

**Proposal 01-04
(P.R. 0094)**

Offered by the Illinois State Bar Association Board of Governors

New Rule ____. **Unauthorized Practice of Law Commission**

- (a) **Authority of the Commission.** The investigation and prosecution of the unauthorized practice of law shall be under the administrative supervision of an Unauthorized Practice of Law Commission.
- (b) **Membership and Terms.** The Commission shall consist of four members of the Illinois Bar and three non-lawyers appointed by the Supreme Court. One member shall be designated by the Court as chairperson. Unless the Court specifies a shorter term, all members shall be appointed for three-year terms. Any member of the Commission may be removed by the Court at any time, without cause.
- (c) **Compensation.** None of the members of the Commission shall receive compensation for serving as such, but all members shall be reimbursed for their necessary expenses.
- (d) **Quorum.** Four members of the Commission shall constitute a quorum for the transaction of business. The concurrence of four members shall be required for all action taken by the Commission.
- (e) **Duties.** The Commission shall have the following duties:
 - (1) to propose to the Court such procedural rules from time to time as may be necessary for the efficient and effective operation of the Commission;
 - (2) to appoint, with the approval of the Supreme Court, a director to serve as chief executive officer of the investigative and prosecutorial system. The Director shall receive such compensation as the Commission authorizes from time to time;
 - (3) to supervise the activities of the Director;
 - (4) to authorize the Director to hire attorneys, investigators and clerical personnel and to set the salaries of such persons;
 - (5) on or before April 30 of each year, to submit an annual report to the Court evaluating the effectiveness of the Commission's activities, recommending any changes it deems desirable, and summarizing unauthorized practice of law developments in Illinois and other jurisdictions during the previous year;

- (6) on or before April 30 of each year, file with the Court an accounting of the monies expended for the previous calendar year; and
 - (7) to seek the elimination of the unauthorized practice of law by action and methods as may be appropriate for that purpose including but not limited to the filing of suits in the name of the Commission.
- (f) This shall not preempt the Attorney Act or any other remedy available under the law.

Comment

The rule is intended to give the Unauthorized Practice of Law Commission broad and liberal authority to investigate and prosecute civilly any individual or organization which practices, attempts to practice, holds himself, herself, or itself out as being able to practice law and/or who charges or receives fees for legal services directly or indirectly when such individual or entity is not authorized to do so. The authority of the judicial branch in the regulation of the practice of law is challenged when those who are not licensed or otherwise under the authority of the Attorney Registration and Disciplinary Commission engage in the practice of law. The responsibility to protect the public through the registration and discipline of attorneys includes a concomitant obligation to ensure that only those lawyers so registered in Illinois as attorneys and counselors at law and subject to discipline perform legal services for the public.

As non-attorneys are not subject to discipline within ARDC's administrative proceedings since they possess no license against which action can be taken, the proposed commission must proceed against such individuals through civil proceedings. The Attorney Act (705 ILCS 205/1 *et seq.* (West 2000)) authorizes the filing of a complaint in any circuit court for contempt of court against "[a]ny person practicing, charging or receiving fees for legal services within this State, either directly or indirectly, without being licensed to practice ***."

The rule further affirms the inherent power of the courts "to punish for contempt or to restrain the unauthorized practice of law." The Supreme Court has exercised this authority, *e.g.*, *People ex rel. Chicago Bar Association v. Goodman*, 366 Ill. 346, 8 N.E.2d 941 (1937). Thus, a Supreme Court Commission would also have such authority to restrain the unauthorized practice of law.