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## **ILLINOIS SUPREME COURT AMENDS RULES ON APPEAL BONDS AND MALPRACTICE INSURANCE**

**The Supreme Court of Illinois amended two of its rules on Tuesday, one dealing with the setting of appeal bonds and the other requiring attorneys to disclose as part of their licensing procedures whether they have malpractice insurance.**

**The Court amended Supreme Court Rule 305 to clearly give discretion to a trial judge in setting an appeal bond if the judge determines a bond in the amount of the judgement plus costs and interest is beyond the means of the judgement debtor.**

**The change is designed to preserve the right of appeal.**

**The traditional method of securing a judgement is to require an appeal bond in the amount of the judgement plus anticipated interests and costs. In commentary accompanying amended Rule 305, the Court noted, however, that changes in the insurance market have made appeal bonds costly in many cases and unavailable in some cases. Also, in limited instances, the appeal bond requirement may be so onerous that it creates a barrier to appeal, forcing a party to settle a case or declare bankruptcy, the Court noted in its commentary.**

**The amended rule thus gives a judge discretion in a money judgment case to approve a bond that covers less than the entire amount of the judgement plus anticipated interest and costs when that amount is not “reasonably available” to the judgement debtor. A lower appeal bond does not lessen the obligation of the defendant on the judgement, but simply allows the defendant to obtain a stay of execution on the judgement pending appeal.**

**The amended rule also allows a defendant to file a form of security other than an appeal bond, such as letters of credit, an escrow agreement or a certificate of deposit when the alternative form of security offers comparable assurance of payment at lower cost.**

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**If a judge approves a bond or other form of security in an amount less than the amount of judgement plus anticipated interest and costs, the judge must also impose conditions to prevent the judgement debtor from disposing of any assets outside the ordinary course of business, the amended rule states.**

**The appeal bond issue received nationwide publicity in March, 2003 after a \$10.1 billion verdict against Philip Morris in Madison County. Initially, the trial judge set the appeal bond at \$12 billion, an amount Philip Morris USA said it would be unable to meet. The Illinois Supreme Court ordered the appeal bond be reduced to \$6 billion, and the appeal to be heard directly by the Supreme Court. Oral arguments in that case are pending.**

**Proposals to amend Rule 305 were the subject of a public hearing by the Court's Rules Committee in January 2004.**

**In its other action, the Supreme Court amended Rule 756 dealing with attorney registration in Illinois. The amended rule now requires each lawyer to disclose whether the lawyer has malpractice insurance on the date of the lawyer's annual registration with the Attorney Registration and Disciplinary Commission.**

**It is anticipated that the administrator of the ARDC will post the information for each lawyer on the Commission's web site, making it available to the public. The amendment also allows the Commission to conduct random audits to assure the accuracy of information reported by lawyers.**

**If a lawyer fails to provide the information regarding malpractice coverage, the lawyer's name will be removed from the master roll of licensed attorneys in the state and the lawyer will be unable to engage in the authorized practice of law.**

**Proposals dealing with the malpractice insurance for lawyers were the subject of public hearings by the Court's Rules Committee in 2002 and 2003.**

**Amended Rule 305 is effective July 1, 2004 and amended Rule 756 is effective October 1, 2004.**