/conflict.htm>

³⁰ IRPC 1.1(a)



representation.”³¹ Attorneys are required to exercise the degree of competence and diligence that are normally used by lawyers under the same circumstances.³²

If an attorney fails in this duty and neglects a client’s case, his motive is irrelevant.³³ Neglect of an attorney’s duties to his client can be sufficient to warrant discipline absent moral turpitude.³⁴ In, *In Re Taylor*, attorney Taylor failed to appear in court for a client’s case, failed to institute a divorce action for a different client after accepting a retainer, and failed to respond to another client’s repeated attempts to contact him after filing an appearance in her case.³⁵ The court found these actions showed a pattern of consistent neglect regardless of his motives and suspended Taylor for one year.³⁶

The duty to practice competently is more than avoiding neglect as in *Taylor*. An attorney must know the area of the law well enough to competently represent their client. If they do not know that area of law, the attorney must obtain an association with another lawyer who is competent to provide the representation.³⁷

Besides competence, an attorney must be diligent and provide the best possible services to her client. The ISBA Advisory Opinion 85-6 determined that a lawyer may not advise, prepare documents for and otherwise act as an attorney for a pro se litigant and not appear in court on the litigant’s behalf as his or her attorney.³⁸ Here, an attorney who represents debtors in Chapter 7 bankruptcy cases failed to appear in a court case and was found in contempt of court. The attorney then altered his practice so that he advised and prepared documents for his clients while they appeared in court pro se. The attorney continued to file motions and asks the court to keep him advised of changes in the status of the case, all the while not appearing in court on behalf of his or her clients. The Commission addressed the question: is it proper for an attorney to advise and act as an attorney for clients but not appear in court on their behalf?

³¹ IRPC 1.1(a)

³² <http://www.law.cornell.edu/ethics/il/narr/ILNARR101.HTM#1.1:100> (Last reviewed April 28, 2010)

³³ *In re Taylor*, 66 Ill. 2d 567, 363 N.E. 2d 845, 6 Ill. Dec. 898 (1977)

³⁴ *Id.* at 847.

³⁵ *Id.* at 846.

³⁶ *Id.* at 848.

³⁷ IRPC, 1.1(b)

³⁸ ISBA Advisory Opinion No. 85-6 (12/6/85)

This opinion was decided under the old Illinois Code of Professional Responsibility. However, the decision was affirmed under the new Illinois Rule of Professional Conduct in January of 1991. The relevant new rules are Rules 1.2(c) & (d), 1.16(d), 3.3(a)8 and 8.4(a)(5). The Commission opined that an attorney is bound by his or her duty to provide the best possible services to the client. The attorney's initial attempt to avoid appearing in court was done via an agreement with the client. The court ruled this improper. So, the Committee reasoned the court must have found the attorney's reasons for not appearing insufficient. Therefore, the attorney breached his duty to provide the best possible service. Further the attorney's later actions of having his or her client appear pro se fall short of an attorney's obligation. By agreeing to limited employment in that manner the attorney put his own needs ahead of the client's needs for adequate representation. To allow an attorney to practice in this fashion would be to allow a halfway practice of law.

This opinion should not be interpreted to mean that an attorney can never limit the scope of his employment. Pursuant to Rule 1.2(c), limiting the scope of employment is permissible so long as the client consents after disclosure.³⁹

In Daily Practice:

You can increase your competence by networking with colleagues that can assist you if need be. You need to insure that when representing a client, you know the specific area of law involved and if not, that you have the assistance of an attorney who is proficient in that area of law.

Use a reliable calendar system and back up the process whether on paper or electronically. Never ignore client inquiries and provide regular updates to avoid neglecting your cases. Remember, neglect of a case, even with benign motives, can warrant sanctions.

If limiting the scope of your representation, do so carefully and in writing. While limitation may be permissible, it cannot be done in such a way that it amounts to the halfway practice of law. Don't forget to have your client consent to limited representation after disclosure.

³⁹ IRPC 1.2(c)

The Duty Of Loyalty

Pursuant to Rule 1.2 of the Illinois Rules of Professional Conduct, an attorney must abide by “the client’s decisions concerning the objectives of the representation.”⁴⁰ This includes the client’s decisions whether or not to accept a settlement offer or plea agreement.⁴¹

The fiduciary duty is also part of the attorney’s duty of loyalty. “The attorney-client relationship constitutes a fiduciary relationship as a matter of law.”⁴² As fiduciaries, attorneys must provide their clients, “the basic obligations of agency: loyalty and obedience.”⁴³

Part of loyalty requires attorneys to avoid conflicts of interests. In, *In re Rosin*, an attorney drafted an investment agreement between his client and a close personal and business friend of his who was also a primary shareholder of the business. The attorney knew his client was mentally ill and was under the influence of prescription drugs. The court found “Where an attorney exposes a client to risk of loss, jeopardizes the freedom or the pecuniary or privacy interests of a client, or otherwise abuses his or her relationship with a client, whether or not the attorney receives the intended advantage, the attorney has breached a duty owed to a client...”⁴⁴

If a potential for a conflict of interest arises, obtaining the client’s consent after disclosure is advisable.⁴⁵ This applies to representation of a person with competing interests to the client as well as entering into business transactions with the client.⁴⁶

An attorney with a potential conflict of interest with a client may continue to represent a client when the attorney reasonably believed the conflict does not adversely affect the representation and the client consents after disclosure of the

⁴⁰ IRPC 1.2(a).

⁴¹ IRPC 1.2(a).

⁴² *In Re Winthrop*, 219 Ill.2d 526, 848 N.E.2d 961, 972, 302 Ill.Dec. 397 (Ill. 2006).

⁴³ *In Re Winthrop*, 219 Ill.2d 526, 848 N.E.2d 961, 972, 302 Ill.Dec. 397 (Ill. 2006). citing *Horwitz v. Holbird & Root*, 212 Ill. 2d 1, 9, , 816 N.E.2d 272 , 287 Ill.Dec. 510 (2004).

⁴⁴ *Rosin*, 515 N.E.2d at 96 citing *In re Saladino*, 71 Ill. 2d 263, 375 N.E.2d 102, 16 Ill. Dec. 471 (Ill., 1978)

⁴⁵ See IRPC, Rule 1.7.

⁴⁶ See IRPC, Rule 1.7 and Rule 1.8.

conflict.⁴⁷ In ISBA Opinion No. 90-30, an attorney filed a lawsuit for debt collection on behalf of a client. The defendant's attorney responded by accusing the plaintiff's attorney of violating provisions of the Fair Debt Collection Practices Act. The defendant offered to release the attorney from any claims for violation of the FDCPA in exchange for a dismissal of the case with prejudice.

The question was whether an attorney with a clear interest in the case - the withdrawal of a potential cause of action against him- that is in conflict with the client's interest in getting the debt collected must withdraw. The Committee cited Rule 1.7 of the Illinois Rules of Professional Conduct, stating that the standard for whether representation is proper depends on whether the attorney reasonably believes the conflict will not affect representation and the client's consent after disclosure of the conflict. Here, the attorney clearly has an interest in the case (the withdrawal of a potential cause of action against him) that is in conflict with the client's interest in getting the debt collected. The Committee would not comment on whether such a belief by the attorney would be reasonable, but assuming both factors of Rule 1.7 are met, nothing prevents the attorney from continuing with the case. However, in such a case withdrawal would be permissible.

