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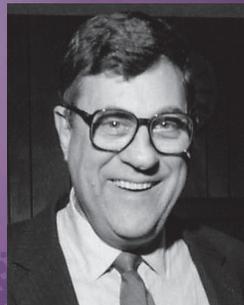
HAROLD I. LEVINE REAL ESTATE INSTITUTE

November 3, 2023

Welcome

Who was Harold Levine?

Lawyer, Educator, Mentor



Harold I. Levine
1931-2003

WHAT EVERY LAWYER SHOULD KNOW ABOUT 1099 REPORTING	2
VETTING A SUPREME COURT JUSTICE	36
PRACTICAL GUIDE TO THE NEW CLIENT TRUST ACCOUNT RULES RPC 1.5 AND 1.15	60
THE A, B, C'S OF MEDITATION	94

What Every Lawyer Should Know about 1099 Reporting

November 2, 2023

Presented by:

- Sophie T. Kabbes, *Underwriting Attorney*
- Greg Miely, *Senior Managing Attorney and
Corporate Counsel*



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Outline

- Reportable Transactions
- Exempt Transactions
- Reportable Information
- Requirements under Federal Law

Reportable Transactions

Reportable Transactions

- The sale or exchange of “reportable real estate” for money, indebtedness, property other than money, or services.
- The term “sale or exchange” does NOT depend on whether the transaction is currently taxable.
- A reporting person must make an information return with respect to a real estate transaction and must furnish a statement to the transferor

Reportable Transactions

- Reportable real estate includes:
 - Improved or unimproved land;
 - Permanent structures;
 - Condominium unit and common elements;
 - Stock in a cooperative.
- Includes present or future interests:
 - Fee simple;
 - Life estates;
 - Reversions;
 - Remainders;
 - Perpetual easements;
 - Leasehold if the remaining term is at least 30 years

Reportable Transactions

- Requirement to report found in 26 C.F.R. § 1.6045-4

Exempt Transactions

Exempt Transactions

- Exempt property;
- Exempt transferors;
- Exempt transactions

Exempt Property

- An interest in surface or subsurface natural resources or crops;
 - Examples- water, ores, and other natural deposits
- A burial plot or vault;
- A manufactured dwelling that is manufactured and assembled at a location different from that where it is used, but only if such structure is not affixed, at the date of closing
 - Example- unaffixed mobile home

Exempt Property

- If there is a combination of reportable and non-reportable property, the non-reportable property is also reportable
 - Example- sale of an unaffixed manufactured home and land. The entire transaction is reportable.

Exempt Transferor

- Corporations;
- Governmental unit;
- Volume Transferor

Exempt Transferor

- Corporations
 - “Incorporated,” “Inc.,” “Corporation,” “Corp.,” “P.C.,” “an Illinois Corporation”
 - NOT “Company” or “Co.”
 - “Insurance company,” “reinsurance company,” or “assurance company” are also acceptable
 - Does NOT include limited liability companies or other entity types

Exempt Transferor

- Governmental Unit
 - The United States, any state or political subdivision thereof (county, city, village, park district, etc.) or wholly-owned agency of any of them;
 - Any foreign government or political subdivision thereof or international organization listed in 22 U.S.C. § 288.

Exempt Transferor

- Volume transferor
 - Has sold or exchanged during either of the prior two calendar years,
 - Previously sold or exchanged during the current calendar year,
 - On the date of closing expects to sell or exchange during the current calendar year,
 - at least 25 separate items of reportable real estate to at least 25 separate transferees and each such item, at the date of closing of such item was or will be held primarily for sale or resale to customers in the ordinary course of a trade or business.

Exempt Transferor

- Volume Transferor Certification must be completed in order for Advocus to rely on this exemption from 1099 reporting

Exempt Transactions

- Gifts;
- Refinances;
- Transfers in satisfaction of debt (foreclosure, deed in lieu of foreclosure);
- De minimis transactions- less than \$600;
- Sale or Exchange of Principal Residence

Sale or Exchange of Principal Residence

- A transferor may claim the exemption for the sale or exchange of transferor's principal residence, if:
 1. The full amount of the gain on the sale or exchange is excludable from gross income under I.R.C. § 121.
 - Property has been used by taxpayer as principal residence for 2 years or more of the 5-year period ending on the date of the sale
 - Taxpayer does not qualify if they received an exemption within 2 years of the date of sale
 - If single, the amount of the gain shall not exceed \$250,000
 - If married filing jointly, the amount of the gain shall not exceed \$500,000 so long as either or both spouses meet the first requirement above AND neither spouse has taken advantage of exemption within 2 years of date of sale

Sale or Exchange of Principal Residence

2. The transferor provides the reporting person with a signed certification
3. After May 6, 1997, no portion of the residence has been used by the transferor or transferor's spouse for business or rental purposes
4. One of the following statements is true:
 - The sale or exchange is for \$250,000 or less; or
 - The sale or exchange is for \$500,000 or less and the gain (profit) is \$250,000 or less, and the seller is married; or
 - The sale or exchange is for \$500,000 or less, the transferor will be filing a joint return, the property was the principal residence of the transferor's spouse for at least two years during the five years prior to the sale or exchange, and the transferor's spouse has not sold or exchange another principal residence during the two years prior to the sale or exchange

Sale or Exchange of Principle Residence

5. During the 5-year period ending on the date of the sale or exchange, the transferor did not acquire the residence in a 1031 exchange
6. If the transferor's basis is determined by the basis of the person who acquired the residence in a 1031 exchange, the 1031 exchange occurred more than 5 years prior to the date of the current sale or exchange.

Certification of No Information Reporting on the Sale or Exchange of a Principal Residence

 **Advocus National Title Insurance Company**

CERTIFICATION FOR NO INFORMATION REPORTING ON THE SALE OR EXCHANGE OF A PRINCIPAL RESIDENCE

Advocus National Title Insurance Company, Inc.†
P.O. Box 9136†
Champaign, IL 61826-9136†
Taxpayer Identification Number: 37-1222620†

This form may be completed by the seller of a principal residence. This information is necessary to determine whether the sale or exchange should be reported to the seller, and to the Internal Revenue Service on Form 1099-S, Proceeds From Real Estate Transactions. If the seller properly completes Parts I and III, and makes a "true" response to assurances (1) through (7) in Part II (or a "not applicable" response to assurance (7)), no information reporting to the seller or to the Service will be required for that seller. The term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.†

Part I. Seller Information

1. Name: _____ (as reported to the IRS on tax returns or on Forms W-9 or SS-4)†
 2. Address or legal description (including city, state, and zip code) of residence being sold or exchanged: _____
 3. Taxpayer Identification Number (TIN): _____
 4. Forwarding Address: _____

Part II. Seller Assurances

Check "true" or "false" for assurances 1 through 5, and "true," "false," or "not applicable" for assurance 6.†

1. I owned and used the residence as my principal residence (as defined under Section 121 of the Internal Revenue Code) for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and there has been no period of nonqualified use (as that term is defined in section 121(b)(5)(C)) after December 31, 2008. True False

2. I have not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.† True False

3. I (or my spouse or former spouse if I was married at any time during the period beginning May 6, 1997, and ending today) have not used any portion of the residence for business or rental purposes after May 6, 1997.† True False

4. The full amount of the gain on such sale or exchange is excludable from gross income under section 121.† True False

5. At least one of the following three statements applies:† True False

The sale or exchange is of the entire residence for \$250,000 or less; or†
 I am married, the sale or exchange is of the entire residence for \$500,000 or less, and the gain on the sale or exchange of the entire residence is \$250,000 or less; or†
 I am married, the sale or exchange is of the entire residence for \$500,000 or less, and (a) I intend to file a joint return for the year of the sale or exchange, (b) my spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) my spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the principal residence.†

6. During the 5-year period ending on the date of the sale or exchange of the residence, I did not acquire the residence in an exchange to which Section 1031 of the Internal Revenue Code applied.† True False

7. If my basis in the residence is determined by reference to the basis in the hands of the person who acquired the residence in an exchange to which Section 1031 of the Internal Revenue Code applied, the exchange to which Section 1031 applied occurred more than 5 years prior to the date I sold or exchanged the residence.† N/A True False

Part III. Seller Certification

†† Under penalties of perjury, I certify that all the above information is true as of the end of the day of the sale or exchange.†

 (Signature of Seller) _____ (Date) _____

Member Name: _____ Member No.: _____ Commitment No.: _____

Reportable Information

Reportable Information

- Transferor;
- Property;
- Closing Date;
- Gross Proceeds;
- Reporting Person Information

Transferor

- You need to report the following from the transferor:
 - Name;
 - Address;
 - Taxpayer Identification Number (TIN)
- A Social Security Number (SSN) or Federal Employment Identification Number (FEIN) may be used as the TIN.
- If the transferor has neither an SSN nor FEIN, the transferor must obtain a TIN from the IRS prior to the closing.

Transferor – Special Cases

- Probate Estate
- Non-probate estate
- Guardianships
- Partnerships
- Trusts
- Single-member LLCs
- 1031 Exchanges
- Foreign Sellers
- Installment Sales

Transferor – Special Cases – Probated Estates

- If the personal representative is selling the property, then the sale is reportable to the estate under its own FEIN.
- The sale is NOT reportable to the decedent or to the heirs and devisees of the decedent.
- If the personal representative directs that the sale proceeds be distributed to the heirs/devisees, the sale is still reportable to the personal representative who is the actual transferor. Distribution to the heirs/devisees is merely an estate function.

Transferor – Special Cases – Probated Estates

- If the personal representative will not be selling the property but will be distributing it to the heirs/devisees who will be selling the property, a Notice of Probate – Release of Estate’s Interest should be recorded.
- No deed from the personal representative to the heirs/devisees is necessary since title vested in the heirs upon death of the decedent, and upon admission of the will to probate, the will itself acts as the conveyancing document (755 ILCS 5/4-13)
- The sale is reportable to the heirs/devisees in the proportion to which they allocate in writing.
- Any unallocated amount will be reported 100% to each remaining heirs/devisees for whom no allocation has been received.

Transferor – Special Cases – Unprobated Estates

- Similar to a probated estate in which the personal representative relinquishes the property to the heirs/devisees, a sale by the heirs/devisees of an unprobated estate is reportable to those heirs and devisees in proportion to which they allocate in writing.
- The sale is not reportable to the decedent.
- Again, any unallocated amounts will be reported 100% to each remaining transferors for whom there has been no allocation.

Transferor – Special Cases – Guardianships

- Similar to a probated decedent's estate in which the personal representative sells the property, a sale by a guardian of a minor or disabled adult would be reportable to the guardian under the guardian's FEIN for the estate.
- The sale is not reportable to the minor or the disabled adult, who are not legally competent to convey good title.

Transferor – Special Cases – Partnerships

- Under the former Uniform Partnership Act, partners held title to partnership real property as co-tenants in partnership, so a sale of partnership property would have been reportable to each of the partners in their proportionate share of the partnership.
- Under the revised Uniform Partnership Act “Property acquired by a partnership is property of the partnership and not of the partners individually.” 805 ILCS 206/203.

Transferor – Special Cases – Partnerships

- Property is deemed to be partnership property:
 - If acquired in the name of:
 - (1) the partnership; or
 - (2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership
- Property is “acquired in the name of the partnership” by a transfer to:
 - (1) the partnership in its name; or
 - (2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
- 805 ILCS 206/204(a) and (b)

Transferor – Special Cases – Partnerships

- Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.
- Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.
- 805 ILCS 206/204(c) and (d)

Transferor – Special Cases – Partnerships

- If there is a clear indication that the property is partnership property, then the sale will be reported to the partnership under its FEIN.
- If there is no indication of partnership, then the sale will be reported to the grantors under their individual taxpayer IDs.
- To avoid any misreporting, be certain that the 1099 documents clearly indicate whether the property being sold is partnership property.

Transferor – Special Cases – Land Trusts

- For a transaction in which title is vested in a corporate land trust (e.g., a title company or bank acting as trustee), the sale is reportable to the beneficiaries of the trust.
- Be certain that the 1099 documents (Solicitation of Taxpayer ID, Substitute 1099-S, and Certification of No Information reporting, if applicable) list the beneficiaries as the sellers/payees and not the corporate trustee.
- The pay proceeds letter is not acceptable as a substitute for the 1099 documents

Transferor – Special Cases – Grantor Trusts

- Of all the 1099 reporting problems experienced by Advocus, property held in a grantor trust has been the most problematic.
- A grantor trust is one in which title to the property is held by the grantor/settlor as trustee and as primary beneficiary.
- During the grantor/settlor's life, income, expenses, profits, and losses of the trust are taxable, and reportable, to the individual grantor/settlor of the trust under the individual's personal taxpayer ID.
- Upon death of the grantor/settlor, the income, expenses, profits, and losses are taxable, and reportable, to the trust under the trust's FEIN
- Cf. 26 USC §§671 to 679.
- Be certain that the 1099 documents list the individual grantor/settlor as the seller/payee with the individual's taxpayer ID.

Transferor – Special Cases – Grantor Trusts – ResWare

- In the Edit Seller dialog box, enter the trustee's or LLC's name, address, etc. and check the "Needs 1099" checkbox. Enter the appropriate "Allocated %" and enter the taxpayer ID in the "Primary SSN/TaxID" textbox or enter zeros if unknown. There must be an entry in this field in order to save the data. Save the data and close that dialog box, then print the 1099 package.
- Reopen the Edit Seller dialog box, enter the individual seller's name in the "Name for 1099, if different" textbox, complete the appropriate percentage allocation, and enter the individual's taxpayer ID/SSN in the "Primary SSN/TaxID" textbox. Save and close the dialog box and print the 1099 package.

Transferor – Special Cases – Grantor Trusts – ResWare

Edit Seller

Type: **Trust** Seller Needs 1099-S Allocated %: **100.00 %** Allocated \$: Exchange (Checkbox 4) Transferor is foreign Enabled

Refunds/Proceeds Group: **Print**

Trust/Estate Name: John P. Jones, as trustee under trust agreement dated April 12, 2020 and known as the John P. Jones trust

Signature Line: John P. Jones, as Trustee under trust agreement dated April 12, 2020 and known as the John P. Jones trust

Don't Create Underscores for Signature Lines

Name for 1099, if different: John P. Jones

Additional Vesting:

Spell Check

Accommodator:

Current Address Same as Property Address

Street Address 1: 7431-7435 S. Eggleston

Street Address 2:

ZIP: 60620 Override

City: Chicago

State: Illinois

County: Cook

Post Closing Address Same as: Property Address Current Address

Street Address 1: 123 N. Main St.

Street Address 2:

ZIP: 60000 Override

City: Anytown

State: Illinois

County: Fulton

Use on Disbursements

Contact Information

Phone:

Work Phone:

Mobile Phone:

Fax:

Primary Email:

Secondary Email:

Preferred Communication:

Tax Information

Primary SSN/Tax ID: 987-65-4321 Yes No

Secondary SSN/Tax ID: Yes No

Include in TIN Match

Linked Party

Send Documents As Attachments Weblinks

Wire Information

Send Confirmation:

Comments/Special Instructions

Buyer/Seller Created

By: Mindy Ward

On: 7/12/2022 3:37 PM ID: 53622

Transferor – Special Cases – Limited Liability Companies

- For tax purposes, a single-member LLC is treated as a sole proprietorship that is taxable, and reportable, to the sole member.
- The foregoing procedure for preparing the 1099 documents in Resource and ResWare in transactions involving a grantor trust should also be utilized for single-member LLCs.
- Multiple-member LLCs are treated as partnerships for tax reporting purposes, and the foregoing discussion regarding reporting sales involving partnerships should be used when reporting for multiple-member LLCs.

