



# Virtual Reality: PMBR Past, Present & Future

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**AMERICAN BAR ASSOCIATION**

**HOUSE OF DELEGATES**

**ADOPTED AUGUST 12-13, 2019**

**RESOLUTION**

RESOLVED: That the American Bar Association urges each state's highest court, and those of each territory and tribe, to study and adopt proactive management-based regulatory programs appropriate for their jurisdiction, as a way to enhance compliance with applicable rules of professional conduct and supplement existing disciplinary enforcement mechanisms, and to:

- a. assist lawyers, law firms, and other entities in which lawyers practice law in the development and maintenance of ethical infrastructures that help to prevent violations of applicable rules of professional conduct;
- b. reduce complaints to lawyer disciplinary authorities;
- c. enhance lawyers' provision of competent and cost-effective legal services; and
- d. encourage professionalism and civility in the profession.

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## POLLING QUESTION

1. What Do You Hope to Get Out of Today's Presentation?

- a. Determine the Status of PMBR Programs Around the Country.
- b. Learn About the Process of Creating a PMBR Program.
- c. Determine Whether Other Jurisdictions Can Help Us Implement PMBR.
- d. Determine if Remote Learning in the Pandemic Might Create an Opportunity to Create PMBR or other CLE Programs.
- e. Learn if There are Alternatives to PMBR.

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# A Quick Tour of the NOBC PMBR 2021 Materials

## Table of Contents of Materials

(organized by length and year, with pdf bookmarks)

Prepared by Professor Laurel S. Terry (LTerry@psu.edu)  
Penn State Dickinson Law

1. PMBR Resource List (with [urls](#)) [pdf. p.2]
2. PDFs of selected PMBR Pages
  - a. Colorado [pdf. p.4]
  - b. Illinois [pdf. p.6]
  - c. Iowa [pdf. p.8]
  - d. Nova Scotia [pdf. p.10]
  - e. ABA Center for Professional Responsibility PMBR Portal [pdf. p.12]
3. 3-page JOTWELL PMBR overview (Laurel Terry, *When it Comes to Lawyers... Is an Ounce of Prevention Worth a Pound of Cure?*, JOTWELL (July 13, 2016)(reviewing a Susan Fortney article about Australian PMBR results) [pdf. p.13]
4. Appendix showing PMBR "Self-Assessment" topics from various jurisdictions [pdf. p.16]
5. ABA PMBR Resolution #107 and Report (Adopted Aug. 2019) [pdf. p.23]
6. NOBC FAQ on Proactive Regulation, App. B: Examples of Proactive Regulation [pdf. p.43]
7. NOBC Proactive Regulation Subcommittee FAQ document (2017)[pdf. p.60]
8. Iowa Attorney Self-Assessment (March 2020) [pdf. p.75]

## VIRTUAL REALITY: PMBR Past, Present and Future

2021 NOBC Midyear Meeting

February 12, 2021

2:30 p.m. – 3:45 p.m.

## Resource List

Prepared by Professor Laurel S. Terry (LTerry@psu.edu)  
Penn State Dickinson Law

## Jurisdiction PMBR Pages (all of which contains a wealth of resources):

**Colorado** PMBP: <https://perma.cc/N2Q7-S585> links to  
<http://www.coloradosupremecourt.us/AboutUs/PMBRMinutes.asp>

**Illinois** PMBR: <https://perma.cc/TP4M-J936> links to  
[https://registration.iardc.org/attvreg/LMS\\_Link/pathlms\\_prelogin?pathPage=%2Fiardc%2Fcourses%2F15664](https://registration.iardc.org/attvreg/LMS_Link/pathlms_prelogin?pathPage=%2Fiardc%2Fcourses%2F15664)

**Iowa** PMBR: <https://perma.cc/RE3P-7XVM> and <https://perma.cc/2TV5-67SA> link to  
<https://www.iowacourts.gov/opr/attorneys/attorney-practice/practice-information/pmb-r-in-iowa/> &  
[https://www.iowacourts.gov/static/media/cms/Iowa\\_PMBR\\_Comprehensive\\_SelfAssessm\\_565AA639DF4FA.pdf](https://www.iowacourts.gov/static/media/cms/Iowa_PMBR_Comprehensive_SelfAssessm_565AA639DF4FA.pdf)

**Nova Scotia** Self-Assessing your Law Firm [MSLEP]: <https://perma.cc/DUT7-X9CK> links to  
<https://nsbs.org/legal-profession/your-practice/practice-support-resources/mslep/>

**Additional Canadian & Australian resources:** see the ABA CPR's International PMBR  
Resources page: <https://perma.cc/4EH9-ER3D> links to

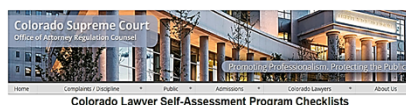
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# PMBR...WHY?

