* Amendments are on pages 5+6

Draft Amendments to Supreme Court Rules 756 and 716 re: Authorization of Inactive and Retired Status Attorneys and House Counsel to Provide *Pro Bono* Services Under the Auspices of a Sponsoring Entity

RULE 756 Registration and Fees

(a) Annual Registration Required. Except as hereinafter provided, every attorney admitted to practice law in this state shall register and pay an annual registration fee to the Commission on or before the first day of January. Until further order of the court, the following schedule shall apply:

(1) No registration fee is required of an attorney admitted to the bar less than one year before the first day of January for which the registration fee is due; an attorney admitted to the bar for more than one year but less than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of $105; an attorney admitted to the bar for more than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of $289, out of which $7 shall be remitted to the Lawyers' Assistance Program Fund, $42 shall be remitted to the Lawyers Trust Fund, $10 shall be remitted to the Supreme Court Commission on Professionalism, and $25 shall be remitted to the Client Protection Program Trust Fund. For purposes of this rule, the time shall be computed from the date of an attorney's initial admission to practice in any jurisdiction in the United States.

(2) An attorney in the Armed Forces of the United States shall be exempt from paying a registration fee until the first day of January following discharge.

(3) An attorney who has reached the age of 75 years shall be excused from the further payment of registration fees.

(4) No registration fee is required of any attorney during the period he or she may be serving in the office of justice, judge, associate judge or magistrate of a court of the United States of America or the State of Illinois or the office of judicial law clerk, administrative assistant, secretary or assistant secretary to such a justice, judge, associate judge or magistrate, or during any period in which he or she is receiving a retirement annuity pursuant to Title 28, Chapter 17 of the United States Code or Chapter 40, Act 5, Article 18 of the Illinois Compiled Statutes.

5) An attorney may advise the Administrator in writing that he or she desires to assume inactive status and, thereafter, register as an inactive status attorney. The annual registration fee for an inactive status attorney shall be $105. Upon such registration, the attorney shall be placed upon inactive status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this State, <u>except as is provided in paragraph j of this rule</u>. An attorney who is on the master roll as an inactive status attorney may advise the Administrator in writing that he or she desires to resume the practice of law, and thereafter register as active upon payment of the registration fee required under this rule and submission of verification from the Director of MCLE that he or she has complied with MCLE requirements as set forth in Rule 790 *et seq.* If the attorney returns from inactive status after having paid the inactive status fee for the year, the attorney shall pay the difference between the inactive status registration fee and the registration fee required under paragraphs (a)(1) through (a)(4) of this rule. Inactive status under

this rule does not include inactive disability status as described in Rules 757 and 758. Any lawyer on inactive disability status is not required to pay an annual fee.

(6) An attorney may advise the Administrator in writing that he or she desires to assume retirement status and, thereafter, register as a retired attorney. Upon such registration, the attorney shall be placed upon retirement status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except as is provided in paragraph j of this rule. The retired attorney is relieved thereafter from the annual obligation to register and pay the registration fee. A retired attorney may advise the Administrator in writing that he or she desires to register as an active or inactive status lawyer and, thereafter so register upon payment of the fee required for the current year for that registration status, plus the annual registration fee that the attorney would have been required to pay if registered as active for each of the years during which the attorney was on retirement status. If the lawyer seeks to register as active, he or she must also submit, as part of registering, verification from the Director of MCLE of the lawyer's compliance with MCLE requirements as set forth in Rule 790 *et seq.*

(7) An attorney who is on voluntary inactive status pursuant to former Rule 770 who wishes to register for any year after 1999 shall file a petition for restoration under Rule 759. If the petition is granted, the attorney shall advise the Administrator in writing whether he or she wishes to register as active, inactive or retired, and shall pay the fee required for that status for the year in which the restoration order is entered. Any such attorney who petitions for restoration after December 31, 2000, shall pay a sum equal to the annual registration fees that the attorney would have been required to pay for each full year after 1999 during which the attorney remained on Rule 770 inactive status without payment of a fee.

(8) Upon written application and for good cause shown, the Administrator may excuse the payment of any registration fee in any case in which payment thereof will cause undue hardship to the attorney.

(b) The Master Roll. The Administrator shall prepare a master roll of attorneys consisting of the names of attorneys who have registered and have paid or are exempt from paying the registration fee. The Administrator shall maintain the master roll in a current status. At all times a copy of the master roll shall be on file in the office of the clerk of the court. An attorney who is not listed on the master roll is not entitled to practice law or to hold himself or herself out as authorized to practice law in this State. An attorney listed on the master roll as on inactive or retirement status shall not be entitled to practice law or to hold himself or herself out as authorized to practice law in Illinois, except as is provided in paragraph j of this rule.

