M.R. 3140

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Order entered December 7, 2011.

(Deleted material is struck through and new material is underscored, except in Rules 570 through 579 and Rule 779, which are entirely new.)

Effective immediately, Rules 570 through 579 and Rule 779 are adopted and Rules 65, 526, 529, 553, 751, 752, 753, 754, 775, 778, and 791 are amended, as follows.

Amended Rule 65

CANON 5
A Judge Should Regulate His or Her Extrajudicial Activities
to Minimize the Risk of Conflict With the Judge's
Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit or permit his or her name to be used in any manner to solicit funds or other assistance for any such organization. A judge should not allow his or her name to appear on the letterhead of any such organization where the stationery is used to solicit funds and should not permit the judge's staff, court officials or others subject to the judge's direction or control to solicit on the judge's behalf for any purpose, charitable or otherwise. ~~A~~ However, a judge may be a speaker or the guest of honor at an organization's fund-raising events and may allow event-related promotional materials, invitations, and other communications to mention such participation by the

judge.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judge's judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in the activities usually incident to the ownership of such investments, but a judge should not assume an active role in the management or serve as an officer, director, or employee of any business.

(3) A judge should manage his or her investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of the judge's family residing in the judge's household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of the judge's family residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of the judge's family residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, including lawyers who practice or have practiced before the judge.

(5) Information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of the judge's judicial duties. As a family fiduciary a judge is subject to the following restrictions:

(1) The judge should not serve if it is likely that as a fiduciary the judge will

be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in his or her personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extrajudicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, State, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Adopted December 2, 1986, effective January 1, 1987; amended October 15, 1993, effective immediately; amended May 24, 2006, effective immediately; amended December 7, 2011, effective immediately.

Amended Rule 526

Rule 526. Bail Schedule–Traffic Offenses

(a) Bail in Minor Traffic Offenses. Unless released on a written promise to comply and except as provided in paragraphs (b), (c), (d) and (f) of this rule a person arrested for a traffic offense and personally served by the arresting officer with a Citation and Complaint shall post bail in the amount of $120 in one of the following ways: (1) by posting $120 cash bail (see Rule 501(b) for definition of "Cash Bail"); or (2) by depositing, in lieu of such amount, an approved bond certificate; or (3) by depositing, in lieu of such amount, a current Illinois driver's license.

(b) Bail in Certain Truck Offenses.

(1) Persons charged with a violation of section 3-401(d) or 15-111 of the Illinois Vehicle Code, as amended (truck overweight) (625 ILCS 5/3-401(d) or 5/15-111), charged with a violation of section 15-112(e) of the Illinois Vehicle Code, as amended (gross weight) (625 ILCS 5/15-112(e)), or charged with a violation punishable by fine pursuant to sections 15-113.1, 15-113.2 or 15-113.3 of the Illinois Vehicle Code, as amended (permit moves) (625 ILCS 5/15-113.1 *et seq.*), shall post cash bail in an amount equal to the amount of the minimum fine fixed by statute, plus penalties and costs (see Rule 501(b) for definition of "Cash Bail"). The accused may, in lieu of cash bail, deposit a money order issued by a money transfer service company which has been approved by the Administrative Director under regulations issued by this court. The money order shall be made payable to the clerk of the circuit court of the county in which the violation occurred. When the bail for any offense hereunder does not exceed $500, the accused may, at his option, deposit a truck bond certificate in lieu of bail.

(2) Persons charged with violating section 15-112(g) of the Illinois Vehicle Code, as amended, by refusing to stop and submit a vehicle and load to weighing after being directed to do so by an officer, or with violating section 15-112(g) by removing all or part of the load prior to weighing shall post bail in the amount of $1,200 (625 ILCS 5/15-112(g)).

(c) Bail in Other Traffic Offenses (Rules of the Road). Except as provided in paragraph (e) of this rule, persons charged with violations of the following sections of the Illinois Vehicle Code shall post bail in the amount specified:

ILCS	Description	Bail
(1) 625 ILCS 5/11-601	Speeding, but only when more than 20 mph over the posted limit but not more than 30 mph over the posted limit	$140
	Speeding, but only when more than 30 mph over the posted limit	$160
(2) 625 ILCS 5/11-601.5	Speeding, but only when 40 mph or more over the posted limit	$2,000
(3) 625 ILCS 5/11-204	Fleeing or Attempting to Elude Police Officer	$2,000
(4) Blank ~~625 ILCS 5/11-401(a)~~	~~Leaving Scene of Accident-Death or Injury~~	~~$2,000~~
(5) 625 ILCS 5/11-501	Misdemeanor Driving Under Influence of Alcohol or Drugs or with 0.08 or more Blood- or Breath-Alcohol Concentration	$3,000
(6) 625 ILCS 5/11-503	Reckless Driving	$2,000
(7) 625 ILCS 5/11-506	Street Racing	$2,000
(8) 625 ILCS 5/12-603.1	Use of Safety Belts, Driver or Passenger	$60

(d) Bail in Other Traffic Offenses (Vehicle Title & Registration Law). Except as provided in paragraph (e) of this rule, persons charged with violations of the following sections of the Illinois Vehicle Code shall post bail in the amount specified:

ILCS	Description	Bail
(1) 625 ILCS 5/3-707	Operating Without Insurance	$2,000
(2) 625 ILCS 5/3-708	Operating when Registration Suspended for Non-insurance	$3,000
(3) 625 ILCS 5/3-710	Display of False Insurance Card	$2,000

(e) Driver's License or Bond Certificate in Lieu of or in Addition to Bail. An accused who has a valid Illinois driver's license may deposit his driver's license in lieu of the bail specified in subparagraphs (1), (2), (3), (6), and (8) of Rule 526(c) and subparagraphs (1) and (3) of Rule 526(d). In lieu of posting the cash amount specified in subparagraphs ~~(4),~~ (5) and (7) of Rule 526(c) or subparagraph (2) of Rule 526(d), an accused must post $1,000 bail and his current Illinois driver's license. Persons who do not possess a valid Illinois driver's license shall post bail in the amounts specified in Rule 526(c) or 526(d), except that an accused may deposit an approved bond certificate in lieu of the bail specified in subparagraphs (1) or (8) of Rule 526(c).

(f) Bail in Other Traffic Offenses (Driver Licensing Law). Persons charged with violations of the following sections of the Illinois Vehicle Code shall post bail in the amount specified:

ILCS	Description	Bail
(1) 625 ILCS 5/6-301	Unlawful Use of License	$1,500
(2) 625 ILCS 5/6-303 ~~or 6-310~~	Misdemeanor Driving With Suspended or Revoked License	$1,500
(3) 625 ILCS 5/6-304.1	Permitting Driving Under Influence of Alcohol or Drugs	$1,500
(4) 625 ILCS 5/6-101	Unlicensed Driving, under the following circumstances:	
See article VI, "Penalties," Illinois Vehicle Code	(a) All cases other than those charging license expired for less than one year	$1,500
	(b) License expired less than	

(625 ILCS 5/6-601)	one year (see Rule 526(a))	
(5) 625 ILCS 5/6-507	Commercial Driver's License	$1,500

(g) Bail for Traffic Offenses Defined by Ordinance. Bail for traffic offenses defined by any ordinances of any unit of local government which are similar to those described in this Rule 526 shall be the same amounts as provided for in this rule.

Amended effective October 7, 1970; amended January 31, 1972, effective March 1, 1972; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended September 29, 1978, effective November 1, 1978; amended September 20, 1979, effective October 15, 1979; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended March 27, 1985, effective May 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended January 11, 1990, effective immediately; amended December 7, 1990, effective January 1, 1991; amended June 12, 1992, effective July 1, 1992; amended September 27, 1993, effective October 1, 1993; amended April 11, 2000, effective immediately; amended September 30, 2002, effective immediately; amended December 5, 2003, effective immediately; amended May 30, 2008, effective immediately; amended June 11, 2009, effective immediately; amended June 3, 2010, effective September 15, 2010; amended December 7, 2011, effective immediately.