Conflicts can arise not just when an attorney's interest conflict with his client's but also when his or her partner's interests conflict with a client's.⁴⁸ In ISBA Advisory Opinion No. 90-34 (05/15/91), the Commission determined that it is permissible for a city attorney prosecuting ordinance violations and a part-time public defender in the same county to form a partnership. However, neither may defend clients charged with ordinance violations nor charges initiated or investigated by the city's police department. In this opinion, Attorney A who has a private practice, serves as city attorney prosecuting city ordinances. The same attorney also defends criminal defendants in his private practice. Attorney B is also a private practitioner who contracts with the county as a public defender. Neither attorney represents clients that are charged with ordinance violations or clients whose cases are investigated by city police. The Commission was asked if attorney A and B may form a partnership without violating the Illinois Rules of Professional Conduct. The Commission determined that both attorneys have managed to tread a fine line by limiting their practice. Rules 1.7 and 1.10 impose restrictions on both of these attorneys, but by limiting their clientele to the extent that they have, both attorneys have managed to avoid violation of the Rules. The key in this case is that neither attorney represents clients who are involved with the aspects of government that each attorney serves.

⁴⁷ ISBA Advisory Opinion No. 90-30 (5/15/91)

⁴⁸ ISBA Advisory Opinion No. 90-34 (05/15/91)

It is important for attorneys to keep in mind that a conflict of interest can result in the loss of a fee. In *King v. King*,⁴⁹ a divorce proceeding, the ex-wife filed for separate maintenance from her ex-husband. The lower court decreed separate maintenance and ordered the ex-husband to pay the ex-wife's attorney fees. The ex-husband claimed that because he briefly consulted with the ex-wife's attorney to discuss his marital problems before that attorney represented the ex-wife, there was a conflict of interest and the attorney was not entitled to fees.

Under Illinois law, "[a]n attorney cannot recover from the party that he has wronged for legal services where he has represented adverse, conflicting, and antagonistic interests in the same litigation." Therefore, if the ex-husband's contact with the attorney was sufficient to invoke an attorney-client relationship, the attorney is not entitled to fees. The court found the ex-husband's statements showed that an attorney-client relationship arose to the extent that any communication between the ex-husband and the attorney would be privileged. Therefore, the attorney could not recover from the party he wronged for legal services where he represented adverse, conflicting, and antagonistic interests in the same litigation.

An attorney's duty of loyalty will persist even after he has been discharged.⁵⁰ In ISBA Opinion 94-14, the Commission determined that upon termination of representation an attorney must return all documents and property received from the client but may retain copies at the attorney's expense. Other part of the files regarding attorney's representation of the client should be available for copying at the client's request and expense. Here, an attorney served as village attorney for 30 years. Upon retirement, the attorney turned over all active files to the new village attorney. The village asked for the inactive files as well. The files were in storage along with files from the attorney's private practice. The attorney considered this request onerous although the village offered to send an administrative assistant to retrieve the files. In this case, the village has discharged the attorney from representation. As such, under Rule 1.16(d) the attorney is required to return all client papers and property. The only circumstance in which an attorney may avoid this is when he or she is asserting a common law or statutory retaining lien. No facts in the case implied that there was such a lien. Therefore the village, as a former client is entitled to all the documents, active and inactive. The assistance of the administrative assistant from the village in this case would be impermissible. Because there are files in storage that come from other clients, allowing someone from the village access to them would be a violation of Rule 1.6. The Committee noted that while

⁴⁹ *King v. King*, 52 Ill. App. 3d 749, 367 N.E.2d 1358, 10 Ill. Dec. 592 (Ill.App. 4 Dist., 1977)

⁵⁰ ISBA Ethics Opinion No. 94-14 (January, 1995)

assistance from the village was not allowed, the attorney could charge the village for reasonable expenses in retrieving the documents.

In Daily Practice:

Always listen to your clients and follow their directions and decisions. Be sure to consider the client's interest first and always place the client's interest above your own.

Conflict of interests is an area where you often begin having second thoughts or questions before the full conflict materializes. As you begin to question the representation, remember, when you start to ask "is there a conflict" you may already be in the middle of one. Avoid conflicts of interests by reading Rules 1.7, 1.8 and 1.9 and commit to memory what you can do to avoid conflicts. Often, consent after disclosure is enough to minimize the conflict particularly if you believe it will not adversely affect your representation.

Your duty will persist even once your attorney-client relationship has been terminated. You still must maintain client confidences and secrets and return all client papers and property.

The Duty of Diligence

Rule 1.3 mandates an attorney to act promptly and diligently on his client's behalf.⁵¹ A failure to do so may result in charges of neglect.⁵² "(I)t is the duty of all lawyers to seek resolution of disputes at the least cost in time, expense and trauma to all parties and to the courts."⁵³

Neglect is often just a small piece of the violation. Often instead of acknowledging their error and trying to make amends, attorneys attempt to cover up their mistakes. That is a bad idea. Courts do not look kindly upon attorneys who have deceived clients in an effort to cover-up their errors and tend to implement more severe sanctions under those scenarios.

⁵¹ IRPC, Rule 1.3.

⁵² <http://www.law.cornell.edu/ethics/il/narr/ILNARR103.HTM#1.3:200>. (Last reviewed February 22, 2008)

⁵³ IRPC, Preamble.

In, *In re Levin*,⁵⁴ an attorney was charged by the ARDC with neglect of legal matters and with misrepresentation, dishonesty and deceit. According to the record, on no fewer than six occasions the attorney neglected cases to an extent that was prejudicial to the client; the statute of limitations tolled and cases were dismissed with prejudice. Adding to his misdeeds, the attorney went on to make statements to each client that their affairs were being handled. The court found that while the attorney's statements did not rise to the level of fraud, they were misleading. The misleading statements, coupled with the pattern of neglect led the court to suspend the attorney's license for three years.

Similarly in, *In re Mason*,⁵⁵ it was the attorney's cover-up of his error that was serious enough to warrant sanction. In *Mason*, an attorney represented a client in a claim involving an accident on a city bus. The attorney learned that the mass transit authority required a notice of claim to be filed within six months of the accident and that he had already missed the six month period. After discovering his error, the attorney fabricated a settlement offer from the mass transit authority in order to cover his mistake. The Administrator of the ARDC charged the attorney with two violations of the Rules of Conduct, first for neglect in missing the six month window with the transit authority, second for the attorney's actions in covering up his error.

On the first count, the court found that the attorney's failure to file the notice of claim did not rise to level of neglect prohibited by the Illinois Rules of Professional Conduct. According to the record, the attorney did not know about the six month policy and had spoken to several CTA representatives during the 6 month window and none of them mentioned it. This oversight was not serious enough to warrant disciplinary action, yet the court made a point of mentioning that its opinion was in no way indicative of whether the attorney's conduct was negligent so as to support a malpractice claim.