(c) Notice of Registration. On or before the first day of November of each year the Administrator shall mail to each attorney on the master roll a notice that annual registration is required on or before the first day of January of the following year. It is the responsibility of each attorney on the master roll to notify the Administrator of any change of address within 30 days of the change. Failure to receive the notice from the Administrator shall not constitute an excuse for failure to register.

(d) Disclosure of Trust Accounts. As part of registering under this rule, each lawyer shall identify any and all accounts maintained by the lawyer during the preceding 12 months to hold property of clients or third persons in the lawyer's possession in connection with a representation,

as required under Rule 1.15(a) of the Illinois Rules of Professional Conduct, by providing the account name, account number and financial institution for each account. For each account, the lawyer shall also indicate whether each account is an IOLTA account, as defined in Rule 1.15(d) of the Illinois Rules of Professional Conduct. If a lawyer does not maintain a trust account, the lawyer shall state the reason why no such account is required.

(e) Disclosure of Malpractice Insurance. As part of registering under this rule, each lawyer shall disclose whether the lawyer has malpractice insurance on the date of the registration, and if so, shall disclose the dates of coverage for the policy. The Administrator may conduct random audits to assure the accuracy of information reported. Each lawyer shall maintain, for a period of seven years from the date the coverage is reported, documentation showing the name of the insurer, the policy number, the amount of coverage and the term of the policy, and shall produce such documentation upon the Administrator's request. The requirements of this subsection shall not apply to attorneys serving in the office of justice, judge, associate judge or magistrate as defined in subparagraph (a)(4) of this rule on the date of registration.

(f) Disclosure of Voluntary *Pro Bono* Service. As part of registering under this rule, each lawyer shall report the approximate amount of his or her *pro bono* legal service and the amount of qualified monetary contributions made during the preceding 12 months.

(1) *Pro bono* legal service includes the delivery of legal services or the provision of training without charge or expectation of a fee, as defined in the following subparagraphs:

(a) legal services rendered to a person of limited means;

(b) legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;

(c) legal services to charitable, religious, civic, or community organizations in matters in furtherance of their organizational purposes; and

(d) training intended to benefit legal service organizations or lawyers who provide *pro bono* services.

In a fee case, a lawyer's billable hours may be deemed *pro bono* when the client and lawyer agree that further services will be provided voluntarily. Legal services for which payment was expected, but is uncollectible, do not qualify as *pro bono* legal service.

(2) Pro bono legal service to persons of limited means refers not only to those persons whose household incomes are below the federal poverty standard, but also to those persons frequently referred to as the "working poor." Lawyers providing pro bono legal service need not undertake an investigation to determine client eligibility. Rather, a good-faith determination by the lawyer of client eligibility is sufficient.

(3) Qualified monetary contribution means a financial contribution to an organization as enumerated in subparagraph (1)(b) which provides legal services to persons of limited means or which contributes financial support to such an organization.

(4) As part of the lawyer's annual registration fee statement, the report required by subsection (f) shall be made by answering the following questions:

(a) Did you, within the past 12 months, provide any *pro bono* legal services as described in subparagraphs (1) through (4) below? ____ Yes ____ No

If no, are you prohibited from providing legal services because of your employment? ____ Yes ____ No

If yes, identify the approximate number of hours provided in each of the following categories where the service was provided without charge or expectation of a fee:

(1) hours of legal services to a person/persons of limited means;

(2) hours of legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;

(3) hours of legal services to charitable, religious, civic or community organizations in furtherance of their organizational purposes; and

(4) hours providing training intended to benefit legal service organizations or lawyers who provide *pro bono* services.

Legal services for which payment was expected, but is not collectible, do not qualify as *pro bono* services and should not be included.

(b) Have you made a monetary contribution to an organization which provides legal services to persons of limited means or which contributes financial support to such organization? ____ Yes ____ No

If yes, approximate amount: $_____.If yes, approximate amount: $_____.

(5) Information provided pursuant to this subsection (f) shall be deemed confidential pursuant to the provisions of Rule 766, but the Commission may report such information in the aggregate.

(g) Removal from the Master Roll. On February 1 of each year the Administrator shall remove from the master roll the name of any person who has not registered for that year. A lawyer will be deemed not registered for the year if the lawyer has failed to provide trust account information required by paragraph (d) of this rule or if the lawyer has failed to provide information concerning malpractice coverage required by paragraph (e) or information on voluntary *pro bono* service required by paragraph (f) of this rule. Any person whose name is not on the master roll and who practices law or who holds himself or herself out as being authorized to practice law in this State is engaged in the unauthorized practice of law and may also be held in contempt of the court.

