

**Proposal 02-02  
(P.R. 0100)**

**ALTERNATIVE 1**

**DRAFT RULE REGARDING LAWYERS' FINANCIAL RESPONSIBILITY  
(MANDATORY DISCLOSURE OF LACK OF MALPRACTICE INSURANCE)**

**New Rule of Professional Conduct 1.19. Lawyers' Financial Responsibility**

(a) Before undertaking a representation, the responsible lawyer in a law firm not possessing minimum insurance shall ensure that the client receives the requisite disclosure specified by this Rule.

(b) If a law firm possessed minimum insurance when a representation was undertaken but fails to maintain such insurance, the responsible lawyer shall ensure that the client receives the requisite disclosure within 30 days of when the law firm no longer maintained such insurance.

(c) Records evidencing requisite disclosures made pursuant to this Rule shall be preserved for a period of seven years from the conclusion of the representation.

(d) For purposes of this Rule, the following terms shall have the meanings set forth below:

(1) "Responsible lawyer" means the lawyer in a law firm with primary responsibility for the legal services rendered to the client in question.

(2) "Law firm" means any solo practitioner, partnership, professional corporation, professional association, limited liability company, registered limited liability partnership, or other organization engaged in the practice of law; provided, however, that "law firm" excludes businesses not engaged in the practice of law and governmental entities.

(3) "Minimum insurance" means a lawyers professional liability insurance policy covering each lawyer practicing in a law firm.

(4) "Before undertaking a representation" means before any legal services are provided to the client in a representation or, if exigent circumstances require legal services to be provided before the requisite disclosure is provided, as soon as reasonably possible after such services are first provided.

- (5) “Fails to maintain such insurance” means either:
- (A) A law firm does not continue to possess a lawyers professional liability insurance policy; or
  - (B) With respect to any representation that was undertaken when a law firm possessed minimum insurance, the law firm does not continue to possess such insurance covering (i) each lawyer practicing in the firm, or (ii) services rendered in that representation during the previous six years or since the inception of that representation, whichever is later.
- (6) “Requisite disclosure” means a document signed by the client which contains one of the following disclosures:
- (A) If the lawyer or law firm does not possess any lawyers’ professional liability insurance: “I am required to advise you pursuant to Illinois Rule of Professional Conduct 1.19 that neither I nor my law firm has minimum insurance which would pay you if you were damaged by any professional negligence or malpractice committed by me or my law firm in representing you.”
  - (B) If the lawyer or law firm has failed to maintain lawyers’ professional liability insurance in accordance with subparagraph (d)(5) of this Rule: “I am required to advise you that neither I nor my law firm has maintained the minimum insurance specified in Illinois Rule of Professional Conduct 1.19 which would pay you if you were damaged by any professional negligence or malpractice committed by me or my law firm in representing you.”

### **Official Comment**

*Purpose.* Lawyers are not required to possess professional liability insurance to practice law in this state. However, it is desirable--often for both lawyers and clients--that lawyers be insured. This Rule is intended to encourage lawyers to maintain insurance and to facilitate clients’ ability to make an informed decision whether to be represented by lawyers who are unable or unwilling to do so.

*Applicability.* The disclosure requirement applies to lawyers in private practice. Conversely, representations undertaken by lawyers employed by government agencies, or by in-house counsel providing legal services to their employer, are not subject to that requirement:

*Covered insureds.* For a law firm to possess “minimum insurance” within the meaning of this Rule, every lawyer in the firm must be covered by the insurance policy and lawyers who join the firm in the middle of a policy year must be added to the policy coverage.

*Maintaining Insurance.* If a law firm possessed minimum insurance when a representation was obtained but fails to maintain such insurance any time during the course of the representation, it must make the requisite disclosure within 30 days of when it first failed to maintain such insurance. To maintain minimum insurance with respect to a particular representation, law firms generally must keep lawyers professional liability insurance in force, add lawyers who join the firm during the course of the representation to the policy coverage, and obtain “prior acts” coverage for claims asserted during the policy period that are based on services rendered in the representation before that period.

*Content of Requisite Disclosure.* Depending on whether the law firm does not possess minimum insurance at the outset of a representation or fails to maintain such insurance, the language of the requisite disclosure is prescribed by subparagraphs (d)(6)(A) or (B), respectively. Minor word changes are permissible so long as they do not alter the gist of the prescribed language.

*Location of Requisite Disclosure.* The requisite disclosure may be included in a fee agreement or other written communication, such as a letter to the client, that the client is reasonably likely to read. Attention should be drawn to the disclosure by placing it in a prominent location and using boldface type and/or capital letters.

*Timing of Requisite Disclosure.* To facilitate a client’s ability to make an informed and unpressured decision whether to hire a law firm that does not possess minimum insurance, the requisite disclosure should ordinarily be made before any legal services are rendered. In unusual, exigent circumstances, disclosure may be made as soon as reasonably possible after the representation has begun.

*Responsibility for Making the Requisite Disclosure.* The lawyer with primary responsibility for the provision of legal services to the client in question is responsible for ensuring that the requisite disclosure is made. That lawyer need not personally make the disclosure.

## ALTERNATIVE 2

### **PROPOSED AMENDED RULE 756 TO REQUIRE REPORT OF MALPRACTICE COVERAGE AS PART OF ANNUAL ATTORNEY REGISTRATION**

#### **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 \$90; 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 \$229, out of which \$7 shall be remitted to the Lawyers' Assistance Program Fund and out of which \$42 shall be remitted to the Lawyers 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 \$90. 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. 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.

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. 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.

(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 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.

**(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. 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.

**(f) 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) of this rule. Any person whose name is not on the master roll and who practices law or who holds himself 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.

**(g) 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 \$10 per month for each month that such registration fee is delinquent.

**(h) 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.