



# Supreme Court of Illinois

January 25, 2017

## **ILLINOIS BECOMES FIRST STATE TO ADOPT PROACTIVE MANAGEMENT BASED REGULATION**

The Illinois Supreme Court has announced today the adoption of certain new rules governing the legal profession in Illinois. The changes are intended to help minimize many of the risks that lawyers face in the private practice of law.

In doing so, Illinois becomes the first state in the nation to adopt Proactive Management Based Regulation (PMBR). The rule changes were based upon a multi-year study of PMBR initiatives in other countries and in the United States, and after consultation with key Illinois stakeholders, including many bar association and lawyer groups.

"Traditionally, attorney regulation has tended to be reactive. Enforcement efforts have come into play only after a problem has arisen. PMBR represents a fundamentally different approach. As its name implies, PMBR is aimed at helping lawyers avoid disciplinary problems before they occur," Chief Justice Lloyd A. Karmeier said. "Today's rule changes are a vital step in implementation of that new strategy. PMBR promises a new level of protection for the public, and the Court is optimistic that it will be embraced by practicing attorneys with the same level of enthusiasm expressed by the numerous professional bodies that have urged its adoption."

Under the Illinois PMBR model, lawyers in private practice must consider establishing mechanisms and protocols to avoid the filing of disciplinary grievances and malpractice claims.

Beginning in 2018, Illinois attorneys in private practice who do not have malpractice insurance must complete a four hour interactive, online self-assessment regarding the operation of their law firm. This self-assessment will require lawyers to demonstrate that they have reviewed the operations of their firm based upon both lawyer ethics rules and best business practices. The program will be administered by the Attorney Registration and Disciplinary Commission (ARDC), the Illinois Supreme Court agency that regulates lawyers.

Following a lawyer's self-assessment, the ARDC will provide the lawyer with a list of resources to improve those practices that are identified during the self-assessment process. All information gathered in a lawyer's online self-assessment is confidential, although the ARDC may report data in the aggregate.

**MORE**

## **IL Becomes First State to Adopt Proactive Management Based Regulation Add One**

Lawyers who do not maintain malpractice insurance are required to complete a self-assessment every two years. Other lawyers are encouraged to self-assess as well. Lawyers who participate in the PMBR self-assessment will earn free Minimum Continuing Legal Education (MCLE) credits.

James R. Mendillo, the Chair of the ARDC noted: “The adoption of PMBR in Illinois demonstrates the continuing commitment of the Supreme Court to the public and to the legal profession. These changes once again establish the Court as being a leading and progressive force in this country.”

According to ARDC Vice-Chair David F. Rolewick: “With PMBR, the Supreme Court is reaching out to sole proprietors and small firm lawyers and providing them with the tools to better manage their practices. Good practice management improves the quality of a lawyer’s services to a client and reduces the stresses in a lawyer’s life.”

Jayne Reardon, Executive Director of the Illinois Supreme Court Commission on Professionalism, said: “I am delighted to work with the ARDC to educate and support lawyers in this new way. PMBR will encourage principles of professionalism that are at the heart of the Commission’s mission.”

The PMBR amendments benefited from the contributions of various organizations that are governed by the Supreme Court including the MCLE Board, the Lawyers Trust Fund of Illinois, the Lawyers Assistance Program, as well as the Commission on Professionalism.

The language of the Amended Rule 756(e) and all of the Supreme Court rules can be found on the Court's website at <http://www.illinoiscourts.gov/SupremeCourt/Rules>.



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# BENCH & BAR

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## The Supreme Court moves proactively on attorney malpractice insurance and liability issues

By [Hon. Alfred M. Swanson Jr. \(Ret.\)](#)

The Illinois Supreme Court is taking a proactive approach to encouraging Illinois lawyers to have professional liability insurance. In an amendment to Rule 756 that took effect January 25, 2017, the Supreme Court will, starting in 2018, require lawyers to answer questions about their professional liability insurance every other year at the time they renew their authorization to practice law. (See sidebar for the text of the amended Rule.)

With this proactive management based regulation, Illinois becomes the first state in the United States to adopt this approach to attorney regulation. Chief Justice Lloyd Karmeier explains that traditionally attorney regulation has been reactive efforts that arise only after problems arise. "This PMBR approach is aimed at helping lawyers avoid disciplinary problems before they occur."

The rule change is based on data the ARDC compiled in research over several years on the demographics of Illinois attorneys who do not have professional liability insurance and a study of data from other states, as well. According to Chief Justice Karmeier, the data shows that a majority of those without malpractice insurance are solo practitioners.

The amended Rule does not change the registration fee exemption for judges or for lawyers on judges' staffs. It does require attorneys to complete a questionnaire that the Chief Justice says is similar to the questions insurance companies ask when attorneys apply to obtain or renew their professional liability coverage.

Chief Justice Karmeier calls this rule change a "stick and carrot" approach to increasing awareness of professional liability

### Rule 756. Registration and Fees


#### **(e) Disclosure of Malpractice Insurance.**

(1) Each lawyer, except for those registering pursuant to (a)(2), (a)(3), (a)(5), (a)(6), and (k)(5) of this rule, 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)(3) of this rule on the date of registration.

(2) Every other year, beginning with registration for 2018, each lawyer who discloses pursuant to paragraph (e)(1)

insurance and of ways to lessen the chances of attorneys facing liability issues. In renewing their license to practice, the Rule requires attorneys to complete a risk self-assessment questionnaire much like the ones insurance companies require on policy renewal. The “carrot” for attorneys is receiving four hours of professional liability credits toward the six hours the MCLE rules require in each two-year reporting period.

The Supreme Court’s idea is to improve lawyer diligence. “Our hope is to improve the practices of the sole practitioner who may now be relying on memory to keep track of deadlines.” The entire self-assessment questionnaire provides confidential results to the attorney. All the ARDC will learn is that the attorney completed the questionnaire.

Chief Justice Karmeier notes that after the Supreme Court started asking lawyers to report on the *pro bono* work they do each year, data indicates lawyers may be doing more *pro bono* work. He notes that solo practitioners are a sub-group at risk for complaints with the ARDC. “The idea is to get people to think more about professional liability issues and ways to avoid problems.” The Chief Justice terms this rule change a “win-win-win” situation. “Lawyers win with more awareness of liability risks and the ways to avoid problems. Clients win because their attorneys are more aware of ways to avoid problems. And, the lawyers receive professional responsibility CLE credit by completing the questionnaire.” 

« [Back to the February 2017 Newsletter](#)

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that he or she does not have malpractice insurance and who is engaged in the private practice of law shall complete a self-assessment of the operation of his or her law practice or shall obtain malpractice insurance and report that fact, as a requirement of registering in the year following. The lawyer shall conduct the self-assessment in an interactive online educational program provided by the Administrator regarding professional responsibility requirements for the operation of a law firm. The self-assessment shall require that the lawyer demonstrate an engagement in learning about those requirements and that the lawyer assess his or her law firm operations based upon those requirements. The self-assessment shall be designed to allow the lawyer to earn four hours of MCLE professional responsibility credit and to provide the lawyer with results of the self-assessment and resources for the lawyer to use to address any issues raised by the self-assessment. All information related to the self-assessment shall be confidential, except for the fact of completion of the self-assessment, whether the information is in the possession of the Administrator or the lawyer. Neither the Administrator nor the lawyer may offer this information into evidence in a disciplinary proceeding. The Administrator may report self-assessment data publicly in the aggregate.