Special Cases – 1031 Exchanges

- 1031 exchanges pose certain difficulties regarding 1099 reporting.
- The 1099 regulations require that sales and exchanges are reportable, and that the amount to be reported is the cash “received or to be received” by the transferor. 26 CFR §1.6045-4(i)
- The regulations also require that the 1099-S form indicate whether the transferor received or will receive property as part of the consideration. 26 CFR §1.6045-4(h)(1)(v).
- In a deferred exchange, at the initial sale in which the seller relinquishes the property to the buyer, the sale proceeds are paid to a qualified intermediary to hold until the seller identifies and closes on the replacement property. Thus, the seller has not received any reportable cash.

Special Cases – 1031 Exchanges

- For 1099-S reporting purposes, at the initial sale, the sale would be reported to the seller as having not received any cash but the form checkbox “Property other than cash received or to be received” must be checked.
- If the consideration for the purchase of the replacement property does not require all the proceeds being held by the qualified intermediary, the excess would be payable to the original seller as cash “received or to be received” from the original sale, and a corrected 1099-S must be issued to the original seller reporting the cash along with the “other property” checkbox.

Special Cases – 1031 Exchanges

- If the purchase of the replacement property occurs in the year following the year of the initial sale, or if that purchase of the replacement property is closed by a different title company, there may be logistical problems in issuing the corrected 1099-S.
- Since the original seller is now the buyer, if the reporting person is not the same person who reported the original sale, the reporting person would not be responsible for correcting the original 1099-S. Even though the reporting person may be the same person who reported the original sale, if the purchase of the replacement property occurred in the following year, would the reporting person remember or have flagged the transaction to issue a corrected 1099-S?
- The fact that the buyer’s incoming funds are being paid by a qualified intermediary should alert the reporting person that a corrected 1099-S may be required.

Advanced Topics – Foreign Transferor

- A foreign seller is not exempt from reporting and must obtain a taxpayer ID from the IRS prior to closing.
- On the 1099-S form the “Foreign Transferor” checkbox must be checked.
- If the seller’s (whether a U.S. citizen or a foreign person) address or forwarding address is also in a foreign country, then the “Foreign Address” checkbox must also be checked.
- Checking the “Foreign Address” checkbox is especially important if filing of the 1099-S returns electronically. The electronic file to be sent to the IRS requires that names and addresses of the seller be limited to a certain number of characters that may not accommodate a foreign address or the address may have fewer or different elements than a U.S. address.

Advanced Topics – Installment Sale

- An installment sale of the real estate is reportable on the initial closing when the installment contract/contract for deed is being executed.
- The Internal Revenue Regulations, the closing date is the settlement date stated on the HUD-1 Settlement Statement or the Closing Disclosure. If there is neither form being used, then the closing date “...shall be the earlier of the date on which title is transferred or the date on which the economic burdens and benefits of ownership of the real estate shift from the transferor to the transferee.” 26 CFR §1.6045-4(v)(2)(ii).
- The amount that is to be reported is the entire sales price (the amount “received or to be received”) and not just the amount being paid at the closing

Advanced Topics– Multiple Transferors

- In the case of multiple transferors, separate reporting information (name, address, taxpayer identification number) must be obtained for each transferor;
- The transferors must provide, at or before the time of closing, an allocation of the gross proceeds among them. The allocation need not be in writing and may be provided by only one of the transferors, as long as it is a complete allocation of the entire gross proceeds.
- If there is no allocation, or an incomplete allocation, for a transferor, then the balance of the gross proceeds not previously allocated shall be reported to that transferor.
- The reporting person may, but need not, accept an allocation after the date of closing and before the due date for reporting the transaction to the IRS.

Advanced Topics – Multiple Transferors

- If the transferors are husband and wife at the time of closing, either may be considered the transferor for reporting purposes, unless the reporting person receives an uncontested allocation of the gross proceeds between them at or prior to the closing

Questions on advanced topics?

Back to reportable information!

Property

- A general description of the real estate transferred;
- Description of the property can be the complete address of the property;
- If there is no address or the address is insufficient, the legal description of the property

Closing Date

- If a Uniform Settlement Statement is used, then “closing date” means the settlement date on the Uniform Settlement Statement;
- In all other cases, “closing date” means the date title is transferred, or the date on which the economic burdens and benefits of ownership shift from the transferor to the transferee, whichever is earlier.

Gross Proceeds

- Total cash received or to be received by or on behalf of the transferor in connection with the real estate transaction.
- “Cash” includes:
 - The principal amount of any obligation to pay cash in the future;
 - The amount of any liability of the transferor assumed by the transferee or to which the transferee takes subject;
 - The maximum amount that can be determined due to the transferor in a contingent payment transaction.
- There is no deduction from gross proceeds for the transferor’s expenses of sale (e.g., commissions, attorneys’ fees, etc.)
- If a Uniform Settlement Statement is used, then “gross proceeds” means the contract sales price on that statement.

Gross Proceeds

- If the transaction involves both reportable real estate and other assets, then “gross proceeds” includes the amount attributable to both the real estate and the other assets without allocation between them

Reporting Person

- Reporting Person information that must be furnished on the 1099:
 - Name;
 - Address; and
 - Taxpayer identification number

Reporting Person

- Order for Responsible Reporting Person:
 1. If a Uniform Settlement Statement is prepared, the settlement agent shown on the Settlement Statement;
 2. If no Uniform Settlement Statement is prepared, the person preparing the closing statement;
 3. If there is no Uniform Settlement Statement and no closing statement (or multiple closing statements), the following persons are responsible for reporting the transaction, in the following order:
 - The transferee’s attorney;
 - The transferor’s attorney;
 - The disbursing title or escrow agent;
 - The mortgage lender;
 - The transferor’s broker;
 - The transferee’s broker; and
 - The transferee.

1099-S form

2023 Form 1099-S

OMB No. 1545-0047

Proceeds from Real Estate Transactions

Filer's Name, Street Address, City, State, ZIP code, and Telephone no.	Seller/Transferor's Name and Address
Filer's Federal Identification Number	Street Address (including apt. no.)
City, State, and ZIP code	City, State, and ZIP code
Telephone number and name of contact for questions about this statement	Transferor's Identification Number
Account or escrow number	

Transaction Information

1. Date of Closing	
2. Gross Proceeds	
Allocation of Gross Proceeds to this Transferor	
3. Address or legal description (including city, state, and ZIP code)	
4. Check here if the transferor received or will receive property or services as part of the consideration	<input type="checkbox"/>
5. Check here if the transferor is a foreign grantor (nonresident alien, foreign partnership, foreign estate, or foreign trust)	<input type="checkbox"/>
6. Buyer's part of real estate tax	

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

You are required by law to provide the Settlement Agent with your correct Tax-Ident. Identification Number. If you do not provide the Settlement Agent with your correct Tax-Ident. Identification Number, you may be subject to civil or criminal penalties imposed by law.

Under penalties of perjury, I certify that the number shown above on this statement is my correct Tax-Ident. Identification Number. I acknowledge receipt of a copy of this statement.

Date

Date

Instructions for Transferor	Account number. Also show an account or other unique number the filer prefers to distinguish your account.
For sales or exchanges of certain real estate, the person responsible for closing a real estate transaction must report the real estate proceeds to the IRS and must furnish this statement to you. To determine if you have to report the sale or exchange of your real estate on your tax return, see the instructions for Schedule D (Form 1040). If the real estate was not your main home, report the transaction on Form 4797, Form 6252, and/or the Schedule D for the appropriate amount to itemize. If box 4 is checked and you received or will receive like-kind property, you must file Form 9814.	Box 1. Shows the date of closing.
Federal mortgage subsidy. You may have to complete (your bank) all or part of a federal mortgage subsidy if all the following apply: <ul style="list-style-type: none"> - You received a loan provided from the proceeds of a qualified mortgage bond or reverse-mortgage certificate. - Your original mortgage loan was provided after 1990. - You sold or disposed of your home at a gain during the first 9 years after you received the federal mortgage subsidy. - Your income for the year you sold or disposed of your home was over a specified amount. This will increase your tax. See Form 8228 and Pub. 5218.	Box 2. Shows the gross proceeds from a real estate transaction, generally the sales price. Gross proceeds include cash and notes payable to you, notes assumed by the transferee (buyer), and any notes paid off at settlement. Box 2 does not include the value of other property or services you received or will receive. See Box 4.
Transferor's taxpayer identification number. For your protection, this form may show only the last four digits of your social security number (SSN), individual taxpayer identification number (ITIN), selective taxpayer identification number (ATIN), or employer identification number (EIN). However, the issuer has reported your complete identification number to the IRS.	Box 3. Shows the address or legal description of the property transferred. Box 4. If marked, shows that you received or will receive services or property (other than cash or notes) as part of the consideration for the property transferred. The value of any services or property (other than cash or notes) is not included in box 2. Box 5. If checked, shows that you are a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust). Box 6. Shows certain real estate tax on a residence charged to the buyer at settlement. If you have already paid the real estate tax for the period that includes the sale date, indicate the amount to list. If from the amount already paid you determine your deductible real estate tax. But if you have already deducted the real estate tax in a prior year, generally report this amount as income on the "Other income" line of the appropriate income tax form. For more information, see Pub. 523, Pub. 525, and Pub. 530.

Requirements under Federal Law

Requirements under Federal Law

- Taxpayer Identification Number Solicitation;
- Recipient Statement;
- Substitute 1099?;
- Transmitting the information to the IRS
- Penalties

Taxpayer Identification Number Solicitation

- The reporting person must solicit the TIN of the sellers at or before the time of closing.
- The solicitation must state that the information is required by law and failure to provide the correct information may result in civil or criminal penalties.
- The solicitation may be in the following form:

You are required by law to provide [name of reporting person] with your correct taxpayer identification number. If you do not provide [name of reporting person] with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

Taxpayer Identification Solicitation

- The solicitation must contain a space for the following from the seller:
 - Name;
 - Address;
 - TIN; and
 - Certification by the seller under penalties of perjury that the information is correct.
- The certification must be in substantially the following form:

Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number

Taxpayer Identification Number Solicitation

- The solicitation must be made at or before the time of closing and may be made in person or by mail, and the transferor is required to give the information to the reporting person.
- If the reporting person does not receive the TIN of a transferor, there will be no penalty imposed on the reporting person if the reporting person has complied with the requirements for soliciting the TIN in good faith as determined by the “course of conduct and the overall results achieved for the year” by the reporting person.
- The solicitation must be retained by the reporting person for four years following the close of the calendar year of the year of closing.

Solicitation of Taxpayer Identification Number

 Advocus National Title Insurance Company	
SOLICITATION OF TAXPAYER IDENTIFICATION NUMBER	
Advocus National Title Insurance Company, Inc. P.O. Box 9136 Champaign, IL 61826-9136 Taxpayer Identification Number: 37-1222620	
You are required by law to provide Attorneys' Title Guaranty Fund, Inc., with your current Taxpayer Identification Number. If you do not provide Attorneys' Title Guaranty Fund, Inc., with your correct Taxpayer Identification Number, you may be subject to civil or criminal penalties imposed by law.	
Name of Payee:	<input type="text"/>
<small>(as reported to the IRS on tax returns or on Forms W-9 or SS-4)</small>	
Address:	<input type="text"/>
City, State, Zip:	<input type="text"/>
Taxpayer Identification Number/Social Security Number:	<input type="text"/>
Are you a nonresident alien, foreign partnership, foreign estate, or foreign trust?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Certification: Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.	
Signature:	<input type="text"/>
Date:	<input type="text"/>
Please return form to: → Advocus National Title Insurance Company, Inc. Underwriting Department P.O. Box 9136 Champaign, IL 61826-9136	
Commitment No.:	<input type="text"/>

Recipient Statement

- If you are the “reporting person” under the above rules, then you must provide the sellers with a 1099-S statement on or after the closing date and before February 1 of the year following the year of the sale or exchange.

Recipient Statement

- The form must contain:
 - The name, address, and taxpayer identification number (“TIN”) of the seller;
 - General description of the real estate;
 - The date of closing;
 - The entire gross proceeds of the transaction, (and if there are multiple sellers, the allocation of the gross proceeds among the sellers);
 - Whether the seller has or will receive property or services as part of the consideration for the transaction;
 - The real estate reporting person’s name, address and TIN; and
 - Any other information required by the Form 1099.

Recipient Statement

- The official IRS form must be used unless all of the requirements for creating a substitute 1099 form have been satisfied. If a Uniform Settlement Statement is used, then it may be used as a substitute 1099 form if it identifies all of the information required on the form 1099 and contains the following statement:

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

1099-S substitute

- Do we want to cover?

Transmitting the Information to the IRS

- Reportable real estate transactions must be submitted to the IRS electronically or by magnetic media (magnetic tape, diskette, etc.).
 - If the total number of reportable transactions for the calendar year is less than 250, then the paper information returns (Copy A of Form 1099-S) may be transmitted to the IRS using IRS Form 1096.
 - For the requirements and formatting of the magnetic media, see IRS Publication 1220.
- The forms must be transmitted to the IRS by February 28 of the year following the year of closing for paper forms and magnetic media, and by March 31 if filing electronically through the IRS's online FIRE (Filing Information Returns Electronically) system.

PENALTIES

- The Reporting Person can be fined for incorrect reporting
- Advocus goes above and beyond so that we can accurately report to the IRS
- HEFTY Fines
- Can be fined for the following:
 - Failing to file an information return with the IRS on or before the due date;
 - Failing to include all required information; or
 - Including incorrect information.

Conclusion

- **Questions?**
- **1099 Reporting is confusing. We are happy to help**
- **If you have questions, please contact**
 - legal@advocustitle.com
 - Sophie.kabbes@advocustitle.com
 - Greg.miely@advocustitle.com





Vetting a Supreme Court Justice

CLE Program

November 2, 2023

Professors Pia Hunter & Jason Mazzone

University of Illinois College of Law

Outline of Topics

1. Overview of the role of the ABA Standing Committee on the Federal Judiciary in evaluating judicial nominees and reporting to the Senate Judiciary Committee.
2. Discussion of the election of 2020, the retirement of Justice Stephen Breyer, and the nomination of Ketanji Brown Jackson to the Supreme Court.
3. Overview of the role of University of Illinois College of Law faculty in the ABA Standing Committee's evaluation of the Jackson nomination.
4. Discussion of Justice Jackson's record as a district and circuit court judge.
5. Discussion of the ABA Standing Committee's final report to the Senate Judiciary Committee and of the hearings on the Jackson nomination.
6. Discussion of the strengths and weaknesses of the vetting and nomination processes for federal judges and prospects for reform.
7. Discussion of Justice Jackson's record so far at the Supreme Court.
8. Q & A.