(h) Reinstatement to the Master Roll. An attorney whose name has been removed from the master roll solely for failure to register and pay the registration fee may be reinstated as a matter of course upon registering and paying the registration fee prescribed for the period of his

suspension, plus the sum of $25 per month for each month that such registration fee is delinquent.

(i) No Effect on Disciplinary Proceedings. The provisions of this rule pertaining to registration status shall not bar, limit or stay any disciplinary investigations or proceedings against an attorney.

(j) *Pro Bono* Authorization for Inactive and Retired Status Attorneys and House Counsel.

(1) **Authorization to Provide *Pro Bono* Services.** Notwithstanding the limitations on practice for attorneys who register as inactive or retired as set forth in Rule 756 (a)(5 or 6), or for attorneys admitted as house counsel pursuant to Rule 716, such an attorney shall be authorized to provide *pro bono* legal services under the following circumstances:

(a) without charge or an expectation of a fee by the attorney;

(b) to persons of limited means or to organizations, as defined in paragraph (f) of this rule; and

(c) under the auspices of a sponsoring entity, which must be a not-for-profit legal services organization, governmental entity, law school clinical program, or bar association providing *pro bono* legal services as defined in paragraph (f)(1) of this rule.

(2) **Duties of Sponsoring Entities.** In order to qualify as a sponsoring entity, an organization must submit to the Administrator an application identifying the nature of the organization as one described in section (j)(1)(c) of this rule and describing any program for providing pro bono services which the entity sponsors and in which retired or inactive lawyers or house counsel may participate. In the application, a responsible attorney shall verify that the program will provide appropriate training and support and malpractice insurance for volunteers and that the sponsoring entity will notify the Administrator as soon as any attorney authorized to provide services under this rule has ended his or her participation in the program. The organization is required to provide malpractice insurance coverage for any retired or inactive lawyers or house counsel participating in the program. To continue to qualify under this rule, a sponsoring entity shall be required to submit an annual statement verifying the continuation of any programs and describing any changes in programs in which retired or inactive lawyers or house counsel may participate.

(3) **Procedure for Attorneys Seeking Authorization to Provide *Pro Bono* Services.** An attorney registered as inactive or retired or admitted as house counsel who seeks to provide *pro bono* services under this rule shall submit a statement to the Administrator so indicating, along with a verification from a sponsoring entity or entities that the attorney will be participating in a *pro bono* program under the auspices of that entity. The attorney's statement shall include the attorney's agreement that he or she will participate in any training required by the sponsoring entity and that he or she will notify the Administrator within 30 days of ending his or her participation in a *pro bono* program. Upon receiving the attorney's statement and the entity's verification, the Administrator shall cause the master roll to reflect that the attorney is authorized to provide *pro bono* services. That authorization shall continue until the end of the calendar year in which the statement and verification are submitted, unless the lawyer or the sponsoring entity

sends notice to the Administrator that the program or the lawyer's participation in the program has ended.

(4) **Renewal of Authorization.** An attorney who has been authorized to provide *pro bono* services under this rule may renew the authorization on an annual basis by submitting a statement that he or she continues to participate in a qualifying program, along with verification from the sponsoring entity that the attorney continues to participate in such a program under the entity's auspices and that the attorney has taken part in any training required by the program.

(5) **Annual Registration for Attorneys on Retired Status.** Notwithstanding the provisions of Rule 756(a)(6), a retired status attorney who seeks to provide *pro bono* services under this rule must register on an annual basis, but is not required to pay a registration fee.

(6) **MCLE Exemption.** The provisions of Rule 791 exempting attorneys from MCLE requirements by reason of being registered as inactive or retired shall apply to inactive or retired status attorneys authorized to provide *pro bono* services under this rule, except that such attorneys shall participate in training to the extent required by the sponsoring entity.

RULE 716. Limited Admission Of House Counsel

(a) Eligibility. A lawyer admitted to the practice of law in another state or the District of Columbia may receive a limited license to practice law in this state when the lawyer is employed in Illinois as house counsel exclusively for a single corporation, partnership, association or other legal entity (as well as any parent, subsidiary or affiliate thereof), whose lawful business consists of activities other than the practice of law or the provision of legal services.

(b) Application Requirements. To qualify for the license, the applicant must file with the Board of Admissions to the Bar the following:

(1) A completed application for the limited license in the form prescribed by the Board.

(2) A certificate of good standing from the highest court of each jurisdiction of admission.