On the second count, the court determined that the attorney's cover-up of his error was misconduct serious enough to warrant sanction. The attorney admitted all the allegations of count II and the court found that his conduct was fraudulent. However, rather than suspension or disbarment the court determined that censure was the appropriate disciplinary measure. The court based its decision on the nature and gravity of the misconduct, the attorney's candor during the disciplinary investigation and the discipline imposed in analogous cases.

⁵⁴ *In re Levin*, 101 Ill. 2d 535, 463 N.E.2d 715, 79 Ill. Dec. 161 (Ill., 1984)

⁵⁵ *In re Mason*, 122 Ill. 2d 163, 522 N.E.2d 1233, 119 Ill. Dec. 374 (Ill., 1988)

In Daily Practice:

First, act promptly. Do your best to handle your client's situation expeditiously. If an error is made, don't lie to your client's or commit a fraud in an attempt to cover-up your error. This will lead to more trouble. Instead, make amends and fix the error. Clients would much rather hear that you have fixed a problem and moved the matter forward than to have silence followed by neglect of the matter.

The Duty to Communicate With The Client

Under Rule 1.4 of the Illinois Rules of Professional Conduct, an attorney must keep his clients informed so that they may make intelligent decisions about their case.⁵⁶ This duty to communicate with a client is twofold.⁵⁷ One is to keep the client "reasonably informed about the status of their case."⁵⁸ This is an affirmative duty on the attorney to keep their clients informed so that the clients can make educated decisions about their cases.⁵⁹ The other piece of this duty is to promptly comply with a client's request for information.⁶⁰ This is also an affirmative duty that requires the attorney to respond promptly to client's questions and demands.⁶¹ "While the lawyer's duty to communicate applies to all clients, from the more ignorant to the most sophisticated, compliance is particularly important for those clients who may be unfamiliar with the workings of our legal system."⁶²

In, *In re Smith*,⁶³ the ARDC filed a complaint alleging among other charges that the respondent attorney failed to communicate with his clients in violation of Rule 1.4. The court held that the duty extends beyond just keeping clients informed of their cases. The attorney is also obligated to respond to inquiries about the case from clients promptly. The testimony of several clients as to their

⁵⁶ See *In re Smith*, 168 Ill.2d 269, 569 N.E.2d 896, 213 Ill.Dec. 550 (Ill., 1995)

⁵⁷ *Smith*, 560 N.E.2d at 902.

⁵⁸ *Smith*, 560 N.E.2d at 902 citing IRPC 1.4(a).

⁵⁹ *Smith*, 560 N.E.2d at 902.

⁶⁰ *Smith*, 560 N.E.2d at 902 citing 134 IRPC 1.4(a).

⁶¹ *Smith*, 560 N.E.2d at 902

⁶² *Smith*, 560 N.E.2d at 902

⁶³ *Id.*

repeated attempts to reach the attorney and to attorney's failure to return their phone calls was sufficient evidence to warrant sanctions.⁶⁴

In Daily Practice:

Ask the client early in the file what is their preferred method of communication and use that method if possible. Make sure you inform you client regularly about the status of their case and when a client calls return the phone call within a day or two. Send regular emails or letters even if you are just letting them know that nothing has happened.

Keep good phone log records and correspondence records so that if it is ever alleged that you did not live up to this duty, you can prove otherwise.

The Duty To Charge Reasonable Fees.

An attorney's fees must be reasonable and must be adequately communicated to the client before beginning the representation. IRPC 1.5.

The Duty to Maintain Confidences.

This is one of the more confusing duties an attorney must uphold. An attorney may not disclose a client's confidence or secret without the client's consent either during or after the attorney client relationship has been terminated. IRPC 1.6. There are a few exceptions to this. An attorney may disclose information where necessary to prevent death or serious bodily harm, to comply with a court order, if necessary to collect one's fee and to defend oneself against claims of misconduct. IRPC 1.6(b)(1)(2) and (3). It is important to note that the term confidence as defined in the Illinois Rules of Professional Conduct encompasses information protected by the attorney-client privilege and secrets refer to information that may be detrimental or embarrassing to the client that he has asked remain confidential. IRPC Terminology. Therefore, this duty applies to much more than just information covered by the attorney client privilege but to anything the client tells the attorney that he requests remain between the two of them.

Duty to the Court

Not only must attorneys meet the above referenced duties to their clients, as officers of the court, attorneys have an obligation to "defend...the integrity of the judicial system against those who would corrupt, abuse or defraud it." IRPC Preamble. Essentially attorneys are duty bound to uphold the rules the court

⁶⁴ Smith, 560 N.E.2d at 902

enacts. In re Himmel, 125 Ill.2d 531, 533 N.E.2d 790, 792, 127 Ill.Dec. 708 (1988). Additionally, a lawyer is mandated to assist the court with its understanding of the law in issue and the facts of the case and to “aid it in doing justice and arriving at correct conclusions.” Winthrop, 848 N.E.2d at 979 citing In re Braner, 115 Ill.2d 384, 392, 105 Ill.Dec. 233, 504 N.E.2d 102 (1987) quoting People ex rel. Attorney General v. Beattie, 137 Ill. 553, 574 27 N.E. 1096 (1981).

An attorney’s conduct before a tribunal has been strictly dictated in Rule 3.3 of the IRPC. Generally, this rule mandates an attorney to act fairly with the court, with clients and witnesses and with other attorneys. Briefly, the rule states that a lawyer shall not provide false or misleading information to a tribunal and must tell the court material facts if necessary to avoid assisting the criminal or fraudulent activities of the client. IRPC 3.3(a)(1) and (2). He may not offer or create false evidence. IRPC 3.3(a)(4) and (5). An attorney cannot hide evidence or witnesses. IRPC 3.3(a)(13) and (14). (The complete text of Rule 3.3 can be found in the Appendix).

Rule 3.3 is directly related to the issue of the Fair Administration of Justice. An oft cited concept that pursuant to Rule 8.4(a)(5) requires attorneys to avoid conduct that is prejudicial to the administration of justice. IRPC 8.4(a)(5) See also Smith, 659 N.E.2d at 904, (“lawyers owe a duty to assist the court in administering justice and in arriving at correct conclusions.”). The Smith court noted that part of this duty is that attorneys must assist the court in the expeditious resolution of cases. Id. “This includes the timely filing of the transcripts and documents that will form the necessary predicate to the court’s entry of final judgment.” Id at 905. Because this duty is to the court, it is not limited “solely to acts taken on behalf of clients.” Id. at 904.

Duty to the Profession

Duty When Recommending Someone for Admission to the Bar.

An attorney is mandated to use good judgment and honesty when recommending someone for admission to the bar. IRPC, Preamble. As the Preamble emphasizes “The quality of the legal profession can be no better than that of its members.” Id..

Duty To Prevent the Unauthorized Practice of Law.

In the same vein, an attorney is prohibited from helping a nonlawyer in the unauthorized practice of law. Yamaguchi, 515 N.E.2d at 1239. By allowing a nonlawyer to use his name on tax valuation forms and appear before the tax board for oral arguments, the attorney aided in the unauthorized practice of law. Id. The court was mindful that this was widespread conduct of real estate brokers



and even known by the tax board. Nonetheless, the court held “if by their nature acts require a lawyer’s training for their proper performance, it does not matter that there may have been widespread disregard of the requirement or that considerations of business expediency would be better served by a different rule.” Id. This attorney received a six months suspension.

