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 to assist lawyers and law firms in the development and maintenance of ethical infrastructures that help to prevent violations of applicable rules of professional conduct and complaints to lawyer disciplinary authorities, and enhance lawyers’ provision of competent and cost-effective legal services.
The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

REPORT

Benjamin Franklin once advised that “an ounce of prevention is worth a pound of cure.”¹ That is what this Resolution is about – encouraging state supreme courts to consider Proactive Management-Based Regulation (“PMBR”) programs tailored to their interests and needs, to help lawyers avoid disciplinary and malpractice complaints. Such programs have already been implemented with good results. They are good for lawyers, good for clients, and allow regulators to focus their limited resources where they are most needed. Illinois and Colorado have adopted PMBR initiatives; other U.S. jurisdictions are studying them. This Report explains the background and rationale behind PMBR programs, the positive results and feedback experienced to date, and how PMBR initiatives are consistent with existing ABA policy, including the ABA Model Regulatory Objectives for the Provision of Legal Services.

Based on the collaborative work of the Standing Committee on Professional Regulation (“Professional Regulation Committee”) and Young Lawyers Division (“YLD”), and as a predicate to this proposal, the YLD Assembly approved an almost identical Resolution at its 2019 Midyear Meeting in Las Vegas.² These two entities now request that the House of Delegates approve this Resolution urging jurisdictions’ highest courts to study and adopt jurisdictionally appropriate PMBR programs.

Realizing the potential of PMBR to enhance lawyer practice and help prevent misconduct, the Professional Regulation Committee and Center for Professional Responsibility (“the Center”) have been educating and providing resources about PMBR programs to regulators, state supreme courts, bar associations, and others for several years. They have done so through PMBR Workshops and roundtables, and discussions with and presentations to the Conference of Chief Justices and National Conference of Bar Presidents. The Professional Regulation Committee has also worked with the National Organization of Bar Counsel to educate regulators, the profession, and the public about PMBR through the development of web resources relating to this subject.³

In 2015, the first of the three PMBR Workshops held to date took place at the Colorado Supreme Court to begin educating and energizing U.S. regulators and bar leaders about PMBR developments and the possibilities for implementing such programs in the U.S. The Colorado Supreme Court Office of Attorney Regulation and the Maurice Deane School of Law at Hofstra University cosponsored it. Regulators from the U.S., Canada, and Australia provided participants with opportunities to discuss their experiences, as well as the possibilities and challenges associated with PMBR. Justices from the Colorado Supreme Court attended the Workshop.

The 2016 Workshop was held in Philadelphia, and built on the work done at the first PMBR Workshop. There were jurisdictional updates, and participants engaged in a moderated discussion designed to help them to identify positive aspects of PMBR and specific challenges that have arisen

² February 2019, YLD PMBR Resolution-Assembly Approved.pdf.
The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

or that may arise from various sectors of the legal profession. Participants discussed next steps to advance the exploration of PMBR and to facilitate continued collaboration.

In 2017, the Colorado Supreme Court adopted its voluntary PMBR program, and the Illinois Supreme Court adopted its mandatory PMBR mechanism for lawyers without professional liability insurance. Both programs are discussed below in more detail and demonstrate how PMBR programs are not one-size-fits-all and can be shaped to meet a jurisdiction’s needs.

The Professional Regulation Committee and Center held the third PMBR Workshop in 2017. The Chief Justice of the Illinois Supreme Court delivered the opening remarks. He spoke about Illinois’ new PMBR program and how the work of the Committee and Center contributed to its adoption. Attendees identified the types of mechanisms and programs that appear to best accomplish the objectives of PMBR, and explored jurisdictions’ PMBR self-assessment documents and their contents in depth.

The conversation continued with a 2018 Roundtable discussion focusing on the progress in Illinois and Colorado. Representatives from Illinois and Colorado spoke about the minimal resources necessary to develop and launch their programs, and the positive feedback they had received about the initiatives. The Committee also presented to the National Conference of Bar Presidents about this subject at the 2018 ABA Annual Meeting in Chicago, and has kept the Conference of Chief Justices apprised of its work. Planning is underway for the 4th Workshop, which will focus on development of a PMBR toolkit for jurisdictions to use in their study and consideration of jurisdictionally appropriate PMBR programs for adoption.