Amended Rule 529

Rule 529. Fines, Penalties and Costs on Written Pleas of Guilty in Minor Traffic and Conservation Offenses

(a) Traffic Offenses. All traffic offenses, except those requiring a court appearance under Rule 551 and those involving offenses set out in Rule 526(b)(1), may be satisfied without a court appearance by a written plea of guilty, with the exception of electronic pleas unless authorized by the Supreme Court, and payment of fines, penalties and costs, equal to the bail required by Rule 526 unless an order of failure to appear to answer the charge has been entered pursuant to Rule 556(a), in which case the fine, penalties and costs shall be equal to the amount of the required bail, plus an additional penalty of $35. The balance remaining after deducting the amounts required by sections 27.3a and 27.3c of the Clerks of Courts Act (705 ILCS 105/27.3a, 27.3c) shall be distributed as follows:

(1) 44.5% shall be disbursed to the entity authorized by law to receive the fine imposed in the case;

(2) 16.825% shall be disbursed to the State Treasurer; and

(3) 38.675% shall be disbursed to the county's general corporate fund.

No other fines, fees, penalties or costs shall be assessed in any case which is disposed of on a written plea of guilty without a court appearance under paragraph (a) of Rule 529. A charge of violating section 3-401(d), 15-111 or offenses

punishable by fine pursuant to sections 15-113.1, 15-113.2 or 15-113.3 of the Illinois Vehicle Code (truck overweight and permit moves) (625 ILCS 5/15-111, 15-113.1 through 15-113.3), or similar municipal ordinances, may be satisfied without a court appearance by a written plea of guilty and payment of the minimum fine fixed by statute, plus all applicable penalties and costs (see Rule 526(b)(1)). Fines, penalties, and costs shall be disbursed by the clerk pursuant to statute.

(b) Conservation Offenses. Conservation offenses for which $120 cash bail is required under Rule 527 may be satisfied without a court appearance by a written plea of guilty, with the exception of electronic pleas unless authorized by the Supreme Court, and payment of fines, penalties and costs, equal to the cash bail required by Rule 527. The balance remaining after deducting the amounts required by sections 27.3a and 27.3c of the Clerks of Courts Act (705 ILCS 105/27.3a, 27.3c) shall be distributed as follows:

(1) 67% shall be disbursed to the entity authorized by law to receive the fine imposed in the case;

(2) 16.825% shall be disbursed to the State Treasurer; and

(3) 16.175% shall be disbursed to the county's general corporate fund.

No other fines, fees, penalties or costs shall be assessed in any case which is disposed of on a written plea of guilty without a court appearance under paragraph (b) of this Rule 529.

(c) Supervision on Written Pleas of Guilty. In counties designated by the Conference of Chief Circuit Judges, the circuit court may by rule or order authorize the entry of an order of supervision under section 5-6-3.1 of the Unified Code of Corrections (730 ILCS 5/5-6-3.1), for traffic offenses satisfied pursuant to paragraph (a) of this Rule 529. Such circuit court rule or order may include but does not require a program by which the accused, upon payment of the fines, penalties and costs equal to bail required by Rule 526, agrees to attend and successfully complete a traffic safety program approved by the court under standards set by the Conference. The accused shall be responsible for payment of any traffic safety program fees. If the accused fails to file a certificate of successful completion on or before the termination date of the supervision order, the supervision shall be summarily revoked and conviction entered. Any county designated by the Conference pursuant to this rule may opt-out of this rule upon notification to the Conference by the chief judge of the circuit and rescinding any rule or order entered to establish supervision on written pleas of guilty.

(d) The provisions of Supreme Court Rule 402 relating to pleas of guilty do not apply in cases where a defendant enters a guilty plea under this rule. The clerk of the circuit court shall disburse fines, penalties, and costs as provided for in paragraph (a) of this Rule 529.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended September 20, 1979, effective October 15, 1979; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended March 27, 1985, effective May 1, 1985; amended June 26, 1987, effective

August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended December 20, 1991, effective January 1, 1992; amended June 12, 1992, effective July 1, 1992; amended January 20, 1993, effective immediately; amended May 24, 1995, effective January 1, 1996; amended April 1, 1998, effective immediately; amended March 16, 2001, effective immediately; amended December 5, 2003, effective January 1, 2004; amended August 6, 2010, effective September 15, 2010; amended December 7, 2011, effective immediately.

Amended Rule 553

Rule 553. Posting Bail or Bond

(a) By Whom and Where Taken. The several circuit clerks, deputy circuit clerks and law enforcement officers designated by name or office by the chief judge of the circuit are authorized to let to bail any person arrested for or charged with an offense covered by Rules 526, 527 and 528. Upon designation by the chief judge of the circuit, bail may be taken in accordance with this article in any county, municipal or other building housing governmental units, police station, sheriff's office or jail, ~~or~~ district headquarters building of the Illinois State Police, weigh station, or portable scale unit established for enforcement of truck violations under Rule 526(b)(1) or similar municipal ordinances. Bail deposits by credit card, debit card or by any other electronic means may only be accepted upon the approval of the chief judge and the circuit clerk's ability to accept such deposits. Individual bonds under paragraph (d) of this rule may additionally be taken as designated by the chief judge of the circuit.

(b) Copy of Bond–Receipt for Cash Bail. A carbon copy of the bond or an official receipt showing the amount of cash bail posted, specifying the time and place of court appearance, shall be furnished to the accused and shall constitute a receipt for bail. The bond or cash bail, or both, shall be delivered to the office of the circuit clerk of the county in which the violation occurred within 48 hours of receipt or within the time set for the accused's appearance in court, whichever is earlier (see Rule 501(b) for definition of "Cash Bail").

(c) Driver's License or Bond Certificate. If an accused deposits a driver's license with the arresting officer in lieu of bail or in addition to bail, or deposits a bond certificate, the arresting officer shall note that fact on the accused's copy of the ticket and transmit the driver's license or bond certificate to the clerk within the time provided in paragraph (b) of this rule.

(d) Individual Bond. Persons arrested for or charged with an offense covered by Rules 526, 527 and 528 who are unable to secure release from custody under these rules may be released by giving individual bond (in the amount required by this article) by those law enforcement officers designated by name or office by the chief judge of the circuit, except when the accused is (1) unable or unwilling to establish his identity or submit to being fingerprinted as required by law, (2) is charged with an offense punishable by imprisonment and will pose a danger to any person or the community, or (3) elects release on separate bail under Rule 503(a)(3) or 503(a)(4). Persons required to deposit both bail and driver's license under Rule 526(e) may be

released on $1,000 individual bond and their current Illinois driver's license. If authorized by the chief judge of the circuit, individual bonds under this paragraph (d) may be executed by signing the citation or complaint agreeing to comply with its conditions.