Duty to Police Lawyer Misconduct.

“The vigilance of the bar in preventing and, where required, reporting misconduct can be a formidable deterrent to such misconduct, and a key to maintaining public confidence in the integrity of the profession as a whole in the face of the egregious misconduct of a few.” IRPC, Preamble. The Preamble alludes to this duty but the Illinois Rules of Professional Responsibility include a Rule specifically dedicated to a lawyer’s responsibility to report another attorney’s professional misconduct. See Illinois Rules of Professional Responsibility, Rule 8.3

The Illinois Supreme Court takes this reporting duty very seriously and has imposed a one year suspension on an attorney for his failure to report another attorney’s misconduct. Himmel, 533 N.E.2d 790. Attorney Himmel negotiated an agreement where he could not file any criminal, civil or ARDC complaints, if another attorney returned his client’s misappropriated settlement funds. Id. at 792. Himmel argued this agreement was proper because his client directed him to enter into it. Id. Additionally he argued he was relieved of his responsibility to report the misconduct because he believed the client was going to do file a complaint with the ARDC. Id.

The Illinois Supreme Court held that an attorney is not relieved of his responsibility to report another attorney’s misconduct even when his client directs him not to or when he believes a client is reporting the misbehaving attorney to the ARDC. Himmel, 533 N.E.2d at 792 and 793. Himmel’s failure to report the attorney interfered with the ARDC investigation, “and thus with the administration of justice.” Id. at 795-796. The Court emphasized that by failing to report the misconduct, Himmel essentially allowed the attorney to continue misappropriating the funds of other clients. Id. at 796. As such, this failure to report warranted a suspension from the practice of law for one year. Id.

Attorneys are also obligated to report their own misconduct. Pursuant to Rule 8.3(d) of the Illinois Rules of Professional Conduct, if an attorney is disciplined by an organization other than the ARDC, he must report that to the ARDC. IRPC, Rule 8.3(d). Additionally, if he is convicted of a felony or misdemeanor, he must notify the ARDC within 30 days of the judgment. Ill. S. Ct. Rule 761.



The Model Rules and The Illinois Rules - Compared And Contrasted

Overall the ABA Model Rules and the Illinois Rules of Professional Conduct are very similar. While Illinois adopted the majority of the Model Rules, they merged the Illinois Code into our existing rules as well. What we end up with is a set of rules, generally more elaborate than the ABA Model Rules.

There are some general differences between the two sets of rules that are worth noting. Typically, where the model rules require the attorney to “know” the Illinois Rules use the standard to “know or reasonably should know.” In both the Model Rules and Illinois rules “Knowingly,” “known,” or “knows” is defined as “actual knowledge of the fact in question.” See Terminology section of Model Rules; Abbreviations, References and Terminology of Illinois Rules. The terminology section of the Illinois Rules explains ““Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.” This adds a burden to most of the Illinois rules. Under the Model Rules, attorneys must have actual knowledge. In Illinois attorneys may be culpable for a rule violation even if they don’t have actual knowledge. If a prudent and competent attorney would have had the knowledge, the attorney can be found in violation of the Illinois Rules.

In many cases, the Model Rules add a writing requirement. So for example in Rule 1.7 under the Model Rules, the attorney must obtain informed consent confirmed in writing to meet the disclosure requirements for a conflict of interest. MRPC, 1.7(b)(3). Whereas in the corresponding Illinois Rule, the attorney is only obligated to obtain the client’s consent after disclosure. IRPC, 1.7(a)(2). With regards to disclosures, the Model Rules are more conservative and require a written component. This offers a measure of protection for the attorney and an attorney is probably well served to abide by the written requirement of the Model Rules even though unnecessary pursuant to the Illinois Rules.

Please note for the following discussion I have omitted rules that are identical or substantially similar. I have also omitted a discussion of rules that were not adopted in Illinois. The ABA Model Rules of Professional Conduct and the Illinois Rules of Professional Conduct can be found in the Appendix. Attorneys practicing in Illinois should at least take the time to thoroughly read the Illinois Rules. Remember, “ignorance of the Code is no excuse for attorney misconduct.” Vrdolyak, 560 N.E.2d at 845.

Rule 1 under both codes addresses the Client-Lawyer Relationship. Rule 1.1 is titled Competence. The rule in Illinois requires lawyers to provide competent representation (IRPC 1.1(a)). “Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.”



IRPC 1.1(a). If a lawyer knows he is not competent on a certain subject, he needs the assistance of another lawyer who is competent. IRPC 1.1(b). However, if he obtains assistance from outside counsel, he must have his client's permission to do so. IRPC 1.1(c). Illinois Rule 1.1(a) is identical to the ABA Model Rule 1.1 on competence. The difference between the two sets of rules is Illinois' addition of 1.1(b) and 1.1(c). The addition of 1.1(b) and 1.1(c) serve to elaborate on what is competent representation and how a lawyer should handle a situation in which he has a client whose needs may be outside the scope of his knowledge.

Rule 1.2 is titled Scope of Representation. This rule mandates an attorney to listen to his client and follow the client's decisions about his representation and what is to be accomplished. IRPC 1.2(a). Illinois included all of the Model Rule requirements but elaborated with additional details from the Illinois Code. Subsections (e), (f), (g), (h) and (i) are not in the Model Rules. These sections prohibit an attorney from threatening criminal charges or disciplinary action to obtain an advantage in a civil matter, filing suit simply to harass or injure another party, advancing a claim if he knows it's not supported by the law, failing to disclose information he is required by law to reveal, protecting a client who refuses to rectify a fraud he committed, failing to reveal a fraud committed by someone other than the client, and assisting a client with something not permitted by the rules. IRPC 1.2(e),(f)(1)(2)(3),(g),(h), (i).

The next rule where the Illinois Rules and the Model Rules substantially differ is Rule 1.5 regarding fees. The Model Rules Rule 1.5(a) declares "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expense." As opposed to Illinois, much briefer "A lawyer's fees must be reasonable." The factors to be used to determine a reasonable fee are identical in both sets of rules and include items like the time and labor required 1.5(a)(1), customary fees for similar work 1.5(a)(3) and whether the fee is fixed or contingent. 1.5(a)(8). See Rule 1.5 for a complete list of all the relevant factors.

Rule 1.5(b) requires an attorney to inform the client about the basis or rate of the fee within a reasonable time after the representation begins. The Model Rules adds that the basis of the fee be communicated to the client "preferably in writing." MRPC 1.5(b). Since the requirement is "preferable", it appears it is not a breach of the Model Rules to communicate with the client verbally regarding the fee structure. The Model Rules also add "Any changes in the basis or rate of the fee or expenses shall also be communicated to the client." MRPC 1.5(b). Regarding the communication of fees, the Model Rules are far more focused on the understanding of the fees involved with his or her representation.

Like Rule 1.5(b), in Rule 1.5(c) the Model Rules maintain their focus on the client's understanding of the fees, more than the Illinois rules. This rule deals with

contingent fees and is basically similar in both sets. However, the Model Rule requires not only that a contingent fee should be explained to the client in writing, but that the writing shall be signed by the client. This signature requirement is not found in the Illinois Rules. Additionally, the Model Rules includes the following language that was not included in the Illinois Rules. “The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.” MRPC, 1.5(c).