## When it Comes to Lawyers... Is an Ounce of Prevention Worth a Pound of Cure?

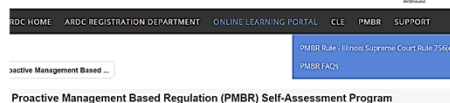
<http://legalpro.jotwell.com/when-it-comes-to-lawyers-is-an-ounce-of-prevention-worth-a-pound-of-cure/>

Susan Saab Fortney, *Promoting Public Protection through an "Attorney Integrity" System: Lessons from the Australian Experience with Proactive Regulation System*, 23 Prof. Law. 16 (2015).



Small Firm Business Manual and Risk Management Checklist

Small Firm Client Engagement Checklist



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From pdf p. 14 in your NOBC meeting materials:

**Table 1**

**Steps Taken by Firms in Connection with the First Completion of the Self-Assessment Process**

|                                                                                  |     |
|----------------------------------------------------------------------------------|-----|
| Reviewed firm policies/procedures relating to the delivery of legal services     | 84% |
| Revised firm systems, policies, or procedures                                    | 71% |
| Adopted new systems, policies, or procedures                                     | 47% |
| Strengthened firm management                                                     | 42% |
| Devoted more attention to ethics initiatives                                     | 29% |
| Implemented more training for firm personnel                                     | 27% |
| Sought guidance from the Legal Services Commissioner/another person/organization | 13% |
| Hired consultant to assist in developing policies and procedures                 | 06% |

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## POLLING QUESTION

2. Does Your Jurisdiction Have a PMBR Program?

- a. Yes
- b. Being Considered/In Development
- c. PMBR Rejected
- d. No Interest in Creating a PMBR Program

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NOBC Midyear Meeting  
February 12, 2021

In 2019, the ABA House of Delegates adopted a resolution that provided that each state's highest court, and those of each territory and tribe, study and adopt proactive management-based regulatory programs appropriate for their jurisdiction as a way to enhance compliance with applicable rules of professional conduct and supplement existing disciplinary enforcement mechanisms.

In January 2021, the NOBC membership was polled via the organization's Listserv regarding the current state of PMBR. The questions and answers to the poll, as edited, appear below:

| Jurisdiction          | PMBR Program Adopted                                        | When Program Adopted | Is PMBR Being Considered for Adoption | Was a PMBR Initiative Considered but Rejected | Do Your Jurisdiction Offer On-Line Substantive CLE | If No PMBR, Would Your Jurisdiction Benefit with Adoption |
|-----------------------|-------------------------------------------------------------|----------------------|---------------------------------------|-----------------------------------------------|----------------------------------------------------|-----------------------------------------------------------|
| Alaska                | No                                                          |                      | Yes. In Early Stages                  | -                                             | Yes                                                | Possibly                                                  |
| Colorado <sup>1</sup> | Yes                                                         | 2017                 | -                                     | -                                             | Yes                                                | -                                                         |
| Delaware              | No                                                          | -                    | No                                    | No                                            | Yes                                                | Yes                                                       |
| D.C.                  | No, but Existing DC Bar Programs Accomplish Many PMBR Goals | -                    | -                                     | -                                             | Yes                                                | -                                                         |
| Florida               | No                                                          | -                    | Yes. In Early Stages                  | -                                             | Yes                                                | Yes                                                       |
| Illinois <sup>2</sup> | Yes                                                         | 2017                 | -                                     | -                                             | Yes                                                | -                                                         |

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## PMBR Extension of What You (probably) Already Do . . .

### TOC #6: NOBC Proactive Regulation FAQ, Appendix B (As of May 19, 2017)

NOBC's Listing of Current and Available Innovative Programs Used in U.S. and Canadian Jurisdictions  
A Collaborative Effort (inspired by the work of Jim Coyle and Jon White, Colorado Supreme Court Office of Attorney Regulation Counsel)

### TOC ## 2a-e plus (new) #8:

#### Attorney Self-Assessment

Iowa Supreme Court  
Attorney Disciplinary Board  
March 2020

- I. COMPETENCE.....
- II. COMMUNICATION.....
- III. CONFIDENTIALITY.....
- IV. CONFLICTS OF INTEREST.....
- V. RECORDS MANAGEMENT.....
- VI. STAFF & OFFICE MANAGEMENT.....
- VII. FINANCIAL MANAGEMENT.....
- VIII. ACCESS TO JUSTICE & CLIENT DEVELOPMENT.....
- IX. WELLNESS & INCLUSIVITY.....

### TOC #4:

- Ethics hotlines;<sup>160</sup>
- Law practice management assistance;<sup>161</sup>
- Continuing legal education requirements;<sup>162</sup>
- Bridge the gap, mentoring, professionalism, or other programs for newly admitted attorneys;<sup>163</sup>
- Practice standards for specific subject matter or practice areas;<sup>164</sup>
- Monitoring discipline data to determine topics for future proactive regulation;<sup>165</sup>
- Using registration data or discipline data to determine type of outreach for particular kinds of lawyers;<sup>166</sup>
- Emailed newsletters that contain proactive tips;<sup>167</sup> and
- Emails to lawyers who switch registration status to solo or small firms given the higher rate of client complaints against solo and small firm lawyers.<sup>168</sup>

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