(e) Alternative Procedure in Minor Cases–Counties Other Than Cook. In any case, excluding citations written by local law enforcement in Cook County ~~arising in counties other than Cook~~, in which the bail or bond specified by Rule 526, 527 or 528 does not exceed $200 in United States currency, an accused not required to be fingerprinted may ~~place the cash bail or deposit (in the amount required by such rule) in a stamped envelope (to be provided by the arresting officer) addressed to the clerk of the circuit court of the county in which the violation occurred and, in the presence of the arresting officer, deposit that envelope in a United States Postal Service mail box~~ post bond by giving the United States currency to the sworn law enforcement officer. The officer shall provide the accused with a copy of the citation duly noted with the amount of the United States currency posted as bond. The accused shall then be released from custody. ~~The appropriate portion(s) of the ticket shall be enclosed with the cash bail or deposit. In rural areas where United States Postal Service mail boxes are not reasonably available, the accused may elect to deposit with a State Police officer, an enforcement officer of the Department of Natural Resources or Secretary of State, or a sheriff or a deputy sheriff, or other law enforcement officers designated by name or office by the chief judge of the circuit, the sealed envelope containing the cash bail or deposit, rather than having to accompany the arresting officer to the nearest mail box.~~ In such cases, the officer will ~~mail or~~ deliver the ~~sealed envelopes~~ appropriate portions(s) of the ticket along with the United States currency as bond(s) to the clerk of the circuit court or a designated building approved by the issuing law enforcement agency and approved by the receiving law enforcement agency before the end of his or her current tour of duty.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended October 17, 1979, effective November 15, 1979; amended December 22, 1981, effective January 15, 1982; amended June 26, 1987, effective August 1, 1987; amended December 7, 1990, effective January 1, 1991; amended June 12, 1992, effective July 1, 1992; amended May 24, 1995, effective January 1, 1996; amended June 11, 2009, effective immediately; amended August 6, 2010, effective September 15, 2010; amended December 7, 2011, effective immediately.

New Rule 570

Rule 570. Applicability

Rules 570 through 579 are applicable to the prosecution, through the judicial system, of violations of ordinances passed pursuant to section 5-1113 of the Counties Code (55 ILCS 5/5-1113), section 1-2-1 of the Illinois Municipal Code (65 ILCS

5/1-2-1), and section 11-1301 of the Illinois Vehicle Code (625 ILCS 5/11-1301) or home rule authority for which the penalty does not include the possibility of a jail term. These rules shall not apply to administrative adjudications.

Adopted December 7, 2011, effective immediately.

Committee Comment
(December 7, 2011)

Rules 570 through 579 apply to the prosecution of ordinance violations not punishable by a jail term and other than traffic and conservation offenses. These rules also apply to parking offenses. Violations of ordinances punishable by a jail term are to be prosecuted in accordance with the rules of criminal procedure. 65 ILCS 5/1-2-1.1. Nothing in these rules is intended to limit the ability to proceed through an administrative process or other alternative methods of resolving ordinance violations.

Rule 570 establishes the applicability of the ordinance violation prosecutions which are prosecuted through the judicial system to ordinances passed pursuant to the Counties Code (55 ILCS 5/5-1113 (ordinance and rules to execute powers; limitations on punishments)), the Illinois Municipal Code (65 ILCS 5/1-3-1 (ordinances and rules; fines or penalties; limitations on punishment)), and home rule authority where the penalty does not include jail time.

Rule 570 would exclude from these rules ordinance violations heard by the administrative adjudication process.

New Rule 571

Rule 571. Code of Civil Procedure to Apply

Except as specifically stated herein or in existing statutes, the Code of Civil Procedure shall apply in all ordinance prosecutions to which these rules apply.

Adopted December 7, 2011, effective immediately.

Committee Comment
(December 7, 2011)

This rule builds on the holdings of both *City of Danville vs. Hartshorn*, 53 Ill. 2d 399 (1973) and *Village of Park Forest v. Walker,* 64 Ill. 2d 286 (1976), in which the Supreme Court held that the Civil Practice Act applied to ordinance violations where the penalty is a fine only. Persons charged with violating municipal ordinances have a right to trial by jury if a written jury demand along with the jury fee is filed and paid at the time of first appearance under provisions of section 2-1105 of the Code of Civil Procedure. But under Supreme Court Rule 201(h), discovery in ordinance prosecution cases where the penalty is a fine only, is allowed only by leave of court.

Before and after the *Hartshorn* decision, courts have struggled to decide what portions of the Code of Civil Procedure apply to ordinance violation prosecutions. It is the intent of Rule 571 to clarify that the Code of Civil Procedure applies to all ordinance violation proceedings under Rules 570 through 579, except as otherwise provided by Supreme Court Rules such as Rule 201(h).

New Rule 572

Rule 572. Form of Charging Document.

(a) A prosecution for an ordinance violation for which the penalty does not include the possibility of a jail term may be initiated by a charging document such as a Notice to Appear, Citation, Ticket, or Complaint or combination of the same. The charging document shall be signed by an attorney representing the plaintiff, or by a peace officer or a code enforcement officer authorized by the plaintiff to sign the charging document. The charging document shall be verified as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109). Such charging document or combination of documents shall contain at least the following:

1. The name of the prosecuting entity;

2. The name of the defendant and his or her address, if known;

3. The nature of the offense and a reference to the relevant ordinance;

4. A statement whether the defendant is required to appear in court and, if so, the date, time and place of appearance;

5. If applicable, the steps the defendant can take to avoid an otherwise required appearance; and

6. A statement that the defendant may demand a jury trial by filing a jury demand and paying a jury demand fee when entering his or her appearance, plea, answer to the charge, or other responsive pleading.

(b) The following statement(s) shall also appear on the charging document or combination of documents listed in (a) above in the event a warrant or default judgment will be sought by the prosecuting entity:

1. A statement that a default judgment may be entered in the event the person fails to appear in court or answer the charge made on the date set for the defendant's court appearance or any date to which the case is continued. The statement must also contain the specific amount of any default judgment.

2. A statement that an arrest warrant may issue if the defendant fails to appear at any hearing.

(c) Multiple Violations. Multiple violations of automobile parking offenses may be contained in a single count. Violations of the same offense occurring on different days, or violations of ordinances which carry a per day fine, may be stated in one count even though each violation or day upon which a violation occurs carries a separate fine. Such separate violations and fines must be clearly stated.

(d) Prayer for Relief. It shall be sufficient for the prosecuting entity to generally pray for a penalty range between the minimum and maximum penalties authorized by the corporate authorities of the prosecuting entity.

(e) Amendments. The charging document may be amended at any time, before or after judgment, to conform the pleadings to the proofs on just and reasonable terms. However, the amount of any default judgment appearing on the charging document under Rule 572(b) may not be amended after the entry of such judgment, without notice to defendant.

Adopted December 7, 2011, effective immediately.

Committee Comment
(December 7, 2011)

Many prosecuting entities have created hybrid complaints that serve both as notice to appear and the charging document itself, similar to a traffic citation. Since an ordinance violation prosecution incorporates aspects of both criminal and civil procedures, the more general term "charging document" phrase is used.

(a) Rule 572 is intended to provide flexibility in the initiation of an ordinance violation prosecution.

The Municipal Code states that "the first process shall be a summons or a warrant." 65 ILCS 5/1-2-9.

Many prosecuting entities, however, begin with a "Notice to Appear" which is provided for in the Code of Criminal Procedure, 725 ILCS 5/1 07-12: (a) Whenever a peace officer is authorized to arrest a person without a warrant he may instead issue to such a person a notice to appear *** (c) Upon failure of the person to appear a summons or warrant of arrest may issue." A notice to appear "is a means by which a person may be brought before the court without the inconvenience of immediate arrest ***. Such a notice may be issued whenever a peace officer has probable cause to make a warrantless arrest." *People v. Warren*, 173 Ill. 2d 348, 357 (1996).

The purpose of this rule is to continue to allow prosecuting entities to utilize the most efficient means of initiating ordinance violation proceedings. "Notices to Appear" are an appropriate and reasonable means of informing defendants of charges against them and are similar to citations issued in traffic cases.

This does not prohibit a prosecuting entity from obtaining an arrest warrant based upon probable cause, as authorized in section 1-2-9 of the Municipal Code (65 ILCS 5/1-2-9).

This rule also makes it clear that an attorney need not sign the charging document in every case. This is especially important where the process is initiated by a nonattorney such as a police officer or code enforcement officer.