Illinois added Rule 1.5(e) which addresses contingent fees for commercial accounts and insurance company subrogation claims. The Model Rules 1.5(e) and the Illinois Rules 1.5(f) both address when fee divisions between lawyers are permissible. Both Rules require the client to consent to a fee division in a signed writing. The Illinois rule elaborates on what the writing must disclose – that there will be a division of fees, how the division will be made and for what the other attorney is responsible. The Illinois Rules also include a definition of economic benefit (IRPC 1.5(i)) which is missing from the Model Rules.

Rule 1.6 of the Model Rules and Illinois Rules are completely different. To begin with, in Illinois, an attorney may not disclose a client’s confidence or secret without the client’s consent. "Confidence" denotes information protected by the lawyer-client privilege under applicable law. IRPC Terminology "Secret" denotes information gained in the professional relationship, that the client has requested be held inviolate or the revelation of which would be embarrassing to or would likely be detrimental to the client. IRPC Terminology.

The Illinois rules indicate a time frame, “a lawyer shall not (disclose) during or after the termination of the professional relationship.” The Model Rules remain silent on the issue of disclosure after the attorney-client relationship has been terminated. Both rules permit disclosure with client consent. Both rules allow disclosure to prevent death or serious bodily harm or to comply with a court order. The Model Rules speak to permissible disclosure when the client is committing a crime or fraud and the attorney has unwittingly participated. The Illinois Rules focuses only on the intention of a client to commit a crime (the attorney’s unwitting participation has been omitted). In Illinois, disclosure is also permissible if necessary to collect one’s fee. Under both sets of rules disclosure is allowed to defend oneself against claims of misconduct. The Illinois Rules also address the Lawyers Assistance Programs and indicate that participant’s disclosures fall under the protection of this rule.

Rule 1.7 addresses Conflict of Interests. Both sets of Rules prohibit an attorney from representing a client in a concurrent conflict of interest. Such a conflict exists when one client’s representation is directly adverse to another client or if there is a risk that representation will be limited by the lawyer’s responsibilities

to another client. Both rules allow for representation in cases where the lawyer reasonably believes that he can provide competent representation to each client, and each affected client gives informed consent. MRPC 1.7(b), IRPC 1.7(a)(1)(2). The Model Rules add that the attorney can provide the representation so long as it is not prohibited by law and it does not involve one client asserting a claim against another client. MRPC 1.7(b). The Illinois Rule adds subsection (c) which explains what the disclosure must include – the implications of common representation and the advantages and risks involved. IRPC 1.7(c).

With regards to Conflict of Interests for Current Clients, Rule 1.8, the Illinois Rules are significantly different than the Model Rules. The Model Rules prohibit transactions between attorneys and their current clients unless the terms are fair and reasonable and disclosed in writing. MRPC 1.8(a)(1), the client has been directed in writing to obtain independent counsel MRPC 1.8(a)(2) and the client gives his informed consent in writing. MRPC 1.8(a)(3). The Illinois rules prohibit such business transaction if the lawyer knows or reasonably should know that the lawyer and his clients interests may conflict or the client expects the lawyer to use his professional judgment to protect the client. IRPC 1.8(a)(1) and (2). Illinois does not require written consent on the part of the client.

Many of subsections of this rule are substantially similar in both sets of rules. However in Illinois an attorney can't provide financial assistance with litigation unless the client remains ultimately liable. IRPC 1.8(d)(1). Additionally, in Illinois there is a prohibition from negotiating an agreement limiting a client's right to file a claim with the ARDC. IRPC 1.8(h). Likewise the Model Rules has a few additions not found in Illinois. The Model Rules adds subsection (j) which prohibits an attorney from having sexual relations with a client unless the sexual relationship preceded the attorney-client relationship. MRPC 1.8(j). Model Rules also adds subsection (k) which applies all the rules in this general rule to all members of a law firm, if it effects one, it effects them all. MRPC 1.8(k).

Rule 1.9 is titled Conflict of Interest: Former Client. The Illinois rules prohibit an attorney from representing a person with interests conflicting with the interests of a former client unless the former client consents after disclosure. IRPC 1.9(a)(1) The Model Rules require "informed consent, confirmed in writing." MRPC 1.9(a).

The Model Rules adds subsection (b) which addresses when a lawyer leaves a firm. In such a case, the lawyer can not represent someone in the same or substantially related matter when his prior law firm had represented someone with materially adverse interests. MRPC 1.9(b). Additionally, such representation is precluded if the lawyer has obtained information protected by Rule 1.6 and 1.9 unless the former client gives informed consent confirmed in

writing. MRPC 1.9(b)(2). The Illinois rules do not speak to this issue. The remaining parts of the rules are substantially similar.

Rule 1.10 addresses imputed disqualification. The Illinois Rules and Model Rules are substantially similar in 1.10(a) A lawyer in a firm is prohibited from knowingly representing a client when any one of them practicing alone would be prohibited by the rules from doing so. MRPC 1.10(a). IRPC 1.10(a). The difference lies in the Illinois standard “reasonably should know.” IRPC 1.10(a). The addition of the phrase ‘reasonably should know’ requires Illinois attorneys to exercise “reasonable prudence and competence” when making such a determination.

In Illinois, subsection (b) addresses new lawyers to a firm. IRPC 1.10(b). This issue is not addressed in the model rules. The Model Rules adds subsection (d) directing readers to rule 1.11 with issues regarding special conflicts for current or former government lawyers. MRPC 1.10(d). The Illinois Rules adds subsection (e) which addresses how to screen a law firm lawyer from a case to prevent a conflict when possible. IRPC 1.10(e). Any subsections not addressed are similar in both rules.

Rule 1.13 addresses the organization as client. Subsections (a) are identical in the Illinois and Model Rules. Model Rules subsection (f) is same as IL subsection (d) and Model Rules (g) is same as Illinois subsection (e). This rule is slightly different in the middle. Under the Model Rules, an attorney can reveal information otherwise protected under Rule 1.6 if the highest authority in the organization fails or refuses to take action to prevent a legal violation and the lawyer believes that the legal violation will result in substantial injury to the organization. MRPC 1.13(c)(1)(2). In Illinois, under the same circumstances, the lawyer may resign. IRPC 1.13(c).

The Model Rules prohibit a lawyer from disclosing information if he is defending a claim arising out of an alleged violation of law. MRPC 1.13(d). The Illinois rules provide a description about how to proceed, if he has information that someone in the organization is violating the law which is likely to substantially injure the organization. IRPC 1.13(b). The Model Rules simply state that the lawyer shall refer the matter to the highest authority in the organization. MRPC 1.13(b).

Rule 1.14 addresses clients under a disability. The Model Rules and Illinois Rules are substantially similar. The difference lies in the inclusion in the Model Rules of subsection (c) which allows an attorney who is taking protective action for a client such as a Guardian ad Litem to reveal protected information to “the extent reasonably necessary to protect the client’s interests.” MRPC 1.14(c).