STATEMENT

of

HON. ANN CLAIRE WILLIAMS (RET.)

on behalf of the

**STANDING COMMITTEE ON THE
FEDERAL JUDICIARY**

AMERICAN BAR ASSOCIATION

before the

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

concerning the

NOMINATION

of

THE HONORABLE KETANJI BROWN JACKSON

to be

**ASSOCIATE JUSTICE OF THE SUPREME COURT
OF THE UNITED STATES**

MARCH 24, 2022

1050 Connecticut Ave. NW, Suite 400 • Washington, DC 20036

Chairman Durbin, Ranking Member Grassley, and Members of the Committee:

My name is Hon. Ann Claire Williams (Ret.) of Chicago, Illinois. It is an honor and privilege to chair the American Bar Association’s Standing Committee on the Federal Judiciary, which recently completed its evaluation of the professional qualifications of Judge Ketanji Brown Jackson to be an Associate Justice of the Supreme Court of the United States. Our District of Columbia Circuit representative, D. Jean Veta of Washington, D.C., and our Federal Circuit representative, Joseph M. Drayton of New York City, were the lead evaluators in the Standing Committee’s evaluation of Judge Jackson. In accordance with the Standing Committee’s established procedures for a Supreme Court nominee,¹ I present this statement to explain the Standing Committee’s evaluation of Judge Jackson’s professional qualifications and the reasoning for its rating. We thank Senator Durbin and this Committee for inviting us to appear before the Senate Judiciary Committee. We also appreciate this administration’s request that the ABA Standing Committee on the Federal Judiciary conduct its peer review evaluations and its reaffirmance that they are a valuable part of the judicial confirmation process.

President Biden announced his nomination of Judge Jackson to be an Associate Justice of the Supreme Court on February 25, 2022. The Standing Committee began its evaluation that very day and continued its work for the next several weeks. After completing its work on March 18, 2022, the Standing Committee unanimously concluded that Judge Jackson merits our highest rating and is “Well Qualified” for appointment to the Supreme Court of the United States.

THE STANDING COMMITTEE’S EVALUATION PROCESS

The Standing Committee has conducted its independent, nonpartisan, and comprehensive evaluations of the professional qualifications of nominees to the federal bench since 1953. The 18 distinguished lawyers who make up our Committee come from every federal circuit in the United States. The Committee members’ law firms range from a local firm with six attorneys to an international firm with over 2,000 attorneys. They practice in trial-level and appellate courts and work in a range of practice areas including banking and regulatory enforcement, class action defense, commercial litigation, criminal law, employment law, Indian law, intellectual property, real estate litigation, and torts. Depending on our workload, each of these lawyers can spend between 400 and 800 hours per year, volunteering their time, to conduct nonpartisan peer reviews of the professional qualifications of all Article III nominees to the Supreme Court of the United States, United States circuit courts of appeals, and United States district courts, as well as the Court of International Trade and the Article IV territorial district courts. A list of the current members of the Standing Committee is attached as Exhibit A.

The Standing Committee does not propose, endorse, or recommend nominees. Its sole function is to evaluate a nominee’s integrity, professional competence, and judicial temperament, and then to rate the nominee either “Well Qualified,” “Qualified,” or “Not Qualified.” It does not base its rating on, or seek to express any view regarding, a nominee’s ideology, political views,

¹ American Bar Association, *Standing Committee on the Federal Judiciary: What It Is and How It Works* (“*Backgrounder*”) at 9–11, available at https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/backgrounder-9-21-2020.pdf.

or political affiliation. The Committee relies heavily on the confidential, frank, and considered assessments of judges, lawyers, law school professors and deans, and others who have relevant information about the nominee's professional qualifications.

The Standing Committee's investigation of a nominee to the Supreme Court is based upon the premise that the nominee must possess exceptional professional qualifications. As set forth in the ABA's *Backgrounder*:

To merit the Committee's rating of "Well Qualified," a Supreme Court nominee must be a preeminent member of the legal profession, have outstanding legal ability and exceptional breadth of experience, and meet the very highest standards of integrity, professional competence and judicial temperament. The rating of "Well Qualified" is reserved for those found to merit the Committee's strongest affirmative endorsement.²

The significance, range, complexity, and nationwide impact of issues that such a nominee will confront on the Supreme Court demands no less. The Standing Committee's investigation of a Supreme Court nominee is more extensive than for a nominee to a lower federal court. The process also is procedurally different in two principal ways. First, each Standing Committee member conducts an investigation into the nominee's professional qualifications in his or her federal circuit and prepares a confidential circuit report that is included in the comprehensive confidential final report of the lead evaluators and sent to each member of the Standing Committee for review. Second, the Standing Committee commissions Reading Groups of scholars and practitioners to review the nominee's legal writings to supplement the Standing Committee's own review of the nominee's writings.

In undertaking its extensive investigation of the professional qualifications of Judge Jackson, the Standing Committee wrote to and invited input relevant to our evaluation from 1,990 judges and 865 lawyers and other professionals. We contacted all of the justices on the Supreme Court; all of the judges on the U.S. Court of Appeals for the District of Columbia Circuit; all of the judges on the U.S. District Court for the District of Columbia; most, if not all, of the appellate judges and district court judges in all of the other federal circuits; all of the judges in the Federal Circuit, as well as all of the judges on the U.S. Court of Claims and the U.S. Court of International Trade; and selected magistrate, bankruptcy, and state court judges.

We also contacted and interviewed lawyers, law school deans and professors, and community and bar representatives across the country. The Standing Committee solicited input from the lawyers identified by Judge Jackson in her Senate Judiciary Committee Questionnaire as possibly having knowledge of her professional qualifications. We contacted practitioners located in Washington, D.C. and other circuits, including current and former federal prosecutors in the U.S. Attorney's Office for the District of Columbia; all of the lawyers who are members of the American College of Trial Lawyers and are located in Washington, D.C.; the heads of voluntary bar associations located in Washington, D.C. and other circuits; all of the law school deans for the law schools located in Washington, D.C., as well as law school deans located in

² *Backgrounder* at 11.

other circuits; and all of the judges, lawyers, and other persons Judge Jackson supplied on a reference list.

The Standing Committee interviewed Article III judges at every level of the federal judiciary, attorneys who had appeared before Judge Jackson as an appellate and district court judge (including those who had lost cases), persons who worked with Judge Jackson during her time on the U.S. Sentencing Commission, attorneys who worked with and against Judge Jackson in her capacity as a federal public defender and as an attorney in private practice, persons who knew Judge Jackson during her clerkships, and persons who worked with Judge Jackson through her service to professional and civic organizations. In these interviews, the Standing Committee specifically searched for all views, negative or positive, regarding Judge Jackson's professional qualifications for service on the Supreme Court.

A Reading Group from the University of Illinois College of Law, a public law school, was co-chaired by Dean Vikram D. Amar and Professor Jason Mazzone. A Reading Group from Stanford Law School, a private law school, was co-chaired by Dean Jenny S. Martinez and Professor David Alan Sklansky. These two Academic Reading Groups were separate and independent. A total of 37 professors and academics who are recognized experts in their respective fields of law participated in these reading groups. Collectively, these professors have decades of experience not only in teaching and scholarship, but also in law firms, nonprofit organizations, and state and federal government. Lists of the members of the Academic Reading Groups are attached as Exhibits B and C.

A Practitioners' Reading Group composed of 15 preeminent, nationally recognized lawyers and three co-chairs also conducted an independent review of Judge Jackson's writings. Each of the distinguished members is very familiar with Supreme Court practice. Most have briefed or argued cases before the Supreme Court, and many have argued multiple cases before the Supreme Court. The majority of the members also served as law clerks to Justices of the Supreme Court appointed by presidents from both parties. The Reading Group includes two former state Supreme Court Chief Justices, a former Deputy Solicitor General of the United States, three former Assistants to the Solicitor General of the United States, two current or former law school deans, and the Chair or Vice Chair of some of the country's leading law firm Supreme Court and appellate practices. It also includes attorneys who served on the Practitioners' Reading Groups for all Supreme Court nominations dating back to that of Chief Justice John G. Roberts, Jr. This Reading Group was co-chaired by Hon. Timothy K. Lewis (Ret.), a former judge on the U.S. Court of Appeals for the Third Circuit; Roberta D. Liebenberg, a former Chair of the ABA Standing Committee on the Federal Judiciary and former Co-Chair of Practitioners' Reading Groups for two prior Supreme Court nominees; and Mary-Christine Sungaila, a member of the Practitioners' Reading Group for the nomination of Justice Brett M. Kavanaugh. A list of the members of the Practitioners' Reading Group is attached as Exhibit D.

To facilitate the Reading Groups' and the Standing Committee's reviews of Judge Jackson's writings, the Stanford Law School and University of Illinois College of Law libraries gathered the nominee's writings that were publicly available. The Reading Groups only reviewed Judge Jackson's published opinions and did not review her unpublished dispositions. The law librarians gathered, and the Reading Groups reviewed, the over 240 published opinions she authored on the district court and the two she authored on the court of appeals, briefs filed in

cases she handled as an attorney, law review articles, and other writings. The librarians also gathered the circuit court opinions where Judge Jackson sat on the panel but did not author the opinions. The materials were indexed by more than 30 subject areas.

All three Reading Groups adhered to the same rigorous standards that govern the work of the Standing Committee and independently evaluated the nominee’s analytical ability, clarity, knowledge of the law, application of the facts to the law, and ability to communicate effectively. Each member of each group reduced his or her evaluation to writing, with cited examples, and those written evaluations were then provided to each member of the Standing Committee.

The Standing Committee based its evaluation on its interviews with and written responses from judges, lawyers, law professors and community representatives from across the United States; its own reading of the nominee’s major writings; the reports of the three Reading Groups; and an in-depth personal interview of the nominee conducted on March 11, 2022 and March 15, 2022 by lead evaluators D. Jean Veta and Joseph M. Drayton and me. The Standing Committee also considered its confidential evaluations conducted in 2021 when Judge Jackson was nominated to the United States Court of Appeals for the District of Columbia and in 2012 when Judge Jackson was nominated to the United States District Court for the District of Columbia.³

Each member of the Standing Committee reviewed the confidential final report and individually evaluated the nominee’s professional qualifications by assessing her integrity, professional competence, and temperament. The Standing Committee unanimously concluded that Judge Jackson was “Well Qualified” to be Associate Justice of the Supreme Court of the United States.

OUR EVALUATION OF JUDGE JACKSON’S PROFESSIONAL QUALIFICATIONS

The Standing Committee’s evaluation of Judge Jackson is based solely on a comprehensive, nonpartisan, nonideological peer review of her integrity, professional competence, and judicial temperament. The Standing Committee did not base its rating on, or seek to express any view regarding, Judge Jackson’s ideology, political views, or political affiliation. It also did not solicit information with regard to how Judge Jackson might vote on specific issues or cases that might come before the Supreme Court of the United States.

A. Integrity

In evaluating integrity, the Standing Committee considers the nominee’s character and general reputation in the legal community, as well as the nominee’s industry and diligence.⁴ The

³ In connection with the 2021 evaluation, the Standing Committee found Judge Jackson “Well Qualified” to serve on the United States Court of Appeals for the District of Columbia Circuit. The Standing Committee found her “Qualified” in 2012 to serve on the United States District Court for the District of Columbia.

⁴ *Backgrounder* at 3.

Standing Committee also considers the extent to which there have been any findings of ethical violations by a nominee, of which there have been none relating to Judge Jackson.

Judge Jackson has a sterling reputation for integrity. Judges and lawyers who have known her in every capacity uniformly praised her character, calling her integrity “beyond reproach,” “first rate,” and “impeccable.” She also uniformly received high marks for her industry and diligence. Lawyers and judges consistently described her as “thorough,” “hard working,” and “extremely well-prepared.” Other representative comments are:

- She has the “utmost integrity.”
- “Judge Jackson has a well-deserved reputation for the highest level of ethics and integrity. She is candid, honest, and takes great pains to ensure that all who appear before her understand the basis for her rulings and are given the chance to make their case and have their arguments heard.”
- She is “100% ethical.”
- “You write the word ‘integrity,’ and then you put her initials next to it.”
- “One can’t remark on [Judge Jackson’s] professional qualifications without mentioning her integrity. It is hard to pinpoint how and when one discerns such things, but as I got to know [Judge Jackson], I quickly gained confidence in her uprightness.”
- “She is off-the-charts in terms of her integrity and judicial temperament. She’s fair, honest, respectful, even-tempered, kind, and understanding with everyone she interacts with.”

* * *

On the basis of these and many other uniformly positive comments received during our extensive review, the Standing Committee concluded that Judge Jackson possesses the integrity required to receive a “Well Qualified” rating.

B. Professional Competence

“Professional competence” encompasses such qualities as intellectual capacity, judgment, writing and analytical abilities, knowledge of the law, and breadth of professional experience.⁵ A Supreme Court nominee should possess “exceptional professional qualifications,” including an especially high degree of legal scholarship, academic talent, analytical and writing abilities, and overall excellence. The nominee should be able to write clearly and persuasively, harmonize a body of law, apply the law to the facts, and give meaningful guidance to the trial and circuit courts and the bar.⁶

⁵ *Backgrounder* at 3.

⁶ *Backgrounder* at 10.

Judge Jackson’s professional competence is exceptional. In summarizing the basis for this conclusion, we emphasize that the Committee does not simply express its own view. Rather, as a conduit for the views of the nominee’s peers in our profession, it also expresses the unanimous consensus of the 160 judges, lawyers, and academics we interviewed in this evaluation; the 44 additional judges and lawyers we interviewed in our 2021 and 2012 evaluations; and the 55 members of the Reading Groups. This point merits repeating: in our extensive investigation, all of the experienced, dedicated, and knowledgeable sitting judges; lawyers who have appeared before the nominee; lawyers who worked with or against the nominee while she was in private practice and at the Office of the Federal Public Defender; and persons she encountered in her work at the Sentencing Commission, in addition to the distinguished members of the Academic and Practitioners’ Reading Groups, described the nominee as outstanding and cite specific evidence in support of that view.

1. Breadth of Professional Experience

In evaluating the breadth of Judge Jackson’s professional experience, we consider her time on the bench and beyond. Judge Jackson has a strong educational background and a broad spectrum of professional experience. She graduated *magna cum laude* from Harvard College in 1992. She graduated *cum laude* from Harvard Law School in 1996, where she served as a supervising editor of the *Harvard Law Review*. Judge Jackson clerked for Judge Patti B. Saris of the U.S. District Court for the District of Massachusetts. She then clerked for Judge Bruce M. Selya of the U.S. Court of Appeals for the First Circuit. After a year in private practice, Judge Jackson clerked for Justice Stephen G. Breyer on the Supreme Court.

Judge Jackson has civil litigation experience from her time at Miller Cassidy Larroca & Lewin LLP (D.C.) (1998 – 1999), Goodwin Procter LLP (Boston) (2000 – 2002), and Morrison & Foerster LLP (D.C.) (2007 – 2010), as well as mediation experience from her work at The Feinberg Group (2002 – 2003). She has criminal experience as a federal public defender in Washington, D.C. (2005 – 2007) and in her work with the U.S. Sentencing Commission, first as an Assistant Special Counsel (2003 – 2005), and, subsequently, as Vice Chair and Commissioner (2010 – 2014). The U.S. Sentencing Commission is a bipartisan, independent agency located in the judicial branch of government, created by Congress in 1984 to reduce sentencing disparities and to promote transparency and proportionality in sentencing. The Commission has seven voting members, all of whom must be confirmed by the Senate, and one nonvoting member. At least three members must be federal judges, and not more than four members may be members of the same political party.

Judge Jackson has over eight years experience as a district court judge, where she presided over both civil and criminal cases. She has served as an appellate judge on the U.S. Court of Appeals for the District of Columbia since 2021.

Throughout her career, Judge Jackson has participated in a number of professional and civic activities. One example is her service to the American Law Institute (ALI), a highly respected, nonprofit organization that publishes Restatements of the Law, Principles of the Law, and Model Codes for our profession to further its mission of clarifying, modernizing, or otherwise improving the law to promote the better administration of justice. ALI has over 4,500 members from the bar, bench, and academy who are selected based on outstanding achievement

in the legal profession. Judge Jackson also serves on ALI’s Council, the ALI governing body composed of 65 leading lawyers, judges, and scholars.