(b) This section provides for issuance of default judgments or warrants upon a failure to appear.

(c) This is intended to minimize paperwork and codify the decision in *Village of Oak Park v. Flanagan*, 35 Ill. App. 3d 6 (1st Dist. 1975). The Village of Oak Park case involved prosecution for multiple parking tickets in which the court held that a computer printout was sufficient to comply with the requirements of pleading for ordinance violations. Note, however, this rule is not meant to contravene the one act,

one crime rule identified in *Village of Sugar Grove v. James Rich,* 347 Ill. App. 3d 689 (1st Dist. 2004).

(d) Section 2-604 of the Code of Civil Procedure requires a "specific" prayer for relief. 735 ILCS 5/2-604. This paragraph is intended to make it clear that a prayer for a penalty within the penalty range authorized by the ordinance is sufficiently specific to advise the defendant of the maximum penalty to which they are exposed.

(e) Section 2-616(a) of the Code of Civil Procedure specifically permits amendments to civil pleadings at various times. 735 ILCS 5/2-616(a). The purpose is to avoid minor errors in the charging document being a cause of a finding of not guilty when a violation has been proved by the requisite proof. The last sentence enforces the requirement of Rule 572(b) that if the prosecuting entity will seek a default judgment, it must state the specific amount in the charging document or combination of documents served upon the defendant.

New Rule 573

Rule 573. Service of the Charging Document

The charging document, including a notice to appear, may be served by hand delivery by a peace officer, code enforcement officer, or as otherwise authorized by law. Where the fine would not be in excess of $750 for a municipal ordinance offense, service of summons may be made by certified mail, return receipt requested, as authorized in section 11-2-9.1 of the Vehicle Code (65 ILCS 5/11-2-9.1) whether service is to be within or without the state. Parking tickets should include a certification that the ticket was either placed on the vehicle or hand delivered to the driver. This rule does not prohibit initiating prosecution by any other means authorized by statute.

Adopted December 7, 2011, effective immediately.

Committee Comments
(December 7, 2011)

Service of process in civil actions generally is covered in Supreme Court Rules 101 through 110. Many ordinance prosecutions are initiated by code enforcement officers, *e.g.*, building safety inspectors for property maintenance violations or animal control officers for animal ordinance violations.

The final sentence makes it clear that this rule allowing for the initiation of prosecution by a Notice to Appear does not abrogate the opportunity to initiate a prosecution as provided in section 1-2-9 of the Municipal Code (65 ILCS 5/1-2-9), namely, by summons or warrant.

New Rule 574

Rule 574. Opportunity to Settle

An opportunity to avoid a court appearance through settlement of the dispute may be provided for by ordinance. The manner and time limit for settlement before which a court appearance will be required may be set forth in the charging document.

Adopted December 7, 2011, effective immediately.

Committee Comment
(December 7, 2011)

This rule permits settlement of a violation. This allows for more efficient processing and court time management.

New Rule 575

Rule 575. Appearance of Defendant, Answer; Failure to Appear; Discovery and Pretrial Procedures

(a) A defendant responding to a charging document for an ordinance violation may appear and enter a plea, file an answer to the charge, or file other responsive pleadings. A Not Guilty plea will be construed as a general denial. The defendant need not file a written answer unless ordered to do so by the Court.

(b) In the event the defendant fails to appear at any proceeding for which the Court has not excused the defendant's appearance, an arrest warrant may issue, or default judgment may be entered. If such judgment is entered, the defendant shall be mailed written notice to the defendant's last known address of: (1) the amount of the judgment, (2) if applicable, the date by which such judgment must be paid, and (3) that a motion to vacate judgment must be filed within 30 days of the date of the mailing of the written notice. "Defendant's last known address" shall be presumed to be the address provided by the defendant himself or herself upon actual delivery of the charging document.

(c) A party may make a motion for summary judgment prior to any trial· on the merits.

(d) In prosecutions for violations of ordinances, no discovery procedures shall be allowed prior to trial except by leave of court.

Adopted December 7, 2011, effective immediately.

Committee Comment
(December 7, 2011)

(a) The purpose of this section is to provide for a simple process for those who appear to answer a charge and also in determining the effect of a failure to appear for

an ordinance violation charge. Supreme Court Rule 286(a) provides for a general denial in small claims cases and this rule provides a similar procedure for ordinance violations. Supreme Court Rule 556(a) permits the entry of default judgment in traffic cases. This rule provides a similar procedure for ordinance violations.

(b) This section provides for procedures to follow in the event of a Defendant's failure to appear at any proceeding for which the Court has not previously excused the appearance.

(c) *Village of Beckmeyer v. Wheelan,* 212 Ill. App. 3d 287 (5th Dist. 1991), provides for summary judgment motions in ordinance violation cases.

(d) Supreme Court Rule 20l(h) provides: "In suits for violation of municipal ordinances where the penalty is a fine only no discovery procedure shall be used prior to trial except by leave of court. This rule extends the application of the rule to cases in which penalties may include public service work and restitution in addition to fines.

New Rule 576

Rule 576. Right to Counsel

A defendant has a right to be represented by an attorney; however, there shall be no right to appointment of counsel in suits for violation of ordinances for which the penalty does not include the possibility of a jail term.

Adopted December 7, 2011, effective immediately.

Committee Comment
(December 7, 2011)

This rule reiterates the long held principle that the right to a court appointed counsel does not attach where there is no possibility of being sentenced to a jail term as a penalty for the underlying offense. See *City of Urbana v. Andre N.B.*, 211 Ill. 2d 456 (2004); *City of Danville v. Clark,* 63 Ill. 2d 408 (1976).

New Rule 577

Rule 577. Jury Trial

Either party shall have the right to trial by a jury. The prosecuting entity shall make its jury demand at the time the action is commenced. The defendant shall make his or her jury demand and pay the jury demand fee at the time of entering his or her appearance, plea, answer to the charge, or other responsive pleading. Failure to pay the required jury fee to the clerk of the circuit court at the time of entering his or her initial appearance, or by a date ordered by the court, shall constitute a forfeiture of the right to a jury trial.

Because ordinance offenses do not provide for penalties in excess of $50,000, any jury request shall result in the matter being tried by a jury of six members.

Adopted December 7, 2011, effective immediately.

Committee Comment
(December 7, 2011)

Section 2-1105 of the Code of Civil Procedure is applicable to jury demands in ordinance violation cases. *City of Danville v. Hartshorn*, 53 Ill. 2d 399, 403 (1973). Section 103-6 of the Code of Criminal Procedure also applies to jury demands in ordinance violation cases. It provides: "every person accused of an offense shall have the right to a trial by jury unless *** (ii) the offense is an ordinance violation punishable by fine only and the defendant either fails to file a demand for a trial by jury at the time of entering his or her plea of not guilty or fails to pay to the clerk of the circuit court at the time of entering his or her plea of not guilty any jury fee required to be paid to the clerk." 725 ILCS 5/103-6; 705 ILCS 105.27.1a(w)(3).

New Rule 578

Rule 578. Burden of Proof

The prosecuting entity must prove the ordinance violation by a preponderance of the evidence; meaning it is more likely true than not that the violation occurred.

Adopted December 7, 2011, effective immediately.

Committee Comment
(December 7, 2011)

This rule restates case law which holds that the burden of proof in ordinance violation cases is the civil law standard of preponderance of the evidence rather than the criminal standard of beyond a reasonable doubt. *City of Mattoon v. Mentzer*, 282 Ill. App. 3d 628, 634 (4th Dist. 1996) (citing *Chicago v. Joyce*, 38 Ill. 2d 368, 373 (1967)).