Rule 1.15 speaks to the issue of safekeeping property. Illinois sections (a) and (b) have identical counterparts in the Model Rules. Illinois section (c) has a substantially similar counterpart in the Model Rules. The Model Rules permits lawyers to deposit their own funds in the trust account to pay bank service charges. MRPC 1.15(b). Lawyers can also deposit prepaid legal fees and expenses and withdraw those funds as the fees are earned or expenses incurred. MRPC 1.15(c).

Section (d) of the Illinois Rules require attorneys to designate the Lawyers Trust Accounts (IOLTA) program as the beneficiary of all income derived from nominal or short-term account. IRPC 1.15(d). The IOLTA program was established so that any interest earned on these small and short term accounts can be used to sponsor non-profit legal aid organizations. (<http://www.law.cornell.edu/ethics/il/> - See the Narrative for Rule 1.15). The rules specifically state that an attorney will not be accused of professional misconduct when using his judgment as to what is a nominal or short term fund. IRPC 1.15(d)(5).

Interestingly, Justice Hipple wrote a dissent about the IOLTA program arguing that it is the equivalent of looting. IRPC, Rule 1.15 Hipple's Dissent. He argued that this program is essentially "the taking private property for public use without just compensation." Id. The fact that the money is taken with philanthropic goals in mind, does not give the court the authority to take interest earned on client funds and distribute those funds to other people. Id. "As income produced by clients' funds, this interest, however small, belongs to the clients, and its assignment by the state to others represents an unconstitutional taking of property." Id.

Section G of Rule 1.5 in Illinois refers to Real Estate Funds Accounts also known as REFAs. REFAs are segregated accounts used by Real Estate lawyers which allow them to "handle the receipt and disbursement of funds deposited but not collected." (<http://www.law.cornell.edu/ethics/il/> - See the Narrative for Rule 1.15). This commonly arises in real estate closings where the attorney may have to accept and disseminate uncleared funds. Id. REFAs offer a solution for those situations allowing the attorney to act within the confines of Rule 1.15 as long as he has previously established a REFA account. Id.

In order to meet the requirements of section (g), the attorney must be acting as a closing agent or must meet the "good-funds" requirements. IRPC (g)(1) (2). The good funds requirement is where the lawyer directs the bank in writing to honor all disbursements up to a specified amount at least the amount deposited in good funds. IRPC (g)(2). The rule goes on to enumerated all the sources of "good funds" IRPC 1.15(g)(2)(a-g). The Model Rules do not speak to funds similar to the IOLTA or REFA.



Overall the feelings of both the Model Rule 1.16 and the Illinois Rule 1.16 are substantially similar although worded quite differently. The bottom line is that under both rules attorneys may withdraw if continued representation would yield a Rule violation, if the attorney is unable to continue representation due to a physical or mental impairment, if the lawyer is discharged, if the client acting in an illegal manner or if he is not paying his fees. IRPC 1.16(a)(1)-(4), MRPC(a)(1)-(3). Illinois adds that withdrawal is permissible if the client is bringing the case to harass or maliciously injure someone. IRPC 1.16(a)(1). Both require that attorneys comply with the law regarding the proper means to effectuate a withdrawal and refund any unearned fees that have been advanced. IRPC 1.16(d)(e), MRPC(c)(d).

The subject of Part Two of the Model Rules and Illinois Rules is Counselors. The rules that Illinois adopted in this section are substantially similar to the Model Rules so this section will not be discussed herein.

The subject of Part Three of the Model Rules and Illinois Rules is Counselors as Advocate. Under this section, the first rule where the Model Rules and the Illinois Rules substantially differ is Rule 3.3 Conduct. The Illinois Rule is far more detailed. Both rules prohibit a lawyer from making a false statement of fact or law to a tribunal. IRPC 3.3(a)(1), MRPC 3.3(a)(1). The Model Rules also requires the lawyer to correct a false statement made before a tribunal. MRPC 3.3(a)(1). They both require an attorney to disclose legal authority even where it is directly adverse to his client's position. IRPC 3.3(a)(3), MRPC 3.3(a)(2). Both rules prohibit an attorney from offering evidence he knows to be false. IRPC 3.3(a)(4), MRPC 3.3(a)(3). In Illinois if the attorney offers evidence and later learns it's false, the rule requires the lawyer to take "reasonable remedial measures." IRPC 3.3(a)(4). The Model Rule continues that remedial measures include "disclosure to the tribunal" if necessary. MRPC 3.3(a)(3).

Both rules allow an attorney to refuse to offer evidence he reasonably believes is false. IRPC 3.3(c), MRPC 3.3(a)(3). Additionally both rules require a lawyers in ex parte proceedings to inform the tribunal of all material facts he knows even if they are adverse so that the tribunal can make an informed decision. IRPC 3.3(d) MRPC 3.3(d). The remaining sections found in the Illinois rule are based on the Illinois Code of Professional Conduct. <http://www.law.cornell.edu/ethics/il/> - See the Narrative for Rule 3.3. For additional discussion of the Rule 3.3 requirements, see the section in this paper on the Attorney's duty to the court.

Rule 3.4 is titled Fairness to Opposing Party and Counsel. There rules are very similar except that the Model Rules has two additional subsections that were not adopted in Illinois. The Model Rules add that lawyers shall not make frivolous discovery requests or fail to comply with legal discovery requests in pre-trial proceedings. MRPC 3.4(d). The Model Rules also add that in a trial, a lawyer

shall not allude to irrelevant matters, “assert personal knowledge of facts in issue...or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.” MRPC 3.4(e). The drafters of the Illinois rules rejected these subsections because the tribunal would be a better forum to address these issues. http://www.law.cornell.edu/ethics/il/narr/IL_NARR_3.HTM#3.4:100.

Illinois rule 3.5 on Impartiality and Decorum of the Tribunal is far more in depth than its Model Rule counterpart incorporating many aspects of the Illinois Code. The Model Rules prohibit an attorney from trying to influence or communicate ex parte with a judge, juror, or prospective juror. MRPC 3.5(a) and (b). Additionally, once the jury has been discharged, an attorney shall not communicate with a juror or prospective juror if prohibited by law, MRPC 3.5(c)(1), if the juror has made known he does not want to communicate MRPC 3.5(c)(2), or the communication is a misrepresentation, coercion, duress or harassment. MRPC 3.5(c)(3). Lastly, an attorney is prohibited from engaging in “conduct intended to disrupt a tribunal MRPC 3.5(d).

The Illinois Rules start with the general notion that before a trial, a lawyer shall not communication with anyone he knows is a member of the venire from which the jury will be selected. IRPC 3.5(a). Once the trial has begun, a lawyer shall not communicate with a juror . IRPC 3.5(b)(1). Even if it is not his case, a lawyer is prohibited from talking with a juror regarding the case. IRPC 3.5(b)(2). Although, a lawyer is permitted to talk with members of the jury in the “course of official proceedings.” IRPC 3.5(c). Communications to harass, embarrass or influence the jurors as well as “vexatious or harassing investigation” of the jurors are prohibited. IRPC 3.5(d) and (e). All the rules of 3.5 apply to investigations of jurors families. IRPC 3.5(f). If a lawyer learns of improper conduct of a juror or his family, he is to reveal it promptly. IRPC 3.5(g). If a lawyer makes a gift to a judge or employee of a tribunal it must comply with the Code of Judicial Conduct. IRPC 3.5(h). A lawyer shall not communicate with the judge in a case the lawyer is trying unless it is during the course of official proceedings, IRPC 3.5(i)(1), the communication is in writing and given to opposing counsel as well, IRPC 3.5(i)(2), an oral communication is permissible if opposing counsel receives adequate notice, IRPC 3.5(i)(3), or if otherwise permitted by law. IRPC 3.5(i)(4).

