

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

Offered by the ISBA Special Committee on Attorneys' Financial Responsibility

New Rule. Attorneys' Financial Responsibility

a. Private Practice of Law

Attorneys engaged in the private practice of law in Illinois and every law firm in which they practice shall maintain adequate insurance or other forms of adequate financial responsibility to compensate clients for the attorney's professional liability. For purposes of this rule, the private practice of law shall not include an attorney engaged exclusively in the practice of law in the employ of the federal, state or local government.

b. Adequate Insurance

As used herein, "adequate insurance" shall mean one or more policies of lawyers' professional liability insurance, which shall insure the attorney and shall be in the following amount:

- (i) for a lawyer practicing alone or for a lawyer in a firm with only one lawyer, the minimum insurance shall be in the amounts of \$100,000 per incident in excess of any deductible, with a \$300,000 annual aggregate, per policy year in excess of deductible.
- (ii) the minimum insurance coverage that a law firm with more than one attorney shall be required to carry is \$250,000 per claim in excess of any deductible and \$500,000 for all claims during the policy year in excess of any deductible.

c. Adequate Financial Responsibility

- (i) For purposes of this rule, an attorney or law firm has established "other forms of adequate financial responsibility" if the attorney or law firm provides funds of no less than \$50,000 multiplied by the number of attorneys practicing in the law firm, but in no case shall the maximum limit of funding for the year be required to exceed \$5,000,000. Such funds shall be specifically designated and segregated for the satisfaction of judgments against the attorney or law firm, by:
 - (a.) deposit in trust or in bank escrow of cash, bank certificates of deposit, or United States Treasury obligations; or
 - (b) a bank letter of credit; or
 - (c) a surety bond;

to be payable in trust to or to the order of any person presenting a settlement agreement or a valid final judgment of any court of competent jurisdiction in the State of Illinois for acts, errors and omissions arising out of the performance of professional services by the attorney or law firm.

(ii) For purposes of this rule, an attorney engaged exclusively in the private practice of law as a full-time employee of a non-governmental entity may establish compliance with this rule by affirming such employment in a manner directed by the Court.

Committee Comment

In paragraph a., the “practice of law” as that term is used in Supreme Court Rule 705, is broader than the “private practice of law” in this rule. Attorneys in the practice of law in the employ of government agencies, including all levels of government and all branches of government are not engaged in the *private* practice of law under this rule.

In paragraph b., minimum levels of adequate insurance establish one method for satisfying the attorneys’ financial responsibility.

Paragraph c. establishes non-insurance mechanisms to establish adequate financial responsibility. The attorney shall be responsible for providing direction to the financial institution on the obligations under this rule.

Paragraph c.(i) establishes alternative forms of financial responsibility. According to the Trusts and Trustees Act, 760 ILCS 5/3(2)(e), escrow accounts may not be held in trust. Instead escrow accounts should be made payable to the order of any person presenting a settlement agreement or a valid final judgment. However, all other alternative forms of financial responsibility in this paragraph may be held in trust accounts payable to any person presenting a settlement agreement or valid final judgment.

Paragraph c.(ii) generally addresses those attorneys who are in-house attorneys for corporations or other non-governmental organizations. The rule anticipates that an attorney who is a full-time, in-house counsel practices exclusively in that context and would affirm same to the Court through the existing annual registration process (see Rule 756).