New Rule 579

Rule 579. Disposition and Appeal

(a) Sentence. The court shall determine the amount of any fine for an ordinance violation to which these rules apply, except that any fine imposed shall not be less than the "minimum fine" authorized by ordinance. Court costs shall be imposed.

(b) Additional Conditions. In addition to any fine imposed, the court may impose a sentence including restitution, or other appropriate penalties or conditions

authorized by ordinance. A sentence of conditional discharge or court supervision disposition shall be permitted by ordinance.

(c) Dispositional Considerations. The court may consider evidence and information may be offered by the parties in consideration for the penalties and/or conditions sought.

(d) Appealability. Either party shall have the right to appeal any final judgment entered in an ordinance violation case pursuant to Rule 303, "Appeals from Final Judgments of the Circuit Court in Civil Cases."

Adopted December 7, 2011, effective immediately.

Committee Comment
(December 7, 2011)

(a) In accordance with typical situations in which a range of penalties is authorized by statute, the court in *City of Chicago v. Roman*, 184 Ill. 2d 504, 511 (1998), held that the fine may not be less than the statutory minimum.

(b) Under the holding in *City of Highland Park v. Curtis*, 83 Ill. App. 2d 218, 229 (2d Dist. 1967), the court should be permitted to impose restitution. Other dispositions must be provided for by ordinance. *Village of Wheeling v. Evanger's Dog and Cat Food Co., Inc.*, 399 Ill. App. 3d 304 (1st Dist. 2010).

(c) Statutory authorization for imposition of court supervision is found in the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*). *Village of Wheeling v. Evanger's Dog and Cat Food Co., Inc.*, 399 Ill. App. 3d 304, 307 (1st Dist. 2010).

(d) Because ordinance violation prosecutions are "quasi-criminal in character, but civil in form," municipalities may properly appeal from a judgment in favor of a defendant. Neither double jeopardy nor Supreme Court Rule 604 bars such an appeal. *Village of Riverdale v. Irwin*, 259 Ill. App. 3d 1008, 1009 (1st Dist. 1994); *Village of Park Forest v. Bragg*, 38 Ill. 2d 225, 227 (1967).

Amended Rule 751

RULE 751. Attorney Registration and Disciplinary Commission

(a) **Authority of the Commission.** The registration of, and disciplinary proceedings affecting, members of the Illinois bar, and unauthorized practice of law proceedings instituted under the authority of Rule 752(a), shall be under the administrative supervision of an Attorney Registration and Disciplinary Commission. Any lawyer admitted in another United States jurisdiction who provides legal services on a temporary basis in Illinois pursuant to Rule 5.5 of the Illinois Rules of Professional Conduct shall be subject to the administrative supervision of the Attorney Registration and Disciplinary Commission to the same extent as a lawyer licensed to practice law in this state. The authority granted in this paragraph to the Attorney Registration and Disciplinary Commission related to the

unauthorized practice of law proceedings shall be independent of that granted by statute, regulation, or other legal authority to any governmental agency, entity, or individual to pursue action relating to the unauthorized practice of law, including but not limited to any action by the Illinois Attorney General or State's Attorney, or any action filed pursuant to the Illinois Attorney Act (705 ILCS 205/1).

(b) Membership and Terms. The Commission shall consist of four members of the Illinois bar and three nonlawyers appointed by the Supreme Court. One member shall be designated by the court as chairperson. Unless the court specifies a shorter term, all members shall be appointed for three-year terms and shall serve until their successors are appointed. Any member of the Commission may be removed by the court at any time, without cause.

(c) Compensation. None of the members of the Commission shall receive compensation for serving as such, but all members shall be reimbursed for their necessary expenses.

(d) Quorum. Four members of the Commission shall constitute a quorum for the transaction of business. The concurrence of four members shall be required for all action taken by the Commission.

(e) Duties. The Commission shall have the following duties:

(1) to appoint, with the approval of the Supreme Court, an administrator to serve as the principal executive officer of the registration and disciplinary system. The Administrator shall receive such compensation as the Commission authorizes from time to time;

(2) to make rules for disciplinary and unauthorized practice of law proceedings not inconsistent with the rules of this court;

(3) to supervise the activities of the Administrator; supervision of the Administrator shall include review, after the fact, of representative samples of investigative matters concluded by the Administrator without reference to the Inquiry Board;

(4) to authorize the Administrator to hire attorneys, investigators and clerical personnel and to set the salaries of such persons;

(5) to appoint from time to time, as it may deem appropriate, members of the bar to serve as commissioners in addition to those provided for in Rule 753;

(6) to collect and administer the disciplinary fund provided for in Rule 756, to collect and remit to the Lawyers' Assistance Program Fund the fee described in Rule 756(a)(1) and the Lawyers' Assistance Program Act (30 ILCS 105/5.570), to collect and remit to the Lawyers Trust Fund the fee described in Rule 756(a)(1), to collect and remit to the Supreme Court Commission on Professionalism the fee described in Rule 756(a)(1) and, on or before April 30 of each year, file with the court an accounting of the monies received and expended for disciplinary activities and fees remitted to the Lawyers' Assistance Program Fund, the Lawyers Trust Fund, and the Supreme Court Commission on Professionalism, and a report of such activities for the previous calendar year, which shall be published by the court, and there shall be an independent annual audit of the disciplinary fund as directed by the court, the expenses of which shall be paid out of the fund;

(7) to submit an annual report to the court evaluating the effectiveness of the registration and disciplinary system and recommending any changes it deems desirable; and

(8) to develop a comprehensive orientation program for new members of the Inquiry Board and implement that program.

Adopted January 25, 1973, effective February 1, 1973; amended effective May 17, 1973, April 1, 1974, and May 21, 1975; amended August 9, 1983, effective October 1, 1983; amended April 10, 1987, effective August 1, 1987; amended June 4, 1987, effective immediately; amended March 17, 1988, effective immediately; amended October 13, 1989, effective immediately; amended October 4, 2002, effective immediately; amended September 29, 2005, effective immediately; amended July 1, 2009, effective January 1, 2010; amended December 7, 2011, effective immediately.

Amended Rule 752

RULE 752. Administrator

Subject to the supervision of the Commission, the Administrator shall:

(a) On his own motion, on the recommendation of an Inquiry Board or at the instance of an aggrieved party, investigate conduct of attorneys licensed in Illinois and attorneys admitted in another United States jurisdiction who provide legal services on a temporary basis in Illinois pursuant to Rule 5.5 of the Illinois Rules of Professional Conduct, ~~which~~ whose conduct tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute, and investigate allegations of the unauthorized practice of law, including investigations involving disbarred lawyers and other persons, entities, or associations that are not authorized to practice law by this court.

(b) Assist each Inquiry Board in its investigations and prosecute disciplinary cases before the Hearing Boards, the Review Board and the court and prosecute unauthorized practice of law proceedings pursuant to Rule 779;

(c) Employ at such compensation as may be authorized by the Commission, such investigative, clerical and legal personnel as may be necessary for the efficient conduct of his office;

(d) Discharge any such personnel whose performance is unsatisfactory to him; and

(e) Maintain such records, make such reports and perform such other duties as may be prescribed by the Commission from time to time.

Adopted January 25, 1973, effective February 1, 1973; amended effective May 17, 1973, and April 1, 1974; amended March 17, 1988, effective immediately; amended December 7, 2011, effective immediately.

Amended Rule 753

RULE 753. Inquiry, Hearing and Review Boards

(a) **Inquiry Board**

(1) There shall be an Inquiry Board. It shall consist of members of the bar of Illinois and nonlawyers appointed by the Commission to serve annual terms as commissioners of the court. Nonlawyer members shall be appointed to the Board in a ratio of two lawyers for each nonlawyer. The Commission may appoint as many members of the Board as it deems necessary to carry on the work of the Board.