Rule 3.6 regarding Trial Publicity is identical in both sets of rules except that the Illinois drafters added subsection (b). This subsection enumerates the subjects that would pose a serious threat to the fairness of a proceeding and as such should not be disseminated to the public. These subjects include a witness’s identity and expected testimony. [IRPC 3.6\(b\)\(1\), possibility of a guilty pleas in a criminal case, IRPC 3.6\(b\)\(2\), and one’s opinion about guilt or innocence. IRPC](#)



[3.6\(b\)\(3\) For a complete list see the Illinois Model Rule 3.6 \(b\) located in the Appendix.](#)

Rule 3.8 addresses the Special Responsibilities of a Prosecutor. The Illinois rules begin with the noble declaration, “The duty of a public prosecutor or other government lawyer is to seek justice, not merely to convict.” IRPC 3.8(a). This broad statement is not included in the Model Rules. “Paragraph (a) of Rule 3.8 is intended to remind prosecutors that the touchstone of ethical conduct is the duty to act fairly, honestly, and honorably.” Committee Comments to IRPC Rule 3.8.

The Illinois rules continues with a broader inclusion of to whom this rule applies. In Illinois, this rule is directed to a public prosecutor or other government lawyer. IRPC 3.8(a). Whereas the Model Rules are directed to prosecutors. MRPC 3.8(a). Both rules require that these attorney’s do not prosecute a charge they know (and in IL reasonably should know) is not supported by probable cause. MRPC 3.8(a), IRPC 3.8(b). Both require the disclosure of adverse and mitigating evidence. IRPC 3.8(c), MRPC 3.8(d). Both prohibit extrajudicial statements if they would result in public condemnation of the accused or if they are forbidden under rule 3.6. MRPC 3.8(f), IRPC 3.8(d) (e). However, the Model Rules adds that the prosecutor shall make sure the accused knows of his right to and how to obtain counsel. MRPC 3.8(b). Also, the Model Rules speaks to prevent an unrepresented accused person from waiving pretrial rights. MRPC 3.8(c). Lastly, the Model Rules prohibits the subpoena of an attorney to present evidence about a past or present client unless the evidence is not protected by a privilege, MRPC 3.8(e)(i) the evidence is essential to complete an ongoing investigation, MRPC 3.8(e)(ii) or there is no other way to get the information. MRPC 3.8(e)(iii).

The subject of Part Four of the Model Rules and Illinois Rules is Transactions With Persons Other Than Clients.

Rule 4.3 is the first rule in this section where the Illinois and Model rules are different. This rule addresses dealing with unrepresented persons. Under both sets of rules an attorney must make sure the unrepresented party understands that the lawyer is not disinterested and must clarify his role if necessary. IRPC 4.3, MRPC 4.3. The rules diverge with the Model Rules addition prohibiting the lawyer from giving legal advice to an unrepresented person except to tell them to get counsel. MRPC 4.3.

[Like Rule 4.3, Rule 4.4 is substantially similar in both sets of rules. Rule 4.4 speaks to Respect for Rights of Third Persons and under both sets of rules prohibits lawyers from embarrassing, delaying or burdening a third person in the course of representation. IRPC 4.4. The difference lies in the addition of subsection \(b\) in the Model Rules which](#) requires a lawyer to notify the sender of a document that was sent to them in error. MRPC 4.4(b).



The subject of Part Five of the Model Rules and Illinois Rules is Law Firms and Associations. The first rule in this section where the Illinois and Model rules are different is Rule 5.5 Unauthorized Practice of Law. Section (a) of the Model Rules encompasses in both section (a) and (b) of the Illinois rules. MRPC 5.5(a), IRPC 5.5(a),(b). Basically this portion sets forth the prohibition from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or help someone else do so. At that point, the Illinois rule is complete. The Model Rules provides detailed explanations of when his is not admitted to the bar practice there. See MRPC 5.5(b),(c),(d).

The subject of Part Six of the Model Rules and Illinois Rules is Public Service. The rules that Illinois adopted in this section are substantially similar to the Model Rules so this section will not be discussed herein.

The next Part in both sets of rules is Part 7, Information About Legal Services. Rule 7.1 addresses Communications Concerning a Lawyer's Services. Both sets of rules prohibit false or misleading statements about one's services and both rules define a false or misleading statements as one that "contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading." IRPC 7.1(a), MRPC 7.1. However, Illinois adds more to the definition of false or misleading by adding if the statement creates an unjustified expectation or compares the lawyer's services to another lawyer's services. IRPC 7.1(b) and (c).

The Model Rules and Illinois Rules are similar with regards to Rule 7.2 Advertising. In Illinois, a copy of all advertisement material must be kept for 3 years after its last dissemination. IRPC 7.2(a)(1). The Model Rules have no such requirement. The Model Rules expressly permits reciprocal referral agreements so long as they are not exclusive and the client is told of the agreement. MRPC 7.1(b)(4). The Illinois Rules do not speak to this issue.

Rule 7.3 addresses direct contact with prospective clients. Both Illinois and the model rules prohibit a lawyer from soliciting a client if his main motive is pecuniary gain. IRPC 7.3. MRPC 7.3(a). The exception is if the contact is a relative, friend or they have prior relationship. IRPC 7.3(a)(1). MRPC 7.3(a)(2). Illinois extends the prohibition on solicitation if the lawyer knows or should have known that the person solicited does not have physical or mental state to exercise reasonable judgment in employing a lawyer. IRPC 7.3(b)(1) Additionally, both sets of rules prohibit solicitation if the person has made it known he does not want to be solicited or solicitation involves coercion, duress or harassment. . IRPC 7.3(b)(2) and (3) MRPC 7.3(b)(1) and (2). Both sets of rules require that envelopes be labeled as advertising material when appropriate. IRPC 7.3(a)(2) MRPC 7.3(c). Illinois allows attorneys to utilize services for self promotion such as charitable legal services organization or a bona fide political, social, civic,

charitable, religious, fraternal, employee or trade organization promote the lawyer. IRPC 7.3(a)(3).

Rule 7.4 addresses communication of fields of practice. Both sets of rules are concerned with an attorney accurately communicating his or her field of expertise. The Model Rules allow an attorney to communicate his field of expertise. MRPC 7.4(a). For example, if he is a patent attorney admitted by United States Patent and Trademark Office, he can use the designation "Patent Attorney" MRPC 7.4(b). Similarly, if he is engaged in Admiralty practice, he may use designation "Admiralty" or "Proctor in Admiralty." MRPC 7.4(c). Lastly, an attorney cannot state or imply he is certified as a specialist unless he is certified by an organization that is approved by state authority or the ABA and the name of certifying organization is identified. MRPC 7.4(d)(1), (2).

