

**HIGHLIGHTS FROM THE NEW
ILLINOIS RULES OF THE PROFESSIONAL CONDUCT
(EFFECTIVE JANUARY 1, 2010)**

1) New Rules

The Supreme Court of Illinois has adopted a number of ethics rules that have not appeared in any previously enacted conduct code. The new rules include, but are not limited to, the following:

- a) **New Rule 1.18.** Describes important duties that lawyers owe to a prospective client arising from preliminary discussions before the creation of a formal lawyer-client relationship;
- b) **New Rule 2.4.** Defines the duties of a lawyer who serves as a third-party neutral, such as a mediator or arbitrator;
- c) **New Rule 3.9.** Articulates the duties of an advocate in a nonadjudicative proceeding, such as before a legislative body or an administrative agency; and
- d) **New Rule 4.4(b).** Addresses how a lawyer should respond when the lawyer receives a document that was inadvertently submitted to the lawyer.

2) Comments to the New Rules

The new ethics rules contain comments that attempt to explain the rules, refer to court decisions relating to the rules and assist lawyers in complying with the rules. The rules are authoritative; the comments serve as a guide.

3) *Pro Bono* Services (Rule 6.5)

As adopted, the new conduct code provides greater opportunities for lawyers to perform *pro bono* legal services through not-for-profit or court-annexed limited legal service programs. Pursuant to new Rule 6.5, lawyers will have more chances to assist people with short-term legal consultation without providing further representation.

4) Confidentiality (Rule 1.6)

Illinois will join a majority of jurisdictions defining client confidentiality in terms of information received during an attorney-client relationship, a much broader standard. The new rule also expands the categories of when a lawyer can make a permissible disclosure of protected information, principally in a case of client fraud that has involved the use of the lawyer's services. The rule retains the Illinois duty to disclose information that could result in death or serious bodily harm.

5) Prohibited Conflict of Interest (Rule 1.8(j))

The new guidelines prohibit a lawyer from having sexual relations with a client unless a prior sexual relationship existed.

6) Heightened Corporate and Organizational Responsibilities (Rule 1.13)

The new code expands the reporting duties of a lawyer for a corporation or an organization who, upon learning of wrongful conduct committed by corporate or organizational employee, must take action to protect the client from the impact of the employee's wrongful conduct.

7) Dealing With a Client who has Diminished Capacity (Rule 1.14)

The Illinois Supreme Court has provided guidance to any lawyer who deals with a client who may have the diminished capacity to make decisions. The rules permit a lawyer to take reasonably necessary protective action to protect a client's interests, including, in certain circumstances, providing emergency legal assistance when a client does not have the capacity to form an attorney-client relationship.

8) Managing Client Funds and Property (Rules 1.5 and 1.15)

The new rules refine the obligations of a lawyer to maintain and protect the funds and property of clients and others, including an important clarification for practitioners as to how they should manage retainer fees. Further, a lawyer will be prohibited from charging a client an unreasonable amount of money for expenses.

9) Sale of a Law Practice (Rule 1.17)

Although the Illinois Supreme Court has permitted lawyers to sell or transfer their law practices since 2005, an amended rule clarifies the earlier law and eliminates certain restrictions on the reasons for a sale.

10) Special Responsibilities of Criminal Prosecutors (Rule 3.8)

New guidelines provide that a criminal prosecutor must make reasonable efforts to assure that an accused has been advised of the right to, and has been afforded a reasonable opportunity to, obtain counsel. A prosecutor must also not seek to obtain from an unrepresented person accused of a crime the waiver of important pretrial rights. Finally, a prosecutor must take precautions when issuing a subpoena to a lawyer in order to gather information about that lawyer's past or present client.

11) Multi-Jurisdictional Practice (Rules 5.5 and 8.5)

The practice of law has changed substantially over the course of the past few decades. A significant percent of Illinois lawyers have a law license issued in another state and there is greater attorney mobility within the profession than in prior years. Illinois now joins a large number of jurisdictions who adopted rules addressing a lawyer's multi-jurisdictional practice. The new guidelines specify the circumstances where a lawyer not admitted in Illinois may render services in this state, define the reach of the Illinois disciplinary authority, and apply choice of law concepts.

12) Lawyer Advertising (Rule 7.2)

New guidelines bring lawyer advertising regulation into the 21st century. For the first time, the rules explicitly govern electronic communication such as e-mail and websites.