(2) The Board shall inquire into and investigate matters referred to it by the Administrator. The Board may also initiate investigations on its own motion and may refer matters to the Administrator for investigation.

(3) After investigation and consideration, the Board shall dispose of matters before it by voting to dismiss the charge, to close an investigation ~~or,~~ to file a complaint with the Hearing Board, or to institute unauthorized practice of law proceedings.

(4) The Board may act in panels. Each panel shall consist of two lawyers and one nonlawyer as designated by the Commission. The Commission shall designate one of the members of each panel as chairman. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision.

(b) **Filing a Complaint.** A disciplinary complaint voted by the Inquiry Board shall be prepared by the Administrator and filed with the Hearing Board. The complaint shall reasonably inform the attorney of the acts of misconduct he is alleged to have committed.

(c) **Hearing Board**

(1) There shall be a Hearing Board. It shall consist of members of the bar of Illinois and nonlawyers appointed by the Commission to serve annual terms as commissioners of the court. Members shall be appointed to the Board in a ratio of two lawyers for each nonlawyer.

(2) The Hearing Board may act in panels of not less than three members each, as designated by the Commission. The Commission shall also designate one of the lawyer members of each panel as chairperson. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision. In the absence of the chairperson of a panel at a hearing, the lawyer member present shall serve as acting chairperson.

(3) The hearing panels shall conduct hearings on complaints filed with the Board and on petitions referred to the Board. The panel shall make findings of fact and conclusions of fact and law, together with a recommendation for discipline, dismissal of the complaint or petition, or nondisciplinary disposition. The Hearing Board may order that it will administer a reprimand to the respondent in lieu of recommending disciplinary action by the court.

(4) The scheduling of matters before the Board shall be in accordance with Commission rules.

(5) Proceedings before the Board, including discovery practice, shall be in accordance with the Code of Civil Procedure and the rules of the supreme court as modified by rules promulgated by the Commission pursuant to Supreme Court Rule 751(a). Information regarding prior discipline of a respondent will not be divulged to a hearing panel until after there has been a finding of misconduct, unless that information would be admissible for reasons other than to show a propensity to commit the misconduct in question.

(6) Except as otherwise expressly provided in these rules, the standard of proof in all hearings shall be clear and convincing evidence.

(d) **Review of Hearing Board Reports**

(1) Review Board. There shall be a nine-member Review Board which shall be appointed by the court. Appointments shall be for a term of three years or until a successor is appointed. Appointments to the Review Board shall be staggered, so that the terms of three members are scheduled to expire each year. No member shall be appointed for more than three consecutive three-year terms. One member shall be designated by the court as chairperson. The Review Board shall function in panels of three, presided over by the most senior member of the panel. The concurrence of two members of a panel shall be necessary to a decision.

(2) Exceptions; Agreed Matters. Reports of the Hearing Board shall be docketed with the Review Board upon the filing of a notice of exceptions by either party. The respondent or the Administrator may file exceptions to the report of the Hearing Board with the Review Board within 21 days of the filing of the report in the Commission. If neither the respondent nor the Administrator files a notice of exceptions to the Hearing Board report, and the report recommends action by the court, the clerk of the Attorney Registration and Disciplinary Commission shall submit the report of the Hearing Board to the court as an agreed matter. Upon the submission of any matter as an agreed matter, the clerk of the Commission shall give notice to the parties of that submission. Within 21 days after submission of the report to the court, the Administrator shall file a motion to approve and confirm the report of the Hearing Board. No response to this motion shall be filed unless ordered by the court on its own motion or pursuant to a motion for leave to respond. Upon receipt of the motion to approve and confirm, the court may enter a final order as recommended by the Hearing Board or as otherwise determined by the court, order briefs or oral argument or both, or remand the matter with directions to the Hearing Board or the Review Board.

(3) Action by the Review Board. The Review Board may approve the findings of the Hearing Board, may reject or modify such findings as it determines are against the manifest weight of the evidence, may make such additional findings as are established by clear and convincing evidence, may approve, reject or modify the recommendations, may remand the proceeding for further action or may dismiss the proceeding. The Review Board may order that it will administer a reprimand to the respondent in lieu of recommending

disciplinary action by the court. A copy of the report or order of the Review Board shall be served on the respondent and the Administrator.

(e) **Review of Review Board Reports**

(1) Petition for Leave to File Exceptions. Reports or orders of the Review Board shall be reviewed by the court only upon leave granted by the court or upon the court's own motion. Either party may petition the court for leave to file exceptions to the order or report of the Review Board. The petition shall be filed within 35 days of the filing of the order or report in the Commission. The supreme court, or a justice thereof, on motion supported by affidavit or verification by certification under section 1-109 of the Code of Civil Procedure may extend the time for petitioning for leave to file exceptions, but such motions are not favored and will be allowed only in the most extreme and compelling circumstances. (See Rule 361.)

(2) Grounds for Petition for Leave to File Exceptions. Whether a petition for leave to file exceptions will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered; the general importance of the question presented; the existence of a conflict between the report of the Review Board and prior decisions of the court; and the existence of a substantial disparity between the discipline recommended and discipline imposed in similar cases.

(3) Contents of Petition for Leave to File Exceptions. The petition for leave to file exceptions shall contain, in the following order:

(a) a request for leave to file exceptions;

(b) a statement of the date upon which the report of the Review Board was filed;

(c) a statement of the points relied upon for rejection of the report of the Review Board;

(d) a fair and accurate statement of the facts, which shall contain the facts necessary to an understanding of the case, without argument or comment, with appropriate references to the record by transcript page and exhibit number;

(e) a short argument (including appropriate authorities) stating why review by the supreme court is warranted and why the decision of the Review Board should be rejected; and

(f) a copy of the reports of the Hearing and Review Boards and proposed exceptions shall be appended to the petition. The petition shall otherwise be prepared, served, and filed in accordance with requirements for briefs as set forth in Rule 341.

(4) Answer. The opposing party need not but may file an answer, with proof of service, within 14 days after the expiration of the time for the filing of the petition. The supreme court, or a justice thereof, on motion supported by affidavit or verification by certification under section 1-109 of the Code of Civil Procedure may extend the time for filing an answer, but such motions are not favored and will be allowed only in the most extreme and compelling

circumstances. (See Rule 361.) An answer shall set forth reasons why the petition should not be granted, and shall conform, to the extent appropriate, to the form specified in this rule for the petition, omitting the first four items set forth in paragraph (3) except to the extent that correction of the petition is considered necessary. The answer shall otherwise be prepared, served, and filed in accordance with the requirements for briefs as set forth in Rule 341. No reply to the answer shall be filed.

(5) Ruling on Petition.

(a) If the court allows exceptions to an order or report of the Review Board, it may:

(i) enter a final order as recommended by the Review Board or as otherwise determined by the court;

(ii) enter an order remanding the matter with directions to the Hearing Board or the Review Board; or

(iii) accept the matter for further consideration.

If the case is accepted for further consideration, the clerk of the Attorney Registration and Disciplinary Commission shall transmit the record of the case to the court. Either party may assert error in any ruling, action, conclusion or recommendation of the Review Board without regard to whether the party filed exceptions. The petition for leave to file exceptions allowed by the court shall stand as the brief of the appellant. Remaining briefs shall be prepared, filed, and served in compliance with Rules 341 and 343. The parties shall not be entitled to oral argument before the court as of right. Oral argument may be requested in accordance with Rule 352.

(b) If the court denies leave to file exceptions, it may:

(i) enter a final order as recommended by the Review Board or as otherwise determined by the court; or

(ii) enter an order remanding the matter with directions to the Hearing Board or the Review Board.