In Illinois, a lawyer or firm can designate a specialty and describe legal matters they'll accept. IRPC 7.4. Just like in the Model Rules, an attorney admitted before United States Patent and Trademark office can use "Patents," "Patent Attorney," "Patent Lawyer," or "Registered Patent Attorney," IRPC 7.4(b)(1) or if in admiralty can use "Admiralty," "Proctor in Admiralty" or "Admiralty Lawyer," IRPC 7.4(b)(3). Unlike the Model Rules, the Illinois rules also account for attorneys engaged in trademark practice and they are allowed to use the terms "Trademarks," "Trademark Attorney" or "Trademark Lawyer." IRPC 7.4(b)(2). If using the term certified, specialist or expert must be truthful and verifiable and must state that the Illinois Supreme Court does not recognize such certifications for specialties in practice of law. IRPC 7.4(c)(1), (2).

The subject of Part Six of the Model Rules and Illinois Rules is Maintaining the Integrity of the Profession. Regarding Rule 8.1, Bar Admission and Disciplinary Matters, the rules are identical with the exception of Illinois' addition of subsection (b). While the Model Rules do not address this issue at all, Illinois rules require that a lawyer does not assist another's application for admission to the bar if he or she knows that person is unqualified. IRPC 8.1(b).

Rule 8.3 speaks to Reporting Professional Misconduct. The Model Rules are simple. If a lawyer knows that another lawyer or judge has violated the Rules of Professional Conduct so as to raise questions of their honesty, trustworthiness or fitness, the lawyer is to inform the appropriate professional authority. MRPC 8.3(a), (b). The exception is if the disclosure would violate rule 1.6 or if the information was obtained when the lawyer or judge was attending a lawyers assistance program. MRPC 8.3(c). The Illinois rules are far more detailed. To begin with if a lawyer has knowledge of a violation that is not protected that another lawyer or judge has violated Rule 8.4(a)(3) or (4), the lawyer must report that knowledge. Rule 8.4(a)(3) addresses criminal acts reflecting honesty,



trustworthiness or fitness and Rule 8.3(a)(4) addresses conduct involving dishonesty, fraud, deceit or misrepresentation. Additionally, the Illinois rules expressly command attorneys to cooperate with an investigative authority when asked about the conduct of lawyers or judges. IRPC 8.4(c). Lastly, the attorney must report to the ARDC if he has been disciplined by any body other than ARDC. IRPC 8.4(d).

The Illinois Rules are far more detailed related to Rule 8.4 on Misconduct. The Model Rules are all encompassed within the Illinois Rule but the Illinois rule makes numerous additions. Both rules prohibit a lawyer from violating the rules, IRPC 8.4(a)(1), MRPC 8.4(a), from inducing or helping another lawyer to violate the rules IRPC 8.4(a)(2), MRPC 8.4(a), from committing a criminal act reflecting poorly on the lawyer's honesty, trustworthiness or fitness, IRPC 8.4(a)(3), MRPC 8.4(b), from dishonest, fraudulent, deceitful or misrepresenting behavior IRPC 8.4(a)(4), MRPC 8.4(c), inhibiting the administration of justice, IRPC 8.4(a)(5), MRPC 8.4(d), (Illinois elaborates on this subsection where the model rules remain silent. Illinois states that as part of this the lawyer can not treat litigants, jurors, witnesses, lawyers or others in a discriminatory fashion.), from indicating they can improperly influence a tribunal, legislative body, government agency or official IRPC 8.4(a)(6), MRPC 8.4(e), and from helping (Model Rules has a knowingly helping standard) a judge to violate the rules. IRPC 8.4(a)(7), MRPC 8.4(f).

With that the Model Rule is complete but the Illinois rule continues on to prohibit a multitude of other potential misconduct by attorneys. Attorneys may not fail to repay an education loan in bad faith, IRPC 8.4(a)(8). Additionally, attorneys may not discriminate based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. IRPC 8.4(9)(a). Further, the Illinois rules include an entire subsection devoted to what lawyer who holds public offices shall not do. IRPC 8.4(b).

Support And Programs To Assist Attorneys

Often an ethics issue arises and the Illinois Rules of Professional Conduct are unclear as to how to proceed. The attorney can look to the ABA Model Rules and their comments for guidance but still may be unable to find a solution. At that point the attorney may want to contact the Ethics Inquiry Program created by the ARDC. The Ethics Inquiry Program provides research assistance and guidance regarding ethics issues. They do not accept e-mails or faxes but can be reached via telephone at 312-565-2600 or 800-826-8625.⁶⁵ The Commission will not keep

⁶⁵ <http://www.iardc.org/ethics.html#1>.

a record of the caller's identity or the substance of the inquiry. The attorney can even remain anonymous and is urged to present the question hypothetically. Id.

Through this program, an Ethics attorney will hear the problem and assist in identifying the relevant Rules of Professional Conduct, case law or other sources to help resolve the issue.⁶⁶ Any information received through the Program is neither legal advice nor a binding advisory opinion. Id. It is legal research assistance only and the attorney is ultimately responsible for her own final judgment. The fact that the inquiry has been made or the response from the Ethics Inquiry attorneys will not be admissible in an attorney disciplinary proceeding. Id.

"The goal of the Program is to help lawyers understand their professional obligations and assist them in resolving important issues in their practice."⁶⁷ The ARDC attorneys and paralegals that staff the program look to existing professional responsibility law, legal precedent, bar association ethics opinions, law review articles and practical guidelines to help attorneys answer their ethics queries.⁶⁸ The Program is also available to the general public if they have concerns about their attorney's behavior.⁶⁹ Note that utilizing this service does not satisfy any requirements to report attorney misconduct.⁷⁰

The Ethics Inquiry Program is just one of a few services offered by the ARDC to assist attorneys in discerning the Rules requirements. On the ARDC website – www.iardc.org – there is a section on rules and decisions. Attorneys can use this link to research independently or simply keep abreast of recent rulings. The ARDC website also has a Publication section which includes articles on the following topics:

- Avoiding ARDC Anxiety: A Disciplinary Primer
- Ten Ethics Questions From Young Lawyers
- Lawyer Admission and Regulation in Illinois
- Client Trust Account Handbook⁷¹

⁶⁶ <http://www.iardc.org/ethics.html#1>.

⁶⁷ ." <http://www.iardc.org/ethics.html#1>

⁶⁸ ." <http://www.iardc.org/ethics.html#1>

⁶⁹ ." <http://www.iardc.org/ethics.html#1>

⁷⁰ ." <http://www.iardc.org/ethics.html#1>.

⁷¹ See <http://www.iardc.org/pubs.html>.



The ARDC is not the only organization offering assistance to attorneys' in Illinois. The Illinois State Bar Association in conjunction with the Chicago Bar Association established The Lawyers' Assistance Program (LAP). This not-for-profit organization works with Illinois legal professionals dealing with addiction issues or mental illness. LAP provides educational, informational and referral, peer assistance and intervention services. Acknowledging that ten to twenty percent of attorneys and judges suffer from alcohol and drug dependency or mental health problems and recognizing that these problems significantly impact a professional's performance, LAP works to protect the public, improve the integrity and reputation of the legal profession and saves the lives and practices of impaired attorneys.⁷²

⁷² www.illinoislap.org