Appointed by Chief Justice Roberts, she also serves on the Supreme Court Fellows Commission and on the Judicial Conference of the United States Committee on Defender Services, which oversees the implementation of the Criminal Justice Act including the provision of federal public defender services. Her board memberships have included the Washington, D.C. Council for Court Excellence, where she co-chaired its Jury Project, a yearlong comprehensive review of jury service in the District of Columbia. Judge Jackson has also served since 2016 on the Harvard Board of Overseers, a 36-member body elected by Harvard alumni. She has been a member of the Board’s Executive Committee since 2019.

We contacted and interviewed jurists, attorneys, and others who knew Judge Jackson in all the preceding roles. Respondents identified Judge Jackson’s broad-based experience as a district court judge, appellate judge, litigator, defense attorney, and member of the Sentencing Commission as significant strengths she would bring to the Supreme Court. Representative comments include:

- “She’s had a valuable range of professional experiences that give her an unusual level of sophistication about how the law and legal institutions work—and how they do not always work as we wish they did.”
- “Her varied professional experience will be a true asset to the Court.”
- “She is one of the brightest legal minds in the country with a well-rounded set of experiences in the legal system and judiciary that will make her an exceptional Supreme Court Justice.”

2. Well-Qualified Consensus from Judges and Attorneys

The unanimous consensus from the many judges and attorneys we interviewed and from whom we received written comments is that Judge Jackson is well qualified to serve on the Supreme Court. The words “brilliant,” “eminently qualified,” and “she has my highest recommendation” were repeatedly used when describing Judge Jackson’s professional competence. As one jurist put it, Judge Jackson is “extraordinarily well qualified.”

Judge Jackson is universally and highly regarded for her intellect. As one interviewee stated, “We have a lot of smart people [on a board on which she serves] but she is brilliant, and I do not say that lightly.” Other representative comments include:

- “She’s absolutely brilliant as a jurist.”
- “Judge Jackson has always had a superior understanding, intelligence, and competence.”
- “She’s very, very smart. She’s very agile and able to think on her feet.”
- “She is absolutely brilliant. She is the judge I aspire to be.”

Judges and lawyers also consistently highlighted Judge Jackson’s exceptionally strong analytical skills and writing, as reflected in the following representative comments:

- She has a “wonderfully analytical mind.”
- “Studying her opinions is like a master class in judicial writing. Her opinions are organized, methodical, and reflect respect for the litigants. . . . She has spent most of her time as a judge on the district court, but wrote opinions in her cases similar to what you would see from an appellate court.”
- “Her opinions are well-written, well-reasoned, and painstakingly researched. During oral argument, Judge Jackson asks thoughtful questions that cut to the heart of the matter while also making sure that she fully understands each party’s arguments.”
- “Judge Jackson is extremely thorough and conscientious. Her written work product, whether memoranda or judicial opinion, is consistently well reasoned and beautifully crafted.”

Interviewees, including opposing counsel in cases before she took the bench and attorneys against whom Judge Jackson has ruled, were similarly consistent in their glowing praise for Judge Jackson’s overall professional competence and qualifications. Comments from attorneys who have been on the losing side of Judge Jackson’s rulings include:

- “I can say without reservation that Judge Jackson is eminently qualified to serve on the high court. She is fair, patient, and insightful – with a command of the issues and the law. We haven’t won every case or question before her, but I would have no hesitation appearing before her again, win or lose. She is a model jurist.”
- “We lost on the issues before her, but . . . [h]er decision was well-reasoned, well-written, and affirmed by the D.C. Circuit. She is smart and competent. She is even-keeled with a great temperament.”
- “I’ve appeared before Judge Jackson many times, both in the District Court and in the D.C. Circuit. In my opinion, Judge Jackson is one of the very best judges – or for that matter, Justices – I have ever argued a case in front of. She is brilliant; her intellect is simply formidable. And equally important, she possesses all of the other important attributes of a great jurist: She is practical and intuitive and curious and courteous and always impeccably well-prepared.”

We received a multitude of similar comments about Judge Jackson’s overall professional competence from judges and lawyers of all political persuasions and from many parts of the profession. Those comments include:

- “She is superbly qualified.”
- She is a “10+.”

- She is “exceptionally well qualified.”
- “Having served as a colleague of Judge Jackson . . . , I can say with great confidence that she has the professional qualifications, integrity, and judicial temperament to be an exceptional and consequential justice on the United States Supreme Court.”
- She is “a superb lawyer and judge, has an exceptional temperament both with litigants and federal judges, and is unquestionably well qualified to serve on the Supreme Court.”
- “I cannot think of anyone more qualified or better-suited to sit on the High Court.”

3. Readings Groups’ Reviews of the Nominee’s Writings

The three Reading Groups submitted comprehensive reports to the Standing Committee that further support the conclusion that Judge Jackson’s legal scholarship, analytical skills, and writing ability are extraordinary. The Reading Groups acted independently and submitted independent reports, in part so that the Standing Committee could see whether there was any divergence of views. The Academic Reading Groups were co-chaired by the deans of their law schools and were composed of experts in the subject areas of the writings they reviewed. The Practitioners’ Reading Group primarily consisted of members who view Supreme Court decisions from another angle—from the standpoint of preeminent practitioners who regularly practice before the Court. More than 300 pages of Reading Groups’ close analysis of Judge Jackson’s writings were shared with our entire Committee. Even though each group worked independently, the three groups reached the same conclusions, and their reports yielded remarkably similar themes. The three Reading Groups summarized their conclusions as follows.

a. University of Illinois College of Law Reading Group

“The overall and overwhelming assessment of the members of the Illinois reading group is that Judge Jackson is an extremely competent jurist whose work demonstrates a high degree of integrity and an admirable judicial temperament. . . .

Our faculty readers praised as well Judge Jackson’s legal knowledge and analytical skills. Her writings demonstrate her tremendous subject-matter breadth as a district court judge and, at the same time, showed her deep and sophisticated knowledge in specific areas of the law. . . . She is adept at understanding the full scope of arguments the parties have made and at distilling the core issues to be resolved. She is a skilled interpreter of statutes and she applies doctrine faithfully and fairly. . . .

[T]he clear consensus . . .—and, again, the reading group was quite diverse among demographic, ideological, and subject-matter lines—was that Judge Jackson’s body of work demonstrated impressive competence and admirable temperament and integrity.”

b. Stanford Law School Reading Group

“The members of the Reading Group had very positive reactions overall to Judge Jackson’s opinions and other writings. Readers were impressed by Judge Jackson’s skills as a writer and a legal analyst, by her evenhandedness and her fidelity to the law, and by

her demonstrable judicial temperament. Again and again, the separate reports by members of the Reading Group praise the clarity of Judge Jackson’s writing; her careful, meticulous presentation of the applicable law and the parties’ arguments; her lucid and methodical reasoning; her manifest lack of bias; her judicial probity; and the respect and dignity she accords to all of the litigants who appear before her. We did not identify any instances in which Judge Jackson appears to have decided an issue unreasonably or with anything less than great care, sharp insight, and impartiality. . . .

With regard to professional competence, with regard to integrity and respect for the rule of law, and with regard to judicial temperament, Judge Jackson’s opinions, as well as her other writings, show her to be highly qualified for an appointment to the Supreme Court.”

c. Practitioners’ Reading Group

“In sum, all of the members of the Practitioners Reading Group found that Judge Jackson’s professional competence is outstanding. Her opinions are well-written, persuasive, analytically rigorous, and clear. She meticulously lays out the facts and procedural history, followed by a thorough discussion of controlling law and the application of the law to the facts of the case. She avoids unnecessarily broad pronouncements and refrains from opining on issues that are not squarely presented. Significantly, many members remarked that her opinions take great pains to explain to the parties the reasoning underlying her decisions and ensure that all arguments and significant cases have been thoroughly addressed. The Reading Group concluded that her opinions provide meaningful guidance to other parties, courts, and practitioners.

The Reading Group members also unanimously agreed that Judge Jackson satisfies the criteria of integrity and judicial temperament. Her opinions reflect a faithful adherence to precedent and demonstrate judicial restraint. She is even-handed in her approach, treating all litigants with respect. Her opinions are professional in tone and approach.

We unanimously conclude that Judge Jackson’s numerous opinions consistently demonstrate the highest degree of legal scholarship, intellectual acumen and overall excellence necessarily required and that she should receive a ‘Well Qualified’ rating from the Committee.”

d. Individual Comments of Reading Group Members

Representative comments from individual members of the Reading Groups include:

- “A striking aspect of Judge Jackson’s opinions is how much ground she covers, in depth, in writing that manages to be both crisp and replete with detail. Her opinions teach – readers are invited to learn what she knows about the surrounding legal principles. . . . [On] the Supreme Court, I suspect her opinions would quickly come to be viewed as an excellent guide to the bench, the bar, and the public, especially on intricate and technical legal questions.”
- She “has that wonderful combination of high intelligence and common sense. She thinks analytically and is a clear and persuasive writer. She can both craft an exceptionally

intricate opinion and present it in a way that lawyers and non-lawyers alike can understand. She writes with confidence and authoritativeness, yet with an abiding sensitivity to the importance of the issues to the parties.”

- “Judge Jackson reveals herself to be highly prepared, exceptionally organized, and intellectually astute. Her opinions are marked by clarity of analysis, careful attention to the facts, and respect for the governing law.”
- Her opinions are “uniformly impartial, respectful, and direct” and “show no favoritism or bias.” “The hallmark of her opinions is thoroughness,” and she takes “no short cuts,” instead “support[ing] her findings and conclusions with copious citation of the parties’ filings, the factual record, and the applicable precedent.”
- “The opinions reviewed also reflect strong judicial temperament. They respectfully address the parties and their legal positions, including in cases where pro se litigants have misunderstood or disregarded the applicable rules.”
- The decisions reviewed spoke “well of her judicial temperament and integrity: she does not indulge in editorializing or digress beyond the parties’ arguments, and she treats litigants courteously even when decisively rejecting their arguments.”
- “One of the most distinctive and laudable attributes of Judge Jackson’s judicial opinions is her unwavering evenhandedness.”
- “My opinion . . . is that Judge Jackson easily satisfies even the very high standards of competence, integrity, and temperament that are applied to nominees to the Supreme Court. The degree of analytical rigor she brought to these relatively routine procedural issues is extremely impressive. The consistent clarity and readability of her writing is even more impressive, especially considering the short turnaround on many of these decisions.”

* * *

The Standing Committee thanks each of the Reading Groups for their hundreds of hours of careful, thorough, thoughtful, and insightful work.

4. Reversals by the U.S. Circuit of Appeals for the District of Columbia Circuit

During her eight years as a district court judge, only ten of Judge Jackson’s 578 opinions, dispositive orders, or orders affecting injunctive relief decisions were reversed by the United States Court of Appeals for the District of Columbia Circuit, in whole or in part. One of those reversals was itself reversed by the Supreme Court. Four of her decisions were vacated and remanded by the Court of Appeals, and three opinions were affirmed but criticized by the Court of Appeals.

None of the interviewees or members of the Academic or Practitioners’ Reading Groups believed that the reversals or circuit court actions reflected negatively on Judge Jackson’s professional competence. To the contrary, representative comments include:

- From two professors who reviewed the nominee’s administrative law decisions: “While Judge Jackson’s district court opinions have occasionally been reversed by the circuit court, in our view these reversals reflect differing approaches to unsettled questions of administrative law rather than any errors of analysis by Judge Jackson.”
- From another professor, with respect to a different decision: “Regardless of this outcome, the fact and mode of reversal does not undermine the conclusions I reach about Judge Jackson’s professional qualifications.”
- From the same professor, discussing a different case: “The trajectory of the case, ultimately including reversal on some issues, does not controvert my conclusions about Judge Jackson’s professional qualifications. If anything, it illustrates the difficulty and contentiousness of the issues.”

* * *

Given the breadth and strength of the preceding comments and a multitude of similar comments, the Standing Committee concluded that Judge Jackson’s professional competence is exceptional and merits a rating of “Well Qualified.”

C. Temperament

In evaluating temperament, the Committee considers the nominee’s “compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law.”⁷ The praise for Judge Jackson’s judicial temperament was universal. Representative comments include:

- She has “the ideal temperament.”
- “Judge Jackson has the perfect temperament for a judge. She is unfailingly respectful, courteous, and warm in every situation, and to everyone, regardless of whether they are a litigant, colleague, or courthouse employee. She is always prepared, and when she speaks, she has always considered every aspect of the topic, and her colleagues listen carefully and give great weight to her contributions to meetings and discussions.”
- She is “humble” and “with no sense of entitlement.”
- Her temperament is “outstanding. . . . She was friendly, engaging, and seemed genuinely pleased to have the opportunity to ask us questions about the issues and to have us help her think through the issues and get to the right answers. . . . Warm, humble, active, and totally engaged.”
- “Judge Jackson has great temperament. She is personable. She is down-to-earth and treats everyone with respect.”

⁷ *Backgrounder* at 3.

- “Judge Jackson exhibited prototypical judicial temperament. She was engaged and curious, her questions were direct but respectful, she listened intently to the answers given by counsel, and she treated each argument and each party even-handedly and with dignity.”

The Standing Committee also explored Judge Jackson’s ability to work with colleagues on difficult issues. Not a single respondent expressed any concern. One interviewee, for example, commented that “Judge Jackson was a strong consensus builder during her time as a Commissioner.” Jurists at all levels of the federal judiciary similarly express confidence in Judge Jackson’s collegiality and consensus-building skills, including through the following comments:

- One jurist regarded Judge Jackson’s service on the Sentencing Commission as valuable because she was required to work in a group and achieve consensus. This jurist noted that she similarly was required to work in a group during her time on the U.S. Court of Appeals for the D.C. Circuit. The interviewee believes Judge Jackson has the skills to work well on difficult issues in a group and to remain collegial.
- Another jurist describes Judge Jackson as easy to work with, responsive, and collegial, even when they disagree on the issues. This jurist states that Judge Jackson approaches those discussions in the spirit of getting to the correct legal answer.
- Still another jurist states: “I would especially highlight how she combines her quick and penetrating analytic ability with both firmness of conviction and an open ear. When she disagrees with you, she spells out why. She is eager to hear analyses different from hers, and is open to reconsidering a position in light of additional arguments. But she will not budge unless she is actually persuaded.”
- A jurist who observed Judge Jackson on the Sentencing Commission reports that she did an especially good job “bridging the gap between differences of opinion” between prosecutors and defense attorneys regarding sentencing policy.
- A jurist who served on a committee with Judge Jackson states that this jurist and Judge Jackson began their work on the committee with different views, but as they progressed, they found common ground.

Freedom from Bias and Commitment to Equal Justice Under the Law

In light of Judge Jackson’s two years as a federal public defender, her representation of Guantanamo Bay defendants, and her time on the Sentencing Commission, the Standing Committee took special care to evaluate whether the nominee possessed “open-mindedness,” “freedom from bias,” and “commitment to equal justice under the law,”⁸ and in particular whether she demonstrated any bias that favored criminal defendants.

Notably, no judge, attorney, or other respondent raised such a concern to us during our extensive evaluation, nor did any do so in our prior 2021 and 2012 evaluations. Instead, we

⁸ *Backgrounder* at 3.

affirmatively raised the issue, including with current and former high-ranking attorneys in the U.S. Attorney's Office for the District of Columbia and with other prosecutors from that office who have appeared before Judge Jackson. All rejected any concern that Judge Jackson was biased. One high-ranking attorney in the U.S. Attorney's Office, for example, when asked about the potential concern that Judge Jackson is "soft on crime," responded, "I vehemently disagree." Another federal prosecutor who has appeared before Judge Jackson at least 10 times responded to the same question by saying "that is not the case" and stating that such an allegation was "absolutely not borne out based on my experience with her." A former federal prosecutor who had multiple cases before Judge Jackson said there was "no bias, and she was fair to all sides in connection with sentencing and all aspects of cases. Judge Jackson did not favor either side."

Instead, the prosecutors found Judge Jackson to be of the highest integrity: doing things by the book, a "100% straight shooter," and treating everyone fairly. Similarly, prosecutors gave Judge Jackson's professional competence the highest praise: "a smart judge without any biases," "incredibly competent," and intellectually nimble and able to incorporate the parties' oral arguments into her rulings. As to judicial temperament, they described Judge Jackson as pleasant, not favoring one party over another, and "a very engaged judge."

Representative comments from current and former federal prosecutors in the U.S. Attorney's Office for the District of Columbia include:

- "I found her to be incredibly fair."
- "I think she's fabulous" and "a great pick."
- "In all of my experiences, both direct and indirect, I have found that Judge Jackson has a sharp intellect, excellent judgment, a balanced demeanor, and a passion for the rule of law. In fact, even when I have disagreed with particular rulings issued by Judge Jackson, I have always found that her decisions were the product of sound judgment and reflected a thoughtful approach to her position on the bench."

My bottom line: I believe that Judge Jackson is an excellent judge and that she is eminently qualified to sit on the U.S. Supreme Court. I support her nomination."

- She was generally regarded as "a good draw" by the prosecutors because "she is a smart judge without any biases, which is all we're asking for."
- "[S]he has been incredibly competent and kind. She has shown the utmost integrity and a calm demeanor in stressful circumstances. [One case], in particular, was a difficult and fraught child pornography case, but she handled it incredibly deftly while being fair and compassionate to all parties involved. She has my absolute highest recommendation."
- "[S]he was everything one would want in a judge. She is smart, experienced, fair, poised, and always displayed excellent judicial temperament. Her opinions were well-reasoned and thoughtful. Lastly, she managed her courtroom very well, while allowing the litigants to be heard and try their cases."

Judges and attorneys who encountered Judge Jackson during her time at the Sentencing Commission similarly commented on her freedom from bias. Indeed, multiple persons we interviewed commented on her dissent to an amendment that would have given defendants who originally received a sentence reduction for cooperating with the government an additional sentencing reduction due to retroactive sentencing guidelines for crack cocaine offenses. One interviewee noted that while perhaps Judge Jackson personally favored the amendment, she believed the Commission did not legally have the authority to make the change and so dissented. (The Supreme Court later agreed with Judge Jackson and the two other dissenters.) Another respondent stated that Judge Jackson displayed “absolutely no indicia of bias on the Sentencing Commission. . . . She is a very reflective person, and she doesn’t bring any kind of preconceived biases or judgment on the issues that we dealt with. I never saw a sense of bias that she applied to our decisions.”

Feedback from other judges and attorneys was of the same accord, including from attorneys who appeared before her and from others who worked with her in professional endeavors such as the American Law Institute. None expressed any concern that Judge Jackson was biased or anything less than open-minded. Comments we received on this point include:

- “She does not let her personal feelings or belief get in the way of what she thinks is the correct legal result.”
- Judge Jackson comes to a case with “an open mind” and “wants to get it right.”
- “She is not outcome-driven.”
- “She is faithful to the rule of law, even if she sometimes may personally disagree with an outcome.”

* * *

Judge Jackson received only praise for her judicial temperament during our extensive evaluation. As a result, the Standing Committee concluded that Judge Jackson’s judicial temperament is deserving of a “Well Qualified” rating.

CONCLUSION

Across every aspect of her professional career, from over 250 judges, attorneys, and academics of all political persuasions, we heard the same words used to describe Judge Jackson: “brilliant,” “thoughtful,” “thorough,” “beyond reproach,” “fair,” “respectful,” and “eminently qualified.” Our extensive review leads us to conclude that Judge Jackson meets the highest standards of integrity, professional competence, and judicial temperament. It is the unanimous opinion of the Standing Committee that Judge Jackson is “Well Qualified” to serve as an Associate Justice of the Supreme Court of the United States.

EXHIBIT A

ABA STANDING COMMITTEE ON THE FEDERAL JUDICIARY, 2021-2022

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HAROLD I. LEVINE
REAL ESTATE INSTITUTE

November 2, 2023

A Practical Guide to the New Client Trust Account Rules RPC 1.5 and 1.15

Scott Renfro
Deputy Administrator, Appeals
Attorney Registration and Disciplinary Commission
of the Supreme Court of Illinois

ARDC 50 YEARS
ATTORNEY REGISTRATION &
DISCIPLINARY COMMISSION

[View 2022 Highlights](#)

[View 2022 Full Report](#)

The image shows a low-angle view of several tall skyscrapers against a blue sky with light clouds. Overlaid on the right side is the ARDC 50 Years logo, which includes the text "ARDC 50 YEARS" in a large, serif font, with "50 YEARS" in a gold, ribbon-like font. Below this is the text "ATTORNEY REGISTRATION & DISCIPLINARY COMMISSION" in a smaller, black, sans-serif font. At the bottom left, there are two blue buttons with white text: "View 2022 Highlights" and "View 2022 Full Report".

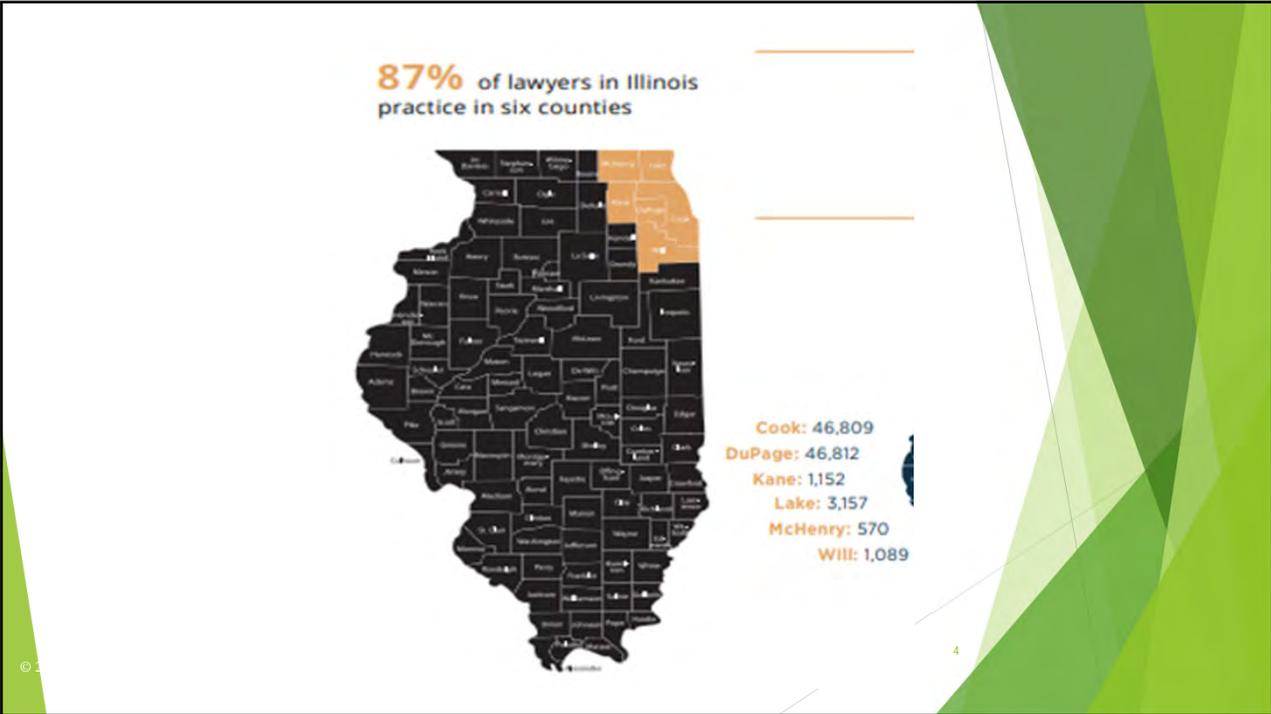


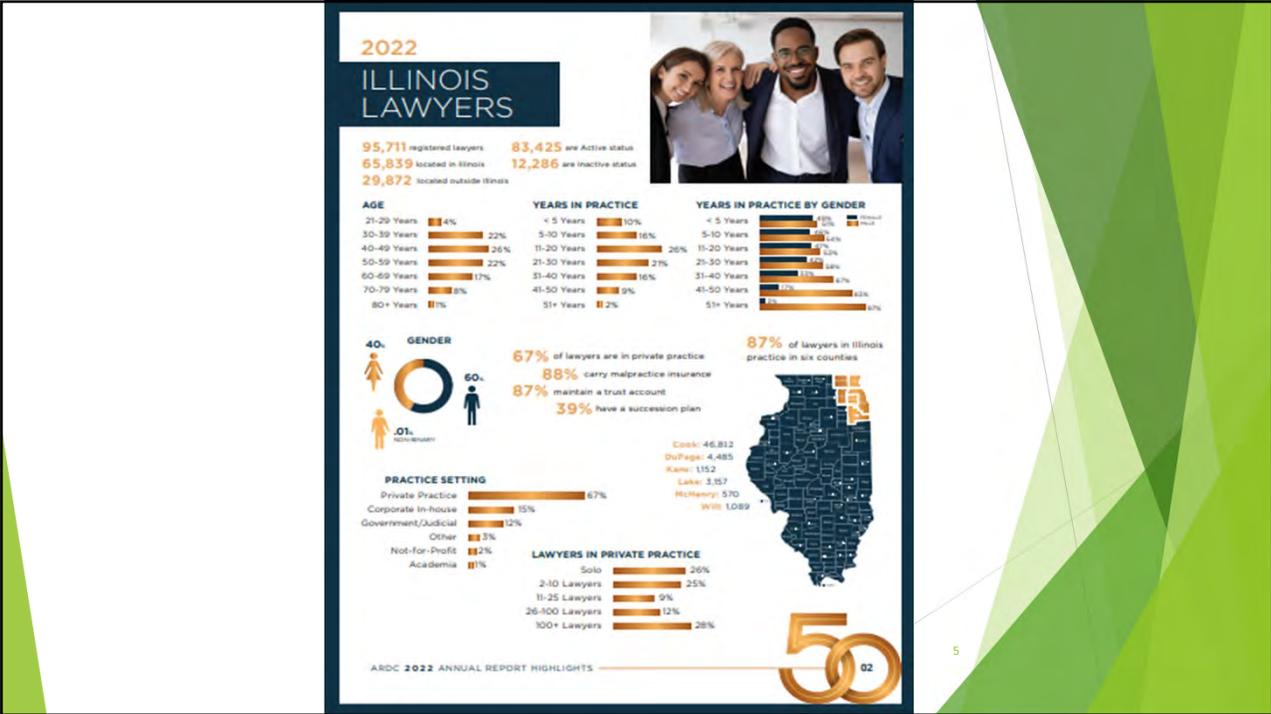
2022
ANNUAL REPORT
HIGHLIGHTS

The Fall 2022
ARDC Annual Report

2022 Illinois Lawyer Population

- ✓ 95,711 of Active and Inactive
- ✓ 231 more lawyers than in 2021; average 0.6% net increase in lawyer population since 2015
- ✓ 28% increase in 2022 over prior year of lawyers moving to Retired status
- ✓ 66.5% of Active status lawyers are in private practice
- ✓ 50.5% of Active lawyers are solos or in firms of 2-10 lawyers; a decrease of 2.1% over 2021
- ✓ 40.0% female lawyers

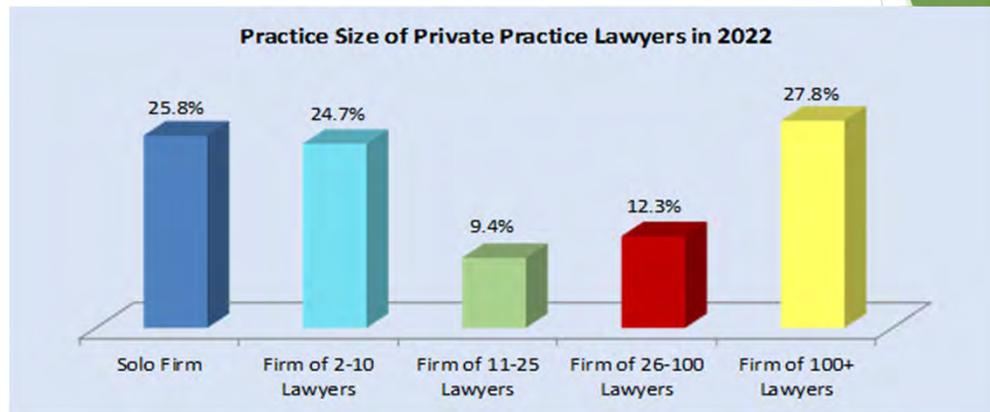




Practice Settings Active Status Lawyers Who Practice

Practice Setting	2018	2019	2020	2021	2022
Private Practice	68.5% 49,970	67.8% 49,996	66.7% 48,798	66.1% 48,650	66.5% 49,108
Corporate In-House	14.3% 10,423	14.8% 10,901	15.4% 11,231	15.5% 11,379	15.5% 11,464
Government/Judicial	11.4% 8,321	11.6% 8,607	12.1% 8,874	12.4% 9,164	11.9% 8,802
Other	3.1% 2,233	3.0% 2,220	3.0% 2,177	3.1% 2,271	3.1% 2,317
Not-for-Profit	2.1% 1,544	2.2% 1,607	2.2% 1,628	2.3% 1,728	2.4% 1,737
Academia	0.6% 461	0.6% 456	0.6% 448	0.6% 434	0.6% 433

Private Practice Lawyers in 2022



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7

REGULATORY ACTION



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8

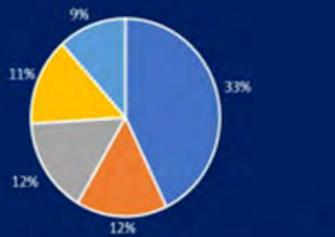
Trend of Top Three Categories of Investigations: 2012-2022



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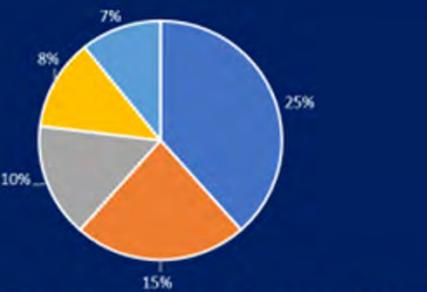
Investigations Opened in 2022

Top Five Allegations



- Neglect
- Failure to Communicate
- Incompetent Representation
- Fees or Billing
- Fraudulent or Deceptive Activity

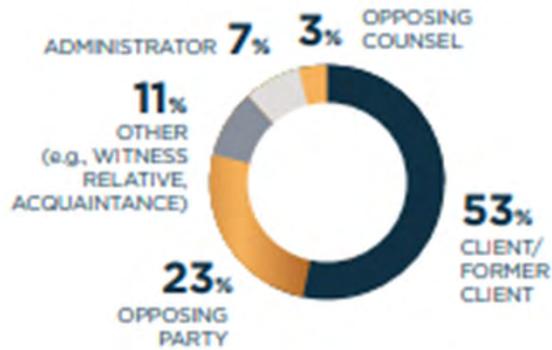
Top Five Practice Areas



- Criminal
- Domestic Relations
- Tort
- Real Estate
- Probate

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TOP FIVE INVESTIGATIONS BROUGHT BY COMPLAINANT TYPE



11

PROSECUTIONS

52 formal disciplinary complaints filed in 2022 before the Hearing Board

16 disciplinary and regulatory proceedings filed directly with the Illinois Supreme Court

66% of proceedings before the Hearing Board were uncontested

69% of formal disciplinary complaints charged fraudulent or deceptive activity in connection with alleged misrepresentation to clients, a tribunal or others, or the conversion of trust funds

48% of disciplinary complaints were concluded by the filing of discipline on consent

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12



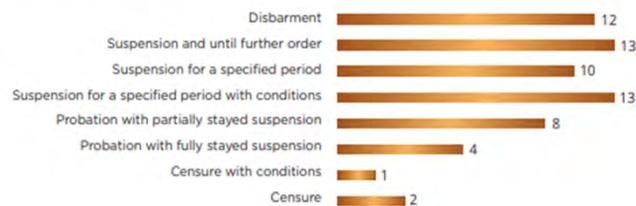
DISCIPLINARY SANCTIONS

63 sanctions entered by the Illinois Supreme Court against 63 lawyers

22 sanctions were discipline on consent

18 sanctions were discipline reciprocal to sanctions entered by another jurisdiction

40% of sanctions were either disbarment or suspension until further order of the Court



Demographics of Lawyers Sanctioned in 2022

- 39.7% disbarred or suspended UFO
- Oldest 91; youngest 31
- 41.3% 60+ yrs.
- 3 lawyers 50+ in practice; 1 less than 5 yrs. in practice
- 63.5% solo practice
- 55.6% pro se

Disciplined Lawyers with Identified Impairments in 2022

- ▶ 31.7% in 2022 with at least one known substance or mental impairment issue vs. 26.5% in 2021
- ▶ 60% are solos
- ▶ 75% have identified depression or other mental impairment
- ▶ 30% have more than one impairment
- ▶ 35% are 60-69 yrs.; 20% are 30-39 yrs.
- ▶ 99% are male

15

**2022
REMEDIAL ACTION**

PROBATION, DIVERSION AND LAWYER WELL-BEING PROGRAM
213 lawyers monitored for substance or mental illness impairments, law office management issues or restitution conditions
60% were monitored with substance abuse or mental conditions
33% were monitored with law office management conditions

REFERRALS TO LAWYERS' ASSISTANCE PROGRAM (LAP)
48 lawyers referred to LAP, accounting for 11% of LAP's referrals.

INTERMEDIARY PROGRAM
12 lawyers contacted successfully by intermediaries

RECEIVERSHIPS
24 investigations in 2022 for possible receivership of a lawyer's law practice
2 appointments in 2022 of the ARDC as receiver of a lawyer's law practice

PERMANENT RETIREMENT
3 lawyers transferred voluntarily to permanent retirement status

ARDC 2022 ANNUAL REPORT HIGHLIGHTS

Outcome	Count
Reciprocal probation	81
Suspension pending restitution	44
Probation	25
Supervision/TOB	24
Diversion	30
Conditional Admission	4
Conditional Reinstatement	5

ARDC Client Protection Program



CLIENT PROTECTION PROGRAM

\$1,098,821 in reimbursements on **53** approved claims involving **32** different lawyers

62% of approved claims involved failure to refund unearned fees

34% of approved claims paid out \$2,500 or less; **6%** of approved claims were for the \$100,000 maximum per-award limit

32% arose out of a criminal representation

63 claims were denied

The Process (Start to Finish)

- ▶ Request for Investigation
- ▶ Answer/Reply
- ▶ Investigation
- ▶ Inquiry Panel
- ▶ Complaint (public)
- ▶ Discovery
- ▶ Hearing Board (report and recommendation)
 - ▶ Contested Hearing
 - ▶ Discipline on Consent
- ▶ Review Board (report and recommendation)
- ▶ Exceptions
- ▶ Illinois Supreme Court

EMERGING ISSUES IN THE LEGAL PROFESSION



ARTIFICIAL INTELLIGENCE (AI)

“The simulation of human thought processes in a computerized model that can help lawyers make informed, data-driven decisions and improve their efficiency.”

ARTIFICIAL INTELLIGENCE (AI)

- ▶ Rule 1.1 - technological competence
 - Duty to maintain competence with relevant technology
- ▶ Unauthorized practice of law
- ▶ Billing
- ▶ Reliability/professional judgment
- ▶ Liability
- ▶ Generational Gap

21

REMOTE WORK/PROCEEDINGS & THE PRACTICE OF LAW



THE REMOTE PRACTICE OF LAW

THE GOOD

- ▶ Efficiency
- ▶ Client Communication
- ▶ Billing

THE BAD

- ▶ Interpersonal Interaction
- ▶ Demeanor/Credibility Assessments
- ▶ Professionalism
- ▶ Client Communication
- ▶ Billing

AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT 1.5 & 1.15

*Addressing The Legal Needs of the
Public
& The Lawyers Who Serve Them*



CBA/CBF TASK FORCE ON THE SUSTAINABLE PRACTICE
OF LAW & INNOVATION

TASK FORCE REPORT

SEPTEMBER 28, 2020

10. Recommendations #10A-B: Undertake a broader plain language review of the Rules (Page 96)

- a. Recommendation #10A: Undertake a broader plain language review of the Rules to modernize them with the lightest hand of regulation needed to achieve the Court's regulatory objectives (Page 96).
 - i. This proposal encourages the Court to undertake a broader review of the Rules of Professional Conduct to incorporate plain language principles and rethink overly prescriptive or unnecessary regulatory provisions.
 - ii. The Task Force already has worked as much as practicable to limit unnecessary regulation and incorporate "plain language" into its proposals.
- b. Recommendation #10B: LTF and ARDC should work together, with input from other stakeholders, to amend Rule 1.15 to accommodate the Court's plain language initiatives (Page 98).

Summary: The Illinois Rules of Professional Conduct are in desperate need of a plain language overhaul in their entirety. The rules are long, and many sections are difficult to understand even for seasoned lawyers. The Task Force has tackled one of the most glaring examples by streamlining the Rule 7 series. This proposal encourages the Court to undertake a broader review of the Rules of Professional Conduct to incorporate plain language principles and rethink overly prescriptive or unnecessary regulatory provisions.



Supreme Court of Illinois

March 1, 2023

ILLINOIS SUPREME COURT AMENDS RULES OF PROFESSIONAL CONDUCT

Chief Justice Mary Jane Theis and the Illinois Supreme Court announced today amendments to Illinois Rules of Professional Conduct 1.5 and 1.15. The amendments to the Rules are intended to address existing issues between the legal needs of the public and the lawyers who could serve them.

“These amendments provide additional guidance for attorneys in a clear, straightforward way,” Chief Justice Theis said. “They also highlight the importance of providing affordable representation for clients and minimize the potential for fee disputes.”

Effective July 1, 2023



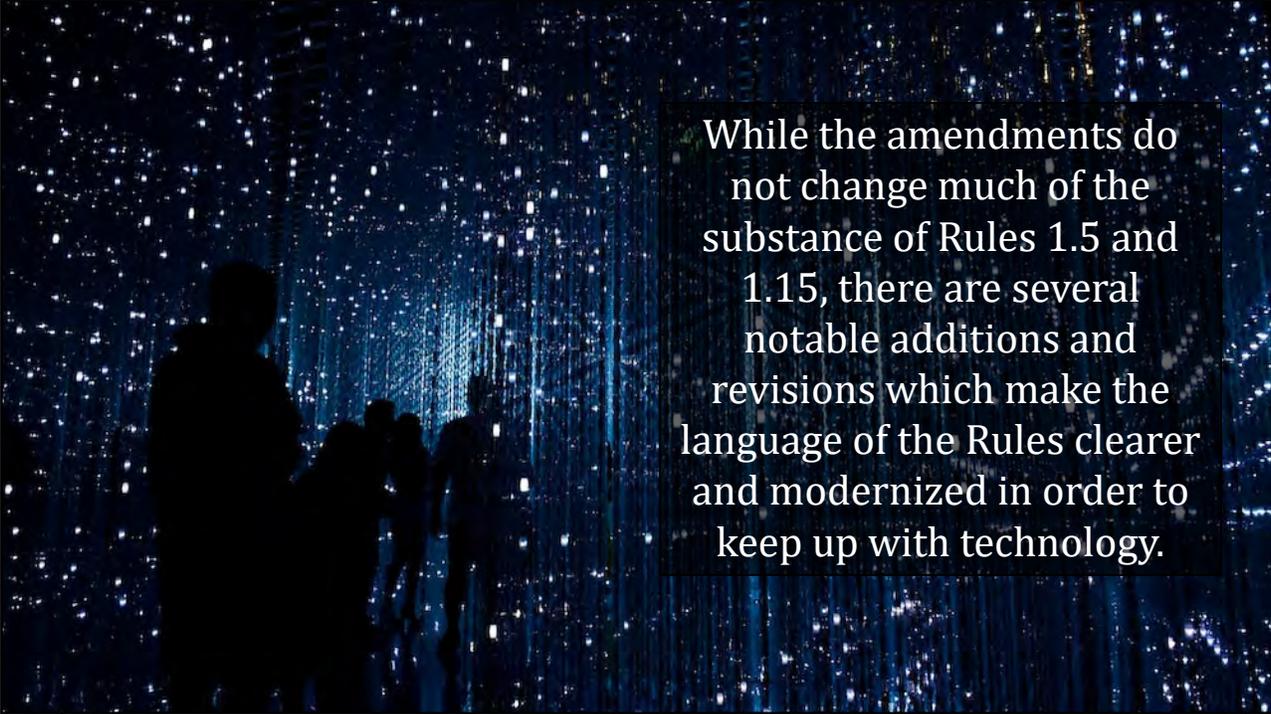
The amendments were approved by the Court after being proposed by a working group of the Illinois Attorney Registration and Disciplinary Commission (ARDC) and Lawyers Trust Fund (LTF), and were reviewed by the Supreme Court’s Committee on Professional Responsibility.

“These amendments provide additional guidance for attorneys in a clear, straightforward way.”



“They also highlight the importance of providing affordable representation for clients and minimize the potential for fee disputes.”

-Chief Justice Mary Jane Theis

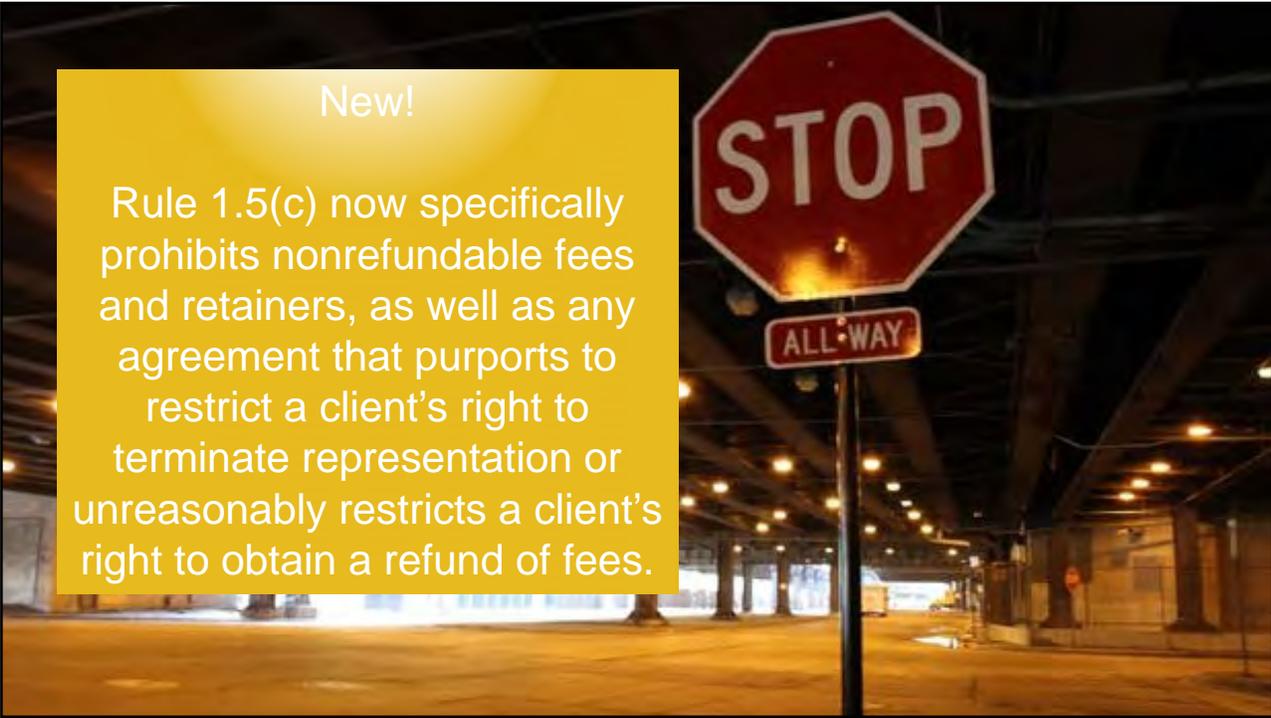


While the amendments do not change much of the substance of Rules 1.5 and 1.15, there are several notable additions and revisions which make the language of the Rules clearer and modernized in order to keep up with technology.

RULE 1.5 “FEES”

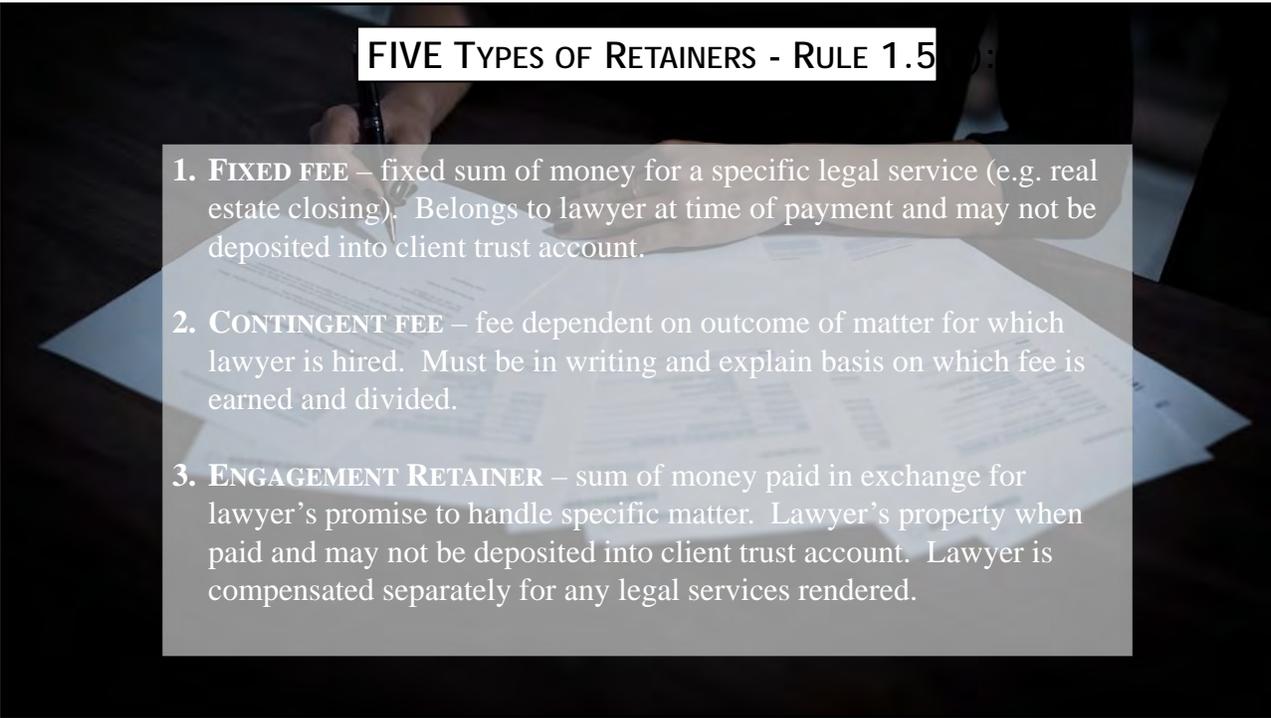
ADDRESSING AGREEMENTS FOR COMPENSATION
BETWEEN CLIENTS AND LAWYERS

LET'S TALK
ABOUT
RETAINER
AGREEMENTS



New!

Rule 1.5(c) now specifically prohibits nonrefundable fees and retainers, as well as any agreement that purports to restrict a client's right to terminate representation or unreasonably restricts a client's right to obtain a refund of fees.



FIVE TYPES OF RETAINERS - RULE 1.5

1. **FIXED FEE** – fixed sum of money for a specific legal service (e.g. real estate closing). Belongs to lawyer at time of payment and may not be deposited into client trust account.
2. **CONTINGENT FEE** – fee dependent on outcome of matter for which lawyer is hired. Must be in writing and explain basis on which fee is earned and divided.
3. **ENGAGEMENT RETAINER** – sum of money paid in exchange for lawyer's promise to handle specific matter. Lawyer's property when paid and may not be deposited into client trust account. Lawyer is compensated separately for any legal services rendered.

FIVE TYPES OF RETAINERS (Cont'd) - RULE 1.5

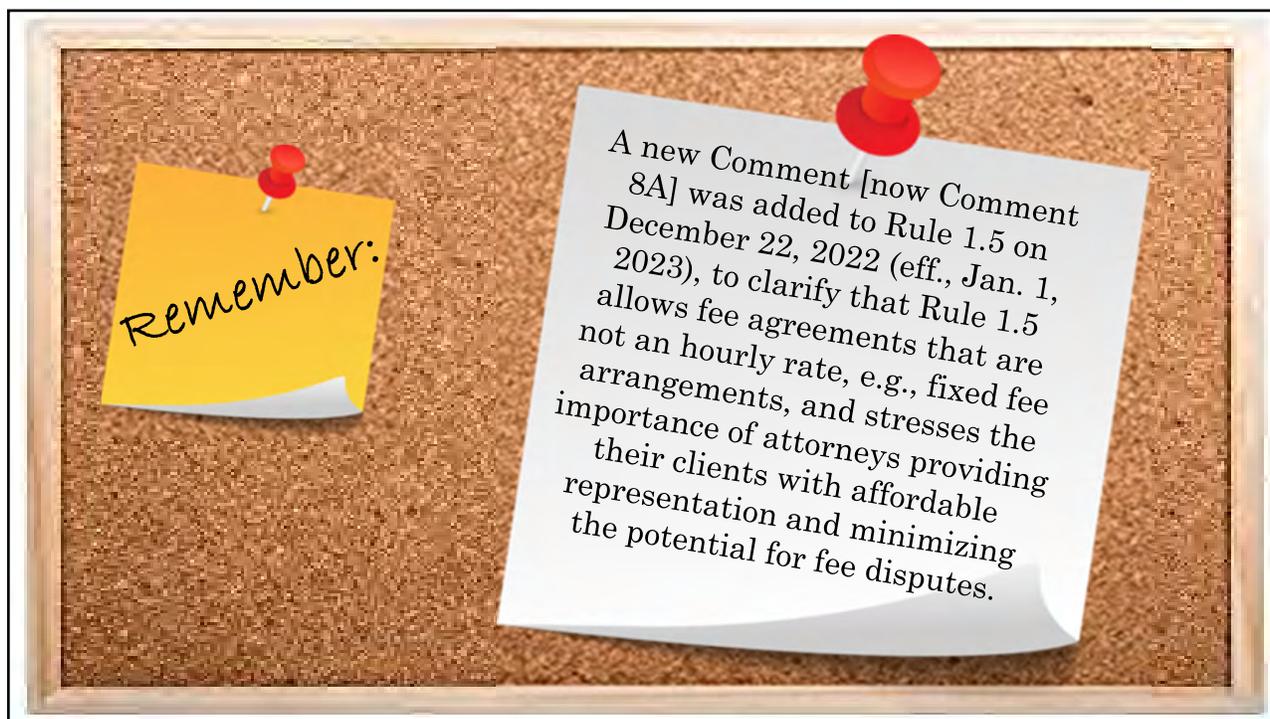
4. **SECURITY RETAINER** – funds paid to lawyer up front for legal services. Remain property of client and must be placed in client trust account until funds are applied to services rendered.
5. **SPECIAL PURPOSE RETAINER** – formerly “advance payment retainer” described in *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277 (2007). Like a security retainer, but must be in writing, fee belongs to lawyer when paid, other requirements spelled out in Rule 1.5(d)(5).

**Descriptions of the common fee retainers were previously located in the Comments to Rule 1.15*

RULE 1.5 MAINTAINS EXISTING GUIDELINES REGARDING:

- 1) Factors determining reasonableness of fees;
- 2) Communication with clients about fees; and,
- 3) Referral fees between lawyers in different firms.





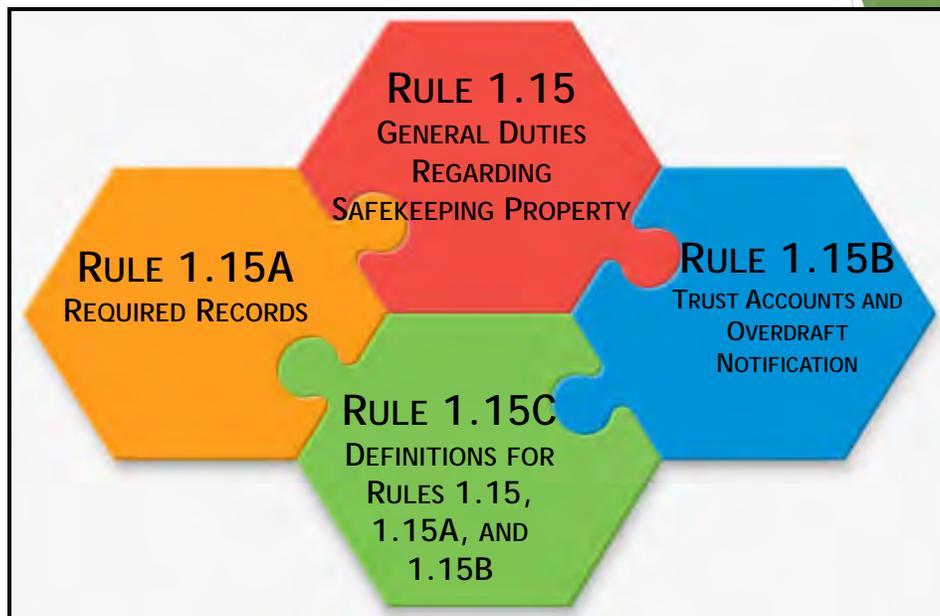
Remember:

A new Comment [now Comment 8A] was added to Rule 1.5 on December 22, 2022 (eff., Jan. 1, 2023), to clarify that Rule 1.5 allows fee agreements that are not an hourly rate, e.g., fixed fee arrangements, and stresses the importance of attorneys providing their clients with affordable representation and minimizing the potential for fee disputes.

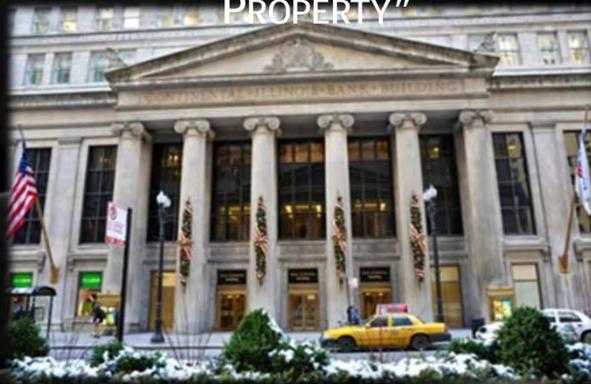
NEW RULE 1.15

**ADDRESSING HOW A LAWYER MUST
HANDLE FUNDS OR PROPERTY OF CLIENTS
OR THIRD PERSONS**

NEW RULE 1.15: FOUR PARTS



RULE 1.15 "GENERAL DUTIES REGARDING SAFEKEEPING PROPERTY"



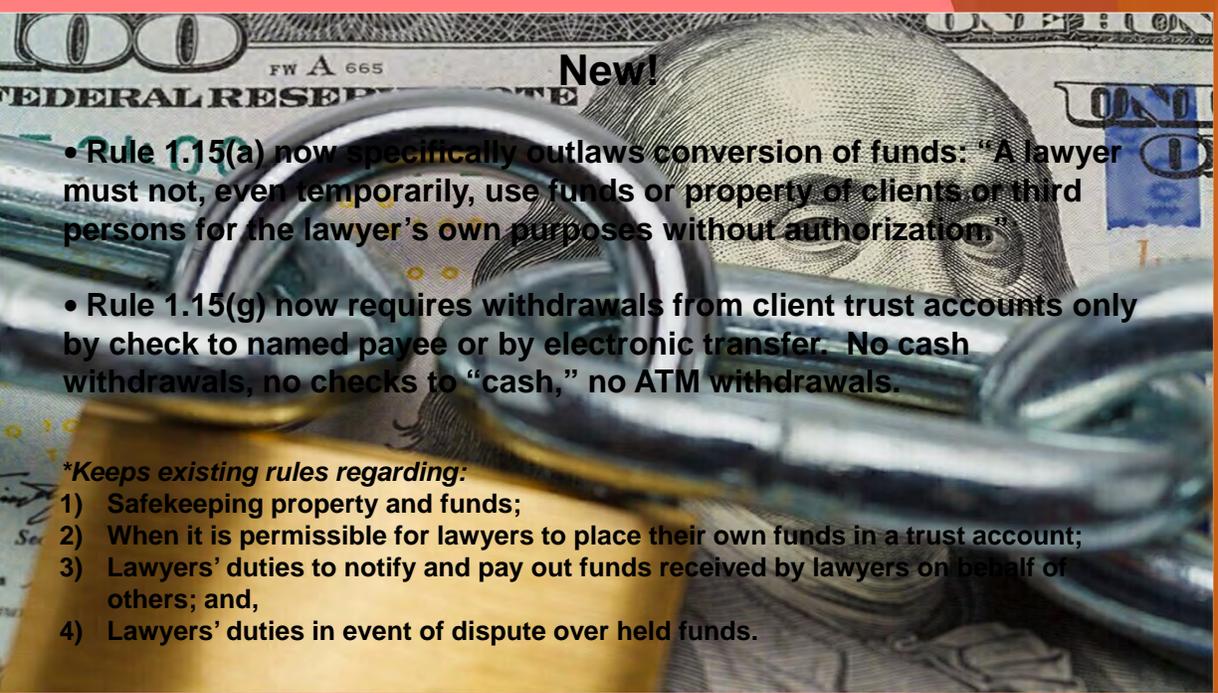
Retains the admonishment that property or funds held by a lawyer in connection with a representation must be kept separate from the lawyer's own property and adds language to underscore the directive that a lawyer cannot use trust funds or property without authorization

New!

- Rule 1.15(a) now specifically outlaws conversion of funds: “A lawyer must not, even temporarily, use funds or property of clients or third persons for the lawyer’s own purposes without authorization.”
- Rule 1.15(g) now requires withdrawals from client trust accounts only by check to named payee or by electronic transfer. No cash withdrawals, no checks to “cash,” no ATM withdrawals.

**Keeps existing rules regarding:*

- 1) Safekeeping property and funds;
- 2) When it is permissible for lawyers to place their own funds in a trust account;
- 3) Lawyers’ duties to notify and pay out funds received by lawyers on behalf of others; and,
- 4) Lawyers’ duties in event of dispute over held funds.



The New Comments explain the meaning of “conversion” and provide guidance for lawyers receiving funds through electronic payment methods.



RULE 1.15A "REQUIRED RECORDS"



New Rule 1.15A, along with Comments, outlines the required records to be maintained when holding funds or property in trust as well as adding a specific provision detailing how to do a three-way reconciliation.

New!

- **Rule 1.15A(b)(7)** requires lawyers to prepare and maintain three-way reconciliation reports of all client trust accounts on at least a quarterly basis. Essentially balancing figures from checkbook register, client ledgers, and receipts and disbursement journals.
- **Rule 1.15A(c)** explains how to perform a three-way reconciliation.

**Keeps existing rules regarding what trust account records are and how long to keep them.*



RULE 1.15B "Trust Accounts and Overdraft Notification"

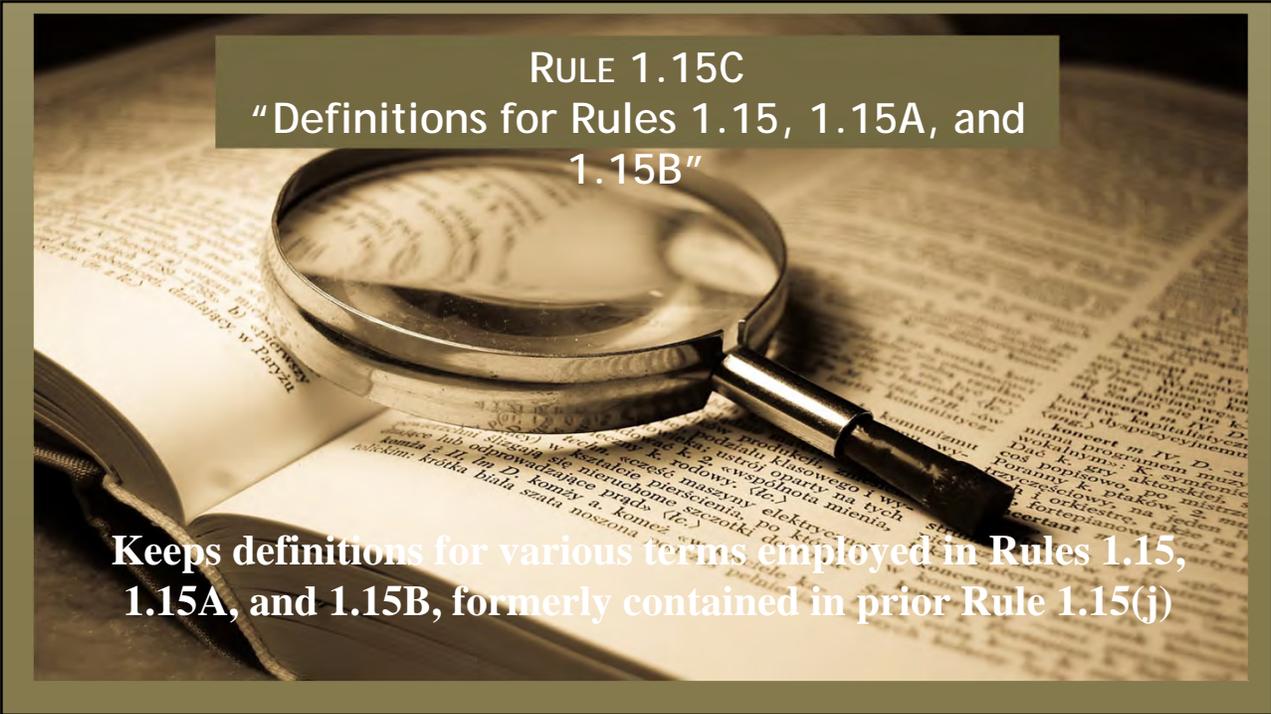
The new home for all the requirements for trust accounts including IOLTA accounts, disbursing real estate transaction funds and overdraft notifications. It also includes instructions on handling unidentified funds.