(6) Agreed Matters. If a petition for leave to file exceptions is not timely filed and if the report of the Review Board recommends action by the court, the clerk of the Attorney Registration and Disciplinary Commission shall submit the report of the Review Board together with a copy of the report of the Hearing Board to the court as an agreed matter. Upon the submission of any matter as an agreed matter, the clerk of the Commission shall give notice to the parties of that submission. Within 21 days after submission of the report to the court, the Administrator shall file a motion to approve and confirm the report of the Review Board. No response to this motion shall be filed unless ordered by the court on its own motion or pursuant to a motion for leave to respond. Upon receipt of the motion to approve and confirm, the court may enter a final order of discipline as recommended or as otherwise determined by the court, order briefs or oral argument or both, or remand the matter with directions to the Hearing Board or the Review Board.

(7) Finality of Review Board Decision. If exceptions are not filed and the order or report of the Review Board does not recommend disciplinary action by the court, the order or report of the Review Board shall be final.

(f) **Duty of Respondent or Petitioner.** It shall be the duty of the respondent or petitioner who is the subject of any investigation or proceeding contemplated by these rules to appear at any hearing at which his presence is required or requested. Failure to comply, without good cause shown, may be considered as a separate ground for the imposition of discipline or denial of a petition.

Adopted January 25, 1973, effective February 1, 1973; amended effective May 17, 1973, April 1, 1974, and May 21, 1975; amended October 1, 1976, effective November 15, 1976; amended August 9, 1983, effective October 1, 1983; amended July 1, 1985, effective August 1, 1985; amended October 13, 1989, effective immediately; amended October 16, 1990, effective November 1, 1990; amended May 26, 1993, effective immediately, amended October 15, 1993, effective immediately; amended December 30, 1993, effective January 1, 1994; amended February 2, 1994, effective immediately; amended December 1, 1995, effective immediately; amended June 29, 2006, effective September 1, 2006; amended December 7, 2011, effective immediately.

Amended Rule 754

RULE 754. Subpoena Power

(a) **Power to Take Evidence.** The Administrator, the Inquiry Board and the Hearing Board are empowered to take evidence of respondents, petitioners and any other attorneys or persons who may have knowledge of the pertinent facts concerning any matter which is the subject of an investigation or hearing.

(b) **Issuance of Subpoenas.** The clerk of the court shall issue a subpoena *ad testificandum* or a subpoena *duces tecum* as provided below:

(1) upon request of the Administrator related to an investigation conducted pursuant to Rules 752, 753, 759, 767, 779, or 780 or related to a deposition or hearing before the Hearing Board; the Administrator may use a subpoena in an investigation conducted pursuant to Rule 753 until such time as a complaint is filed with the Hearing Board;

(2) upon request of the Inquiry or Hearing Board related to a proceeding pending before the Board;

(3) upon request of the respondent or the petitioner related to a deposition or hearing before the Hearing Board; or

(4) upon request of the Administrator related to the investigation or review of a Client Protection Claim.

(c) **Fees and Costs.** Respondents and petitioners shall not be entitled to a witness fee or reimbursement for costs to comply with any subpoena issued pursuant to this rule. All other persons shall be entitled to payment for fees, mileage and other costs as provided by law. Such payments shall be made by the Commission for a subpoena

issued at the instance of the Administrator, the Inquiry Board or the Hearing Board. Such payments shall be made by the respondent or the petitioner for a subpoena issued at his instance.

(d) **Judicial Review.** A motion to quash a subpoena issued pursuant to this rule shall be filed with the court. Any person who fails or refuses to comply with a subpoena may be held in contempt of the court.

(e) **Enforcement.** A petition for rule to show cause why a person should not be held in contempt for failure or refusal to comply with a subpoena issued pursuant to this rule shall be filed with the court. Unless the court orders otherwise, the petition shall be referred to the chief judge of the circuit court of Cook County or Sangamon County or any other judge of those circuits designated by the chief judge. The designated judge shall be empowered to entertain petitions, hear evidence, and enter orders compelling compliance with subpoenas issued pursuant to this rule. When a petition is referred to the circuit court, the following procedures should be followed:

(1) The Clerk of the Supreme Court shall forward a copy of the petition for rule to show cause to the designated judge of the circuit court and, at the same time, shall send notice to the party who filed the petition and all persons upon whom the petition was served that the matter has been referred to the circuit court. The notice shall name the judge to whom the matter has been referred and state the courthouse at which proceedings pertaining to the petition will be heard.

(2) Any answer to the petition or other responsive pleading shall be filed with the Clerk of the Supreme Court and a copy of such answer or other pleading shall be delivered to the judge to whom the matter has been referred by mailing or hand delivering the copy to the chambers of the designated judge. The proof of service for such answer or other responsive pleading shall state that delivery to the designated judge was made in accordance with this rule.

(3) Proceedings on the petition before the designated judge, including scheduling of hearings and time for serving notices of hearing, shall be governed by the rules of the circuit court in which the designated judge sits, unless otherwise ordered by the judge.

(4) The designated judge may enter any order available to the circuit court in the exercise of its authority to enforce subpoenas, including orders for confinement or fines. If the judge finds an attorney in contempt for failure to comply with a subpoena issued pursuant to this rule, in addition to entertaining any other order, the judge may also recommend that the court suspend the attorney from the practice of law in this State until the attorney complies with the subpoena. Upon issuance of such a recommendation by the designated judge, the Administrator shall file with the Clerk of the Supreme Court a petition seeking implementation of the recommendation of suspension.

Adopted January 25, 1973, effective February 1, 1973; amended May 21, 1975; amended June 12, 1987, effective August 1, 1987; amended November 29, 1990, effective December 1, 1990; amended March 28, 1994, effective immediately; amended April 1, 1994, effective immediately; amended December 7, 2011, effective immediately.

Amended Rule 775

RULE 775. Immunity

Any person who submits a claim to the Client Protection Program or who communicates a complaint concerning an attorney or allegations regarding the unauthorized practice of law to the Attorney Registration and Disciplinary Commission, or its administrators, staff, investigators or any member of its boards, shall be immune from all civil liability which, except for this rule, might result from such communications or complaint. The grant of immunity provided by this rule shall apply only to those communications made by such persons to the Attorney Registration and Disciplinary Commission, its administrators, staff, investigators and members of its boards.

Adopted October 13, 1989, effective immediately; amended March 28, 1994, effective immediately; amended December 7, 2011, effective immediately.

Amended Rule 778

RULE 778. Retention of Records by Administrator

(a) **Retention of Records.** The Administrator is permitted to retain the record of investigation for all matters resulting in the imposition of discipline as defined by Rule 770 ~~or,~~ for investigations which have been stayed or deferred by the transfer of the attorney to disability inactive status, or for investigations that have resulted in the filing of unauthorized practice of law proceedings.

(b) **Expungement.** The Administrator shall expunge the record of an investigation concluded by dismissal or closure by the Administrator or Inquiry Board three years after the disposition of the investigation, unless deferral of expunction is warranted under paragraph (c). Expungement shall consist of the Administrator's destruction of the investigative file and other related materials maintained by the Administrator relating to the attorney, including any computer record identifying the attorney as a subject of an investigation.

(c) **Deferral of Expungement of Investigative Materials.** Expungement of an investigative file and all related materials under paragraph (b) shall be deferred until the passage of three years from the later of the following events:

(1) the conclusion of any pending disciplinary or disability proceeding related to the attorney before the Hearing or Review Boards or the Court; or

(2) the termination of any previously imposed sanction (including suspension, disbarment or probation) or the restoration of the attorney from disability inactive to active status.

Adopted January 5, 1993, effective immediately; amended June 29, 1999, effective November 1, 1999; amended December 7, 2011, effective immediately.

