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New mandatory rule for solos looks to help those without malpractice

As reported in last April's Sole Speak column, alarming numbers of sole practitioners lack malpractice insurance or formal succession plans, leading the state to consider more proactive methods of attorney regulation.

That day is here. Under newly amended Supreme Court Rule 756, lawyers without insurance for 2018 must undergo mandatory self-assessment and training to maintain their good standing for the following year.

Key provisions of Rule 756(e)(2) Subpart (e)(2) of Supreme Court Rule 756 now requires uninsured lawyers who register for 2018 to complete an "interactive online educational program" sponsored by the Attorney Registration & Disciplinary Commission.

Although the program's specific components are not yet available, the mandated subject matter concerns "professional responsibility requirements for the operation of a law firm."

Once the course is completed, the lawyer will receive the "results of the self-assessment," along with "resources ... to use to address any issues raised by the self-assessment."

Program participants are awarded four hours of Continuing Legal Education professional responsibility credit and all coursework is confidential. Responses may not be used in any disciplinary proceeding.

Every lawyer who does not have a malpractice policy for 2018 must either complete the ARDC's self-assessment course or procure insurance to be eligible for the 2019 registration year.

The specified two-year cycle — reporting insurance status in year one, followed by self-assessment and training (or securing insurance)

in order to register for year two — then repeats in 2020 and beyond.

Although this type of proactive management based regulation, or PMBR, has been used abroad and is being evaluated on a voluntary basis in Colorado, Illinois is the first U.S. jurisdiction to implement a full-fledged, mandatory PMBR program.

The ARDC's deputy administrator and chief counsel, James J. Grogan, an early and vigorous advocate for PMBR, lends his full support to the state's new self-assessment procedures.

Grogan points out that PMBR is intended to help fill a role normally addressed by malpractice insurers for covered attorneys. To secure a policy, lawyers must complete a comprehensive application that details existing client-protection and succession-planning measures, he explained.

The application process itself has a proactive benefit, by compelling lawyers to think about and address those critical issues, in order to obtain coverage.

Grogan explains that PMBR assists lawyers in evaluating many of the same issues considered important by malpractice insurers,

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thus promoting sound firm practices, reducing the risk of client complaints and avoiding disciplinary problems down the road.

Is this new rule intended to force registrants to obtain malpractice insurance? Absolutely not, Grogan responded.

The simple fact is that more

SOLE SPEAK

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than 40 percent of Illinois solos are practicing without coverage, and the state wants to help this substantial group make good self-assessment decisions and stay on the right track.

Grogan also emphasized that PMBR is intended to be collaborative and forward-looking, not punitive. "We want to give our lawyers an additional safety net, including new graduates who are practicing on their own without a mentor."

succession planning.

Grogan said he wants lawyers to know the program can benefit all counsel, covered or not, and anticipates healthy enrollment figures in 2018. With four CLE credit hours to be awarded at the conclusion, PMBR training is a win-win proposition for all.

Currently, more than three-quarters of all solos in Illinois report they have no succession plan. Illinois has not yet mandated succession planning for sole practitioners, but the writing could be on the wall.

Although a number of states sponsor voluntary succession planning — and Florida requires disclosure of an "inventory attorney" to serve on a permissive basis — Iowa is the first state to require full succession planning by its members.

Under Iowa Court Rule 39.18, all private practitioners must identify an "assisting attorney" with appropriate durable powers to wind down the practice in the event of disability or death.

The rule additionally requires counsel to maintain basic practice information, such as a client list, and provide the state with custodial and location information for the client list, electronic and paper files and records, passwords and other security protocols.

The Iowa rule also encourages lawyers to include planning provisions that permit the assisting attorney to collect fees and expenses, terminate leases and liquidate or sell the practice.

Grogan acknowledged that succession planning is a core need for all solo practices and said the ARDC continues to study the issue.

Given the state's pioneering efforts with PMBR, mandatory succession planning for sole practitioners may not be far behind.