New!

- **Rule 1.15B(a) & Rule 1.15B(b)** (formerly, Rules 1.15(f) & (g)) regarding use of IOLTA accounts versus non-IOLTA trust accounts based on whether interest on held monies may earn net income for a client or third person
- **Rule 1.15B(c)** describes banks that are eligible to hold IOLTA accounts.

**Keeps existing rules regarding:*

- 1) Handling unidentified funds in IOLTA accounts;
- 2) Overdraft notification program; and
- 3) Lawyers' disbursement of real estate transaction funds using Real Estate Funds Accounts.



A Closer look at Rule 1.15B

- ▶ Background on LTF & IOLTA
- ▶ Conceptual Review of IOLTA and Unidentified Funds requirements
- ▶ Deep Dive into Rule 1.15B
- ▶ Intersection between ARDC and LTF

What is The Lawyers Trust Fund?

- ▶ 1981: CBA and ISBA task force
- ▶ 1983: LTF incorporated, IOLTA program approved
- ▶ Conversion to mandatory requirement in 1987
- ▶ 501(c) charitable foundation
- ▶ Nine-member board of directors (Three each from CBA, ISBA, IL Supreme Court)
- ▶ Three revenue sources: IOLTA, Legal Aid Fee, Unidentified Funds

LTF & Legal Aid In Illinois

- ▶ Mission: support the provision of direct legal aid services to low-income Illinoisans with civil legal problems
- ▶ Current year: Grants to 48 non-profit agencies - \$14 million in annual funding
- ▶ FY2022: 109,041 cases closed
- ▶ 89% closed by legal aid staff; 11% pro bono
- ▶ 1,405 FTE staff, 857 front-line attorneys, paralegals, or advocates

Interest on Lawyers' Trust Accounts (IOLTA)

- ▶ Pre-IOLTA: client trust accounts were pooled, did not generate interest
- ▶ Goal: make accounts productive for charitable purposes
- ▶ British Columbia, Florida (1979)
- ▶ Movement to expand after cuts to Legal Services Corporation budget
- ▶ Support by ABA and state bars; today every state has an IOLTA requirement

Interest on Lawyers' Trust Accounts (IOLTA)

- ▶ Operating principles
 - ▶ For deposit of client and third-party funds
 - ▶ IOLTA eligible funds = not capable of generating net interest for individual client
- ▶ Rules designate IOLTA program as "beneficial owner" of interest
- ▶ Tax rulings - interest directed to charitable purpose are tax exempt

Unidentified Funds Requirement

- ▶ Adopted in Illinois in 2015
- ▶ Addresses situations where lawyers have accumulated balances in IOLTA account
 - ▶ Can't document as belonging to a client or law firm
 - ▶ After due diligence, lawyers remit unidentified funds
- ▶ Helps manage IOLTA accounts with balances that can't be explained

Rule 1.15B in Depth

- ▶ 1.15B(a) Use of IOLTA Accounts
 - ▶ Successor to Rule 1.15(f)
 - ▶ Foundational IOLTA requirement
 - ▶ All funds deposited in IOLTA or non-IOLTA
 - ▶ Net income test
 - ▶ No funds held in non-interest bearing accounts

Rule 1.15B In Depth

- ▶ 1.15B(b) Account determination
 - ▶ Successor to Rule 1.15(g)
 - ▶ Itemizes factors: amount deposited, expected duration, rate of interest
 - ▶ Core principle: net interest
 - ▶ Role of reasonable judgement
 - ▶ Not subject to discipline

Rule 1.15B In Depth

- ▶ 1.15B(c) Eligible Financial Institutions
 - ▶ Successor to Rule 1.15(f)
 - ▶ Requirements for eligibility to hold IOLTA funds
 - ▶ Interest rate comparability - bank can't pay lesser rates on IOLTA deposits
 - ▶ Critically important to IOLTA
 - ▶ Requirement goes to lawyer selection of bank

Rule 1.15B In Depth

- ▶ 1.15B(d) Unidentified Funds
 - ▶ Successor to Rule 1.15(i)
 - ▶ Some language updated but basic elements remain in place
 - ▶ Ownership can't be ascertained
 - ▶ 12 months of due diligence
 - ▶ Funds remitted to LTF
 - ▶ Reasonable judgement of lawyer ("no charge of ethical impropriety")
 - ▶ Refund provision

Rule 1.15B In Depth

- ▶ 1.15B(e) Overdraft Notification
 - ▶ Successor to Rule 1.15(h)
 - ▶ Trust account overdraft notification
 - ▶ Eligible banks must complete agreement with ARDC to notify when accounts are overdrawn
 - ▶ Reporting requirement for banks

Rule 1.15B In Depth

- ▶ 1.15B(f) Disbursement of Real Estate Transaction Funds
 - ▶ Limited application to real estate closings
 - ▶ Unmodified from former Rule 1.15(j)

ARDC & LTF

- ▶ Commonalties
 - ▶ Front line attorney inquires
 - ▶ Lawyer education
 - ▶ Eligible financial institutions
- ▶ Differences
 - ▶ ARDC - discipline role
 - ▶ LTF - role confined to administering IOLTA and UIF

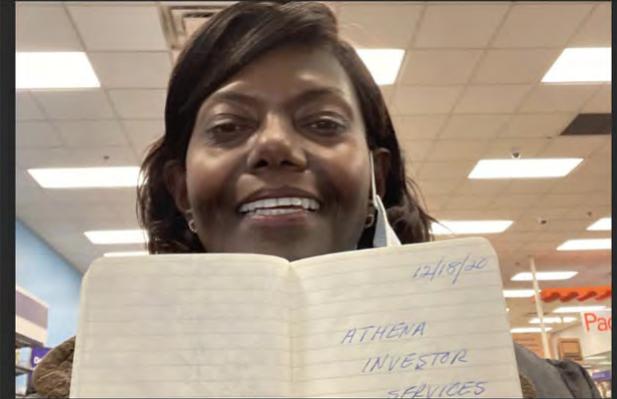
Some recent disciplinary matters of interest...

- Disbarments effective September 21, 2023:
 - In re Patricia M. Martin, 2023PR00034
 - In re Ian Louis Erdos, 2023PR00027
- Pending at Illinois Supreme Court on Motion to Approve and Confirm
 - In re Ruggiero 2021PR00078

LOCAL NEWS >

Retired Cook County judge disbarred over fleecing of late Tuskegee Airman uncle

02 NEWS BY CHRIS TYE, TODD FEURER
UPDATED ON: SEPTEMBER 22, 2023 / 11:44 AM / CBS CHICAGO



On the 21st day of September, 2023, the Supreme Court entered the following judgment:
M.R.031841

In re:
Patricia Manila Martin. Attorney Registration & Disciplinary Commission
2023PR00034

Motion by Patricia Manila Martin to strike her name from the roll of attorneys licensed to practice law in Illinois pursuant to Supreme Court Rule 762(a). Allowed. Effective immediately.

*In re Ian Louis Erdos
2023PR0027 MR 03106*



From the motion pursuant to Rule 762(a)...

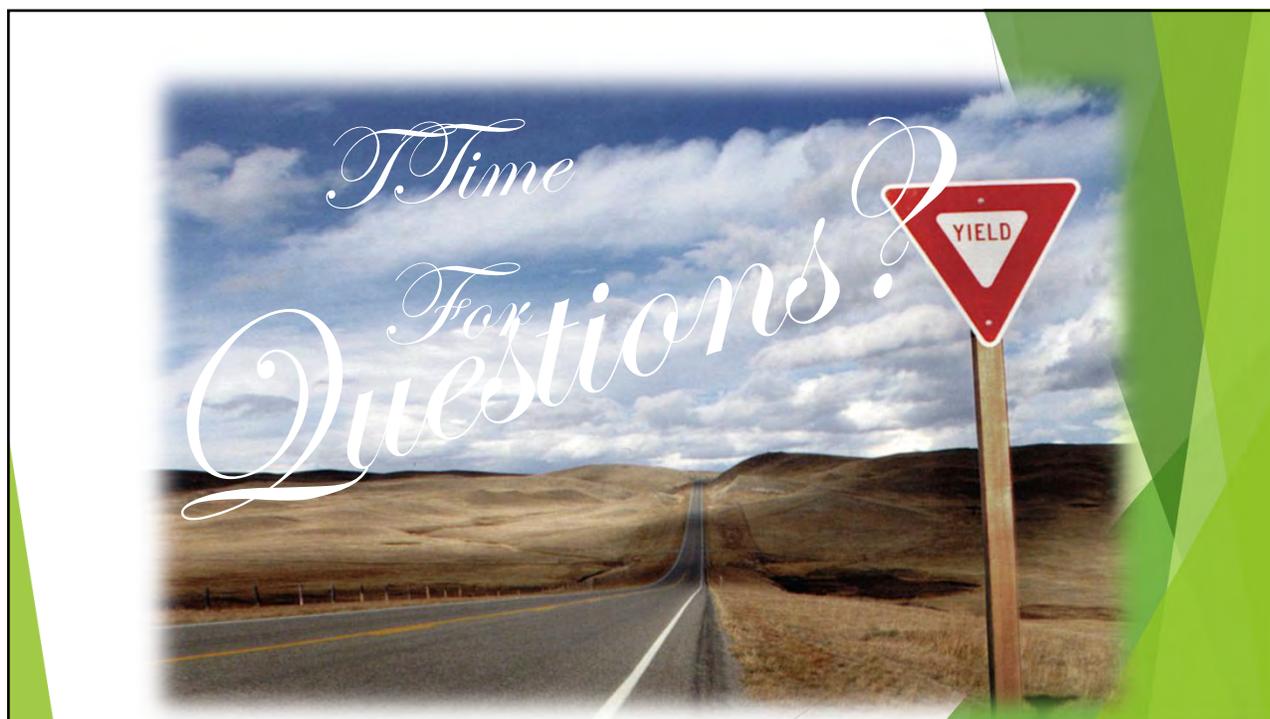
...states that on the date Ian Louis Erdos signed a motion requesting that his name be stricken from the Roll of Attorneys, the members of Panel C of the Commission's Inquiry Board had voted to file a complaint against Movant charging him with conversion of \$849,476.71, charging and collecting unreasonable fees totaling \$110,944.35, and false statements pertaining to his engagement as attorney and trustee for two trusts, including falsely claiming to have executed a mortgage to secure a purported loan from one of the trusts. If those allegations had been the subject of a hearing, the evidence set forth below would clearly and convincingly establish the misconduct described below:

In re Ruggiero: from Administrator's Motion to Supplement Motion for Sanctions...

8. In his email to underlying counsel sent at 3:40 p.m. on December 28, 2022 which attached his responses to the Administrator's Notice to Produce, Respondent wrote:

As I advised in our pre-hearing conference on December 20, 2022 (and made my objections known), my recent illness in addition to completing my physical therapy and my family situation (not to mention the Christmas holidays) have impacted my ability to gather information/documentation by today's deadline. I am attempting to gather information/documentation, if any, as quickly as possible. I am very aware of the deposition date of 1/6/23. To the extent that I can, I will attempt to produce information/documents by early next week, if not before.





THANK YOU!

Resources

- Rules, disciplinary decisions, & free webinars available through ARDC and link on our website www.iardc.org
 - Lawyers' Assistance Program:
 - (800) LAP-1233 www.illinoislap.org
- Ethics inquiry hotline at ARDC for guidance on Rules
 - (312) 565-2600 (Chicago)
 - (217) 546-3523 (Springfield)

THE ABC'S OF MEDITATION:

An Important Component of Mental Health

MENTAL HEALTH FLOWS FROM SELF-CARE AND PERSONAL WELLBEING

- Self-Care contributes to Wellbeing
- Wellbeing is The Foundation of Mental Health
- Mental Health Is Now a Concern Focused Upon by the Illinois Supreme Court (See, Rule 794(d)(2)(ii)).

MENTAL HEALTH IS AN UNAPPRECIATED, CO-EQUAL PARTNER OF PHYSICAL HEALTH

- Our physical health regimen can incorporate mental health goals
- Time devoted to taking care of the body, can also be devoted to taking care of the mind
- Warming-up is time for the *body*-- Cooling down is time for the *mind*
- The definition of "working out" needs to change

HOW CAN MEDITATION CONTRIBUTE TO MENTAL HEALTH?

- Improved Self-Regulation of Thought, Feeling and Emotion (Response, not Reaction)
 - Clarity of Thought (Time for Contemplation of Secular Concerns)
 - Better Acquaintance With What's On Our Minds (Awareness)
 - Permission to Be Alone With Ourselves ("Me Time"/Life Balance)
-
- All of the above-qualities relate directly to our everyday world-- our day-to-day experience
 - An everyday, common sense approach to meditation can benefit our mental health, and our effectiveness in the world in which we live and work

CAN TRADITIONAL MEDITATION BENEFIT OUR MENTAL HEALTH?

- Yes, but it doesn't credit the importance of physical health
- Yes, but it has been promoted as a panacea to too many concerns
- Yes, but in the 21st century, it needs to be singularly focused
- Yes, but it should be secularized, in order to separate itself from existing connotations and religious association

THE BEER ANALOGY: WHAT DO MEDITATION AND BEER HAVE IN COMMON?

- Lite beer
- Pilsner-style beer *(All beer)*
- Belgian, or Hoppy IPA beer

- "Lite" style meditation (**Meditative Moments**)
- "Pilsner style" meditation (**Led meditation**) *(All meditation)*
- "Belgian, or Hoppy IPA" style meditation (**Self-Guided meditation**)

MEDITATIVE MOMENTS ("Lite" meditation)

- *Least* amount of time
- *Least* amount of effort

- *As often* as personal preference and circumstances may permit
- *As brief* as personal preference and circumstances may permit
- *As private* as circumstances may permit
- *As formal/informal* as personal preference and circumstances may permit

- The seeds of a meditation practice

LED MEDITATION ("Pilsner-style" meditation)

- Common at retreats or other group get-togethers, and on cellphone/computer apps
- Group leader, or app narrator, leads the mediation session
- Comments are typically geared toward cultivation of a particular quality (e.g. kindness or empathy), or development of a benefit related to a specific habit or lifestyle challenge (e.g. improved sleep or stress relief)
- Passive listening, on part of attendees/listeners
- No required comment or question period, at conclusion of led meditation session

- Early growth of a more robust meditation practice

SELF-GUIDED MEDITATION ("Belgian or Hoppy IPA) meditation

- What many of us think of as "real" meditation
- A *proactive* practice, not a *passive* endeavor
- More formal and more disciplined, but a tremendous opportunity for shared experience
- We get out of it, what we put into it
- Coaching is encouraged, to learn the "Rules of the Road" and to help us understand/talk about our practice

MIX AND MATCH, TO MEET DEMANDS OF PERSONAL/PROFESSIONAL SCHEDULES

- Flexibility and Practicality are absolutely necessary in meeting the demands of today's world
- Emphasis on *secular* aspects of meditation (with respect and appreciation for traditional practices)
- *Secular* meditation is an important tool for development of, and care for, our mental health



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