New Rule 779

RULE 779. Unauthorized Practice of Law Proceedings

(a) Proceedings against Suspended Illinois Lawyers and Out of State Lawyers. Unauthorized practice of law proceedings authorized by the Inquiry Board against an Illinois attorney who is suspended or against a lawyer licensed in another jurisdiction in the United States shall be instituted by the Administrator by the filing of a disciplinary complaint before the Hearing Board, and the hearing and review procedure shall be governed by Rule 753.

(b) Proceedings Against Disbarred Illinois Lawyers and Unlicensed Persons. Unauthorized practice of law proceedings authorized by the Inquiry Board against an Illinois attorney who is disbarred or disbarred on consent or against a person, entity or association that is not licensed to practice law in any other United States' jurisdiction may be brought by the Administrator as civil and/or contempt actions pursuant to the rules of this court, its inherent authority over the practice of law, or other laws of the State related to the unauthorized practice of law. Proceedings shall be commenced in the circuit court for the circuit in which venue would be proper under the Code of Civil Procedure (735 ILCS 5/2-101 *et seq*.), unless venue is fixed by a specific law governing the proceedings, in which case that venue provision controls. The circuit court is authorized to enter a final judgment disposing of the case. Appeals from that judgment are governed by Rule 301 of this court.

Adopted December 7, 2011, effective immediately.

Amended Rule 791

Rule 791. Persons Subject to MCLE Requirements

(a) Scope and Exemptions

These Rules shall apply to every attorney admitted to practice law in the State of Illinois, except for the following persons, who shall be exempt from the Rules' requirements:

(1) All attorneys on inactive or retirement status pursuant to Supreme Court Rules 756(a)(5) or (a)(6), respectively, or on inactive status pursuant to the former Supreme Court Rule 770 or who have previously been placed on voluntarily removed status by the Attorney Registration and Disciplinary Commission ("ARDC");

(2) All attorneys on disability inactive status pursuant to Supreme Court Rules 757 or 758;

(3) All attorneys serving in the office of justice, judge, associate judge, or magistrate of any federal or state court;

(4) All attorneys ~~who, by virtue of their office~~ serving in the office of judicial law clerk, administrative assistant, secretary, or assistant secretary to a justice, judge, associate judge or magistrate of any federal court or any court of the State of Illinois and who ~~or employment in the state or federal judiciary,~~ are prohibited

by the terms of their employment ~~the Supreme Court of Illinois or the federal judiciary~~ from actively engaging in the practice of law;

(5) All attorneys licensed to practice law in Illinois who are on active duty in the Armed Forces of the United States, until their release from active military service and their return to the active practice of law;

(6) An attorney otherwise subject to this rule is entitled to an exemption if the attorney meets all of these criteria:

(i) the attorney is a member of the bar of another state which has a comparable minimum continuing legal education requirement~~,~~ or is licensed to practice law under a limited license issued by another state which has a comparable minimum continuing legal education requirement;

(ii) the individual attorney's only or primary office is in that other state or, if the attorney has no office, the individual attorney's only or primary residence is in that state;

(iii) the attorney is required by that state to complete credits to be in compliance with the continuing legal education requirements established by court rule or legislation in that state; and

(iv) the attorney has appropriate proof that he or she is in full compliance with the continuing legal education requirements established by court rule or legislation in that state; and

(7) In rare cases, upon a clear showing of good cause, the Minimum Continuing Legal Education Board ("Board") may grant a temporary exemption to an attorney from the Minimum Continuing Legal Education ("MCLE") requirements, or an extension of time in which to satisfy them. Good cause for an exemption or extension may exist in the event of illness, financial hardship, or other extraordinary or extenuating circumstances beyond the control of the attorney. Attorneys denied a temporary exemption or extension may request reconsideration of the initial decision made by the Director of MCLE ("Director") by filing a request in a form approved by the Board (or a substantially similar form) no later than 30 days after the Director's initial decision. The Director shall decide the request for reconsideration within 30 days of its receipt, and promptly notify the attorney. If the Director denies the request, the attorney shall have 30 days from the date of that denial to submit an appeal to the full Board for consideration at its next scheduled Board meeting. Submission of a request for reconsideration or an appeal does not stay any MCLE compliance deadlines or MCLE fee payments.

(b) Full Exemptions

An attorney shall be exempt from these Rules for an entire reporting period applicable to that attorney, if:

(1) The attorney is exempt from these Rules pursuant to paragraphs (a)(1), (a)(2), (a)(3), (a)(4),(a)(5), or (a)(6), on the last day of that reporting period; or

(2) The attorney is exempt from these Rules pursuant to paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6), for at least 365 days of that reporting period; or

(3) The attorney receives a temporary exemption from the Board pursuant to paragraph (a)(7), for that reporting period.

(c) Partial Exemptions

An attorney who is exempt from these Rules for more than 60, but less than 365, days of a two-year reporting period, and who is not exempt for the entire reporting period pursuant to paragraph (b), shall be required to earn one-half of the CLE activity hours that would otherwise be required pursuant to Rule s 794(a) and (d).

(d) Nonexemptions

An attorney who is exempt from these Rules for less than 61 days during a two-year reporting period, and who is not exempt for the entire reporting period pursuant to paragraph (b), shall be required to earn all of the CLE activity hours required pursuant to Rules 794(a) and (d).

(e) Resuming Active Status

An attorney who was exempt from these Rules, pursuant to paragraphs (b)(1) or (b)(2), above, for the attorney's last completed reporting period because the attorney was on inactive, retirement or disability inactive status pursuant to Supreme Court Rules756(a)(5) or (a)(6), 757 or 758, shall upon return to active status, have 24 months to complete the deferred CLE requirements, not to exceed two times the requirement for the current two-year reporting period, in addition to the CLE credit required for the current two-year reporting period.

(f) Attorneys on Discipline Status

Paragraphs (f)(1) and (2) shall apply to attorneys on discipline status for reporting periods ending June 30, 2012, and thereafter.

(1) Discipline Imposed Pursuant to Rules 770(a), (b), (c) and (e)

(i) An attorney whose discipline is imposed pursuant to Rules 770(a), (b), (c) and (e) is not required to comply with the MCLE requirements for any reporting period in which the discipline is in effect.

(ii) If the attorney is reinstated to the master roll by order of the Supreme Court ("Court"), the attorney must thereafter earn no less than 30 hours of MCLE credit and no more than 90 hours of MCLE credit which will be set by the MCLE Board based on the length of the attorney's discipline and whether credits need to be earned for the current reporting period. Those MCLE credits shall be earned and reported to the MCLE Board no later than 365 days after entry of the order reinstating the attorney to the master roll. The attorney shall contact the MCLE Board promptly after entry of the order reinstating the attorney to the master roll to establish the number of credits that need to be earned by the attorney. The attorney may apply any MCLE credits earned while the discipline imposed pursuant to Rules 770(a), (b), (c) or (e) was in effect. If the attorney does not earn the needed credits and report no later than 365 days after entry of the order reinstating the attorney to the master roll, the attorney shall pay a late fee, in an amount as set by the Board in the Court-approved fee schedule, and the attorney shall be referred to the ARDC pursuant to Rule 796(e). A reinstated attorney then needs to comply with the MCLE requirements for the two-year reporting period that begins after the attorney's reinstatement and all reporting periods thereafter.

(2) Discipline Pursuant to Rules 770(d), (f), (g) and (h)

An attorney whose discipline is imposed pursuant to Rules 770(d), (f), (g) and (h) is required to comply with the MCLE requirements for all reporting periods in which the discipline is in effect.

(g) Foreign Legal Consultants

Beginning with the reporting period ending June 30, 2012 and thereafter, the MCLE Rules do not apply to foreign legal consultants licensed under Rule 712.

Adopted September 29, 2005, effective immediately; amended December 6, 2005, effective immediately; amended February 10, 2006, effective immediately; amended September 27, 2011, effective immediately; amended December 7, 2011, effective immediately.