(3) A certificate from the disciplinary authority of each jurisdiction of admission which:

(a) states that the applicant has not been suspended, disbarred or disciplined and that no charges of professional misconduct are pending; or

(b) identifies any suspensions, disbarments, or disciplinary sanctions and any pending charges.

(4) A duly authorized and executed certification by applicant's employer that:

(a) it is not engaged in the practice of law or the rendering of legal services, whether for a fee or otherwise;

(b) it is duly qualified to do business under the laws of its organization and the laws of Illinois;

(c) the applicant works exclusively as an employee of said employer for the purpose of providing legal services to the employer at the date of his or her application for licensure; and

(d) it will promptly notify the Clerk of the Supreme Court of the termination of the applicant's employment.

(5) Such other affidavits, proofs and documentation as may be prescribed by the Board.

(6) The requisite fees in accordance with Rule 706.

(c) Character and Fitness Approval at Discretion of the Board. At the discretion of the Board of Admissions to the Bar, any applicant for a limited license under this rule may be required to receive certification of good moral character and general fitness to practice law by the Committee on Character and Fitness in accordance with the provisions of Rule 708.

(d) Certification by the Board. In the event the Board of Admissions to the Bar shall find that the applicant meets the requirements of this rule, the Board shall certify to the Court that such applicant is qualified for licensure.

(e) Limitation of Practice. Licensed house counsel, while in the employ of an employer described in subparagraph (a) of this rule, may perform legal services in this state solely on behalf of such employer; provided, however, that such services shall

(1) be limited to

(a) the giving of advice to the directors, officers, employees and agents of the employer with respect to its business and affairs; and

(b) negotiating, documenting and consummating transactions to which the employer is a party; and

(2) not include appearances as counsel in any court, administrative tribunal, agency or commission situated in this state unless the rules governing such court or body shall otherwise authorize or the lawyer is specially admitted by such court or body in a particular case or matter.

Lawyers licensed under this rule shall not offer legal services or advice to the public or in any manner hold themselves out to be so engaged or authorized, except as is provided in Rule 756(j).

(f) Duration and Termination of License. The license and authorization to perform legal services under this rule shall terminate upon the earliest of the following events:

(1) The lawyer is admitted to the general practice of law under any other rule of this Court.

(2) The lawyer ceases to be employed as house counsel for the employer listed on his or her initial application for licensure under this rule; provided, however, that if such lawyer, within 120 days of ceasing to be so employed, becomes employed by another employer and such employment meets all requirements of this rule, his or her license shall remain in effect, if within said 120-day period there is filed with the Clerk of the Supreme Court: (a) written notification by the lawyer stating the date on which the prior employment terminated, identification of the new employer and the date on which the new employment commenced; (b) certification by the former employer that the termination of the employment was not based upon the lawyer's character and fitness or failure to comply with this rule; and (c) the certification specified in subparagraph (b)(4) of this rule duly executed by the new employer. If the employment of the lawyer shall

cease with no subsequent employment within 120 days meeting all requirements of this rule, he or she shall promptly so notify the Clerk of the Supreme Court in writing stating the date of termination of the employment.

(3) Withdrawal of an employer's certification filed pursuant to subparagraph (b)(4) of this rule. An employer may withdraw certification at any time without cause being stated.

(4) Upon order of this Court.

(g) Annual Registration. Once the Court has conferred upon house counsel a limited license to practice law, counsel must register with the Attorney Registration and Disciplinary Commission and pay the fee for active lawyers set forth in Rule 756 for the year in which the license is conferred. For each subsequent year in which house counsel continues to practice in Illinois under the limited license, counsel must register and pay the fee required by Rule 756 in order to be authorized to practice under the limited license.

(h) Discipline. All lawyers licensed under this rule shall be subject to the jurisdiction of the Court for disciplinary purposes to the same extent as all other lawyers licensed to practice law in this state.

(i) No Credit Toward Admission on Motion. The period of time a lawyer practices law while licensed under this rule shall not be counted toward his or her eligibility for admission on motion under Rule 705.

(j) Transition. Any lawyer not licensed in this state who is employed as house counsel in Illinois on the effective date of this rule shall not be deemed to have been engaged in the unauthorized practice of law in Illinois prior to licensure under this rule if application for the license is made within 12 months of the effective date of the rule.

(k) Newly Employed House Counsel. Any lawyer who is newly employed as house counsel in Illinois after the effective date of this rule shall not be deemed to have engaged in the unauthorized practice of law in Illinois prior to licensure under this rule if application for the license is made within 180 days of the commencement of such employment.