The Professional Regulation Committee and YLD believe that the time is ripe for the ABA to continue to lead in this area by adopting this Resolution.

The Current U.S. Lawyer Regulatory System is Primarily Reactive

The ABA has long supported state-based judicial regulation of the profession. This Resolution furthers that policy.4 The highest courts of appellate jurisdiction possess the inherent and/or constitutional authority to regulate the legal profession. Each jurisdiction has a lawyer disciplinary entity that is responsible for investigating and prosecuting complaints alleging that lawyers have violated applicable rules of professional conduct. These entities frequently serve other frontline regulatory, as well as educational, functions.5

In the U.S., much of the lawyer regulatory process is primarily reactive; it is complaint driven. There are over 1.2 million lawyers with active licenses in the United States.6 In 2016, Disciplinary

---

5 For example, some disciplinary offices are charged with collecting annual licensing fees and maintaining the master roll of lawyers. Others serve as conservators when lawyers die or abandon their practices.
The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

Agencies received over 87,000 complaints that necessitated screening, referral to other agencies, investigation, and in some cases, prosecution and the imposition of discipline. Historically, a majority of complaints against lawyers are about what is characterized as “lesser misconduct,” including lack of communication, neglect, and similar issues.

The Professional Regulation Committee and YLD believe that it is better to prevent problems than to have to react to them through the disciplinary process or malpractice complaints. However, some lawyers do not have infrastructure or mentoring opportunities available to them. In addition, as noted by the YLD in the Report accompanying its Resolution before the Assembly, more law students are opening their own practices and may lack the necessary practice management and skills, as well as the ability to identify or assess where they need additional skills training and education. PMBR programs are designed to help lawyers make those assessments, obtain that additional training and education, and develop ethical infrastructures.

In the Professional Regulation Committee’s experience, complaints about lesser misconduct, typically those involving neglect or lack of communication, are indicative of practice management or other skills-related issues that can and should be remediated, and hopefully future complaints will be avoided. Consistent with ABA policy, many jurisdictions now have in place programs that allow the disciplinary counsel, upon receiving a complaint involving lesser misconduct, to refer these lawyers to alternatives to discipline, also known as diversion, programs. These programs, while in the lawyer’s and public’s best interest, are still reactive in nature and do not help the lawyer avoid the disciplinary complaint in the first place. Rather, in such programs the lawyer and disciplinary entity enter into a contract whereby the lawyer agrees to complete actions to address the alleged violations, such as educational programs or the use of a practice management monitor. It is the lawyer’s responsibility to complete the terms of the contract. The contract provides for oversight of the lawyer and reporting to the disciplinary counsel about compliance. Typically, the disciplinary matter is held in abeyance pending successful completion of the contract. If the lawyer does not successfully complete the terms of the contract, disciplinary counsel may resume disciplinary proceedings. If the lawyer does fulfill the contract the disciplinary agency is barred from taking further action based on the allegations that led to the diversion.

Proactive Management-Based Regulatory Programs

1. The PMBR Concept

There are some parts of the current lawyer regulatory structure in the U.S. that are proactive in

https://www.americanbar.org/groups/professional_responsibility/resources/surveyonlawyerdisciplinesystems2014/.

7 Id.
9 Id. Research conducted by the Professional Regulation Committee indicates that at 29 jurisdictions (each New York Judicial Department counts as one jurisdiction) have formal alternatives to discipline programs, and a pilot program was launched in 2017 by the U.S. Patent and Trademark Office.
nature, including Bridge the Gap Programs, ethics hotlines, continuing legal education programs and other practice management solutions, as well as random audits of trust accounts. While these programs can help lawyers provide better services, they are ad hoc in nature. PMBR programs offer a different paradigm, a systemic preventive approach that helps lawyers and law firms develop ethical infrastructures to improve the delivery of legal services and client relations. Unlike the reactive alternatives to discipline/diversion concept discussed above, PMBR systems operate separate from the disciplinary process, because the purpose of PMBR is to prevent misconduct and malpractice, and the resulting need for involvement with the lawyer disciplinary system and courts. PMBR programs are not one-size-fits-all, as described in more detail below, and are able to be crafted to meet the needs of each jurisdiction.

Regarding the fact that PMBR programs are not one-size-fits all, the Professional Regulation Committee and YLD want to make clear at the outset what these programs and this Resolution are not. They are not about establishing or advocating for alternative business structures or entity regulation. To interpret the PMBR concept and this Resolution as such would be incorrect. Discussion of PMBR models below that are in jurisdictions that permit entity regulation or alternative business structures are illustrative only. They are intended to show the range of PMBR programs and that they are not one-size-fits-all in nature. The examples below are also not exhaustive.

Another beneficial effect of PMBR programs that the Professional Regulation Committee and YLD have seen, is that they change for the better the relationship between the regulator and regulated. Historically, the relationship between regulators and the profession has been fraught; the relationship is often perceived and experienced as adversarial, especially by lawyers who are notified by disciplinary counsel that a complaint against them has been made. Under PMBR programs that have been implemented in other countries and in the U.S., the regulator and regulated have developed a different relationship. The relationship is one where the parties work together to help the lawyer come into compliance with the PMBR program, or in jurisdictions with voluntary programs to encourage and help lawyers follow it. Noncompliance is not met with an immediate invocation of the disciplinary process. Involvement of the disciplinary process is a last resort in jurisdictions where PMBR programs are mandatory. Information shared with the regulator as part of the PMBR process, whether the program is mandatory or voluntary, must not be used by the disciplinary agency. As discussed in more detail below, it should be and is held confidential to support the preventive purpose of the program.

The Report supporting the YLD Resolution that preceded this proposal notes that PMBR’s guiding principles of prevention and better client service are particularly important for young lawyers who, in a challenging and competitive legal services marketplace, must optimize these practice management and competency skills as early in their careers as possible. That Report noted that “PMBR can assist young lawyers with learning how to practice good habits at the outset of their careers rather than rehabilitating poor habits later. PMBR programs are also helpful from a

---

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

business development perspective.”

2. PMBR in U.S. Jurisdictions: A Positive Experiment to Date and Growing

As noted above, the Professional Regulation Committee’s efforts to educate regulators and the bar about PMBR have contributed to the adoption of PMBR programs by two state supreme courts. Other jurisdictions have commenced study of PMBR systems, including Utah, New Mexico, and Wisconsin. The Illinois Supreme Court and the Colorado Supreme Court adopted different types of PMBR programs in 2017 after conducting studies about it and engaging in broad outreach to the profession and public. Illinois’ program is mandatory for lawyers without malpractice insurance; Colorado’s program is voluntary. Neither involves entity regulation.

The Illinois program requires lawyers without malpractice insurance to complete a four-hour interactive, online self-assessment about their practice. The Chief Justice of the Illinois Supreme Court introduces the program in a video, and there are currently eight interactive modules that comprise the self-assessment program. The program addresses the ethics rules and lawyers’ business practices. The modules address: (1) technology and ethics; (2) conflicts of interest; (3) fees, costs, and billing practices; (4) effective client-lawyer relationships; (5) client trust accounts; (6) lawyer well-being; (7) professionalism and civility; and (8) diversity and inclusion. For example, the trust accounting module reinforces the proper ways to handle client funds and avoid practices that could lead to complaints about issues such as comingling, bookkeeping and accounting procedures. Lawyers may also voluntarily take the PMBR programming. CLE credit is available to all who complete it.

To allay fears about the disciplinary agency obtaining information from the self-assessment and using the data in a disciplinary context, the Illinois Supreme Court adopted rules to ensure that “[a]ll information related to the self-assessment shall be confidential, except for the fact of completion of the self-assessment, whether the information is in the possession of the Administrator or the lawyer.” That information is also not subject to discovery.

Colorado’s voluntary PMBR program is called the Colorado Lawyer Self-Assessment Program, and it is also online. That the program is voluntary highlights how the concept of PMBR is not “one-size-fits-all.” Colorado’s program allows lawyers to earn up to three CLE credits by completing the ten self-assessments. The Colorado Supreme Court amended its Rules of Procedure Regarding Attorney Discipline and Disability Proceedings, Colorado Attorneys’ Fund

---

11 Supra note 2, at 2.
13 Id.
14 Id.
15 Ill. Supreme Court Rule 756(e)(2) states, for example: “Neither the Administrator nor the lawyer may offer this information into evidence in a disciplinary proceeding.”
16 In addition to this information, answers to other frequently asked questions can be viewed at: https://registration.iardc.org/attyreg/Registration/Registration_Department/PMBR_FAQs/Registration/regdept/Rule_756e2_Self-Assessment_FAQ_s.aspx
17 See http://www.coloradosupremecourt.com/AboutUs/LawyerSelfAssessmentProgram.asp.
The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

for Client Protection, and Mandatory Continuing Legal Education and Judicial Education to include the Self-Assessment Program, stating in new Court Rule 256 that: “The Colorado Supreme Court additionally finds that maintaining the confidentiality of information prepared, created, or communicated by a lawyer or by a law firm administrator, employee, or consultant acting under the direction of a lawyer, in connection with a lawyer self-assessment will enhance participation in the Colorado Lawyer Self-Assessment Program…”18 Confidential information is defined in the Rule and the parameters for the ways in which that information cannot be used is also set forth.19

As of September 6, 2018, 182 Colorado lawyers had completed the program and received CLE credit, and over 400 lawyers had finished at least one part of the program.20 The Colorado Office of Attorney Regulation continues to actively engage in outreach about the program.

Due to the newness of both programs, no formal studies yet exist regarding their effectiveness. However, as reported in a 2018 article in the Illinois Bar Journal, “PMBR is part of the ARDC's effort to focus on prevention over prosecution…” and it has experienced success with participation and received positive feedback on the eight current PMBR modules. 21 As noted in the article, in addition to being asked to rate their own experience with the program, participants “are also asked whether they would recommend the PMBR courses to others. A whopping 93 percent said yes with regard to the technology and conflicts courses; 95 percent said yes about the fees, costs and billing module, as well as the trust accounts and record management module.”22 The program is similarly viewed as a positive development by the profession in Colorado, with supportive articles appearing in bar journals including the Colorado Trial Lawyers’ Association.23

3. PMBR Works: Models Elsewhere

As noted above, PMBR and this Resolution are distinct and unrelated to the concepts of alternative business structures or entity regulation. Nothing about this Resolution seeks to change existing ABA policy on those subjects. Discussion of PMBR models below that are in jurisdictions that permit entity regulation or alternative business structures are illustrative only, not exhaustive, and intended only to demonstrate the flexibility that PMBR affords in crafting jurisdictionally appropriate programs.

The genesis of PMBR as a concept grew from a New South Wales, Australia law allowing lawyer and nonlawyer partners/owners of law firms. Starting in 2001, lawyers in New South Wales,

18 COLO. SUP. CT. R. 256.
19 Id.
22 Id.
23 This article states that the program is “an invaluable resource, especially for solo and small firm lawyers, new lawyers, and lawyers practicing in the areas of plaintiffs’ personal injury, family law, criminal law, and bankruptcy.” http://www.coloradosupremecourt.us/PDF/AboutUs/PMBR/Morris%20Talk%20Colorado%20Lawyer%20SelfAssessment%20Program.pdf.
Australia were permitted to have Incorporated Legal Practices (ILP) that included lawyer and non-lawyer partners/owners. Regulators in that country wanted to maximize public protection in the context of this new construct for delivering legal services. The legislation that governed these ILPs required each entity to have a Legal Practice Director and to put into place “appropriate management systems.”

“Appropriate management systems” was not a defined phrase in the legislation and so ILPs lacked guidance as to how they should comply with the regulations. In response, the regulator in New South Wales, the Office of the Legal Services Commissioner (OLSC), consulted with relevant stakeholders including the bar and the professional liability insurer, and developed collaboratively with them the first PMBR program. That program consisted of a checklist of ten objectives/areas that “appropriate management systems” should address, and required each ILP to conduct a “self-assessment” to determine the ILP’s compliance with these objectives. The ILP was required to rate its level of compliance. The OLSC provided resources to help ILPs determine how to rate themselves and offered onsite assistance to those who requested such help. The OLSC conducted audits of those ILPs that did not complete the self-assessment process.

The areas covered by the self-assessment checklist in New South Wales mirror and are designed to help ILPs implement systems to prevent the same types of issues that frequently give rise to disciplinary complaints and possible referral to diversion programs in the U.S. These issues include neglect, delay, lack of communication, failure to return client files, trust account and record management systems, retainer and billing practices, supervision of staff, and conflicts of interest.

In 2009, the OLSC partnered with a law school professor to study the program’s impact. That study determined that there was a significant drop in complaints to the OLSC (of up to two-thirds) against ILPs that completed the initial self-assessment process. A second study explored why this significant reduction in complaints had occurred, and found that it was because almost 75% of the firms that completed the self-assessment took steps to improve their processes due to their participation in the program. Of note, the majority of lawyers who participated in the program expressed satisfaction with the PMBR program, even those who were skeptical when the program began. Queensland, Australia implemented a similar PMBR program with the anecdotal data

---

25 Supra note 10, at 724-725.
27 Supra note 10, at 725.
28 Supra note 10 at 726.
31 Id.
The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

showing results analogous to those in New South Wales.32

In December 2014, Australia adopted the Uniform National Legal Profession Act. New South Wales’s 2015 Legal Profession Act implements the uniform national law. Self-assessments are no longer required under the new law. Instead, the designated local regulator may, if it has reasonable grounds (which may include a complaint), conduct an audit of a lawyer or law firm’s compliance with the law and any other applicable professional obligations. The regulator can, as part of the audit, provide “management system direction” to the lawyer or firm if it considers it reasonable to do so after the audit to “ensure that appropriate management systems are in place.33 That direction may include a requirement that the lawyer or firm provide the regulator with periodic reports of compliance.34 While this new system steps back from the original PMBR regime, the data from the initial self-assessment process remains no less important. Queensland has not yet adopted the Uniform National Law. Its original PMBR program remains in effect.

Regulators in Canada have also undertaken study of and implemented PMBR programs, recognizing the benefits of this regulatory paradigm. For example, in 2015 the now Law Society of Ontario (formerly the Law Society of Upper Canada) created a Compliance-Based Entity Regulation Task Force to explore PMBR for lawyers and paralegals. The Law Society regulates lawyers in Ontario. That Task Force issued a Report asking the Law Society’s Convocation (its Board of Directors) to approve development of a regulatory framework based on principles of compliance-based regulation.35 As noted on the Law Society’s website, “[c]ompliance-based regulation emphasizes a proactive approach in which the regulator identifies practice management principles and establishes goals and expectations. Lawyers and paralegals report on their compliance with these expectations, and have autonomy in deciding how to meet them.”36 The Task Force noted in its Report that compliance-based regulation and entity regulation do not have to be implemented together.37 In 2016, the Convocation approved the Task Force’s recommendations.38

In May 2018, the Task Force released another Report to Convocation39 and the Law Society released for comment the Task Force’s draft Practice Assessment Tool.40 No decision has been made whether this PMBR program will be mandatory or voluntary. The Law Society is accepting comments regarding the Practice Assessment Tool.

33 Legal Profession Uniform Law (N.S.W.) § 257(1).
34 Id. at § 257(2)(b).
36 Id.
37 https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/c/convocation_may_2016_cber.pdf.
38 https://lso.ca/about-lso/initiatives/compliance-based-entity-regulation.
The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

The Nova Scotia Barristers’ Society (NSBS), the regulator in the province, has developed from the bottom-up a new professional regulatory design that it refers to as “Triple P Regulation.” This new proactive regulatory model will apply to the admissions process as well as to practice post-licensure. “Triple P” stands for principled, proactive, and proportionate regulation. The system is risk focused, and like other PMBER models, is designed to help lawyers and law firms avoid disciplinary and malpractice complaints. A pilot project was completed with approximately 50 firms from 2016 – 2017. Starting in January 2018, lawyers are subject to completing a self-assessment based on the “ten elements of a management system for ethical legal practice” or MSELPA. The NSBS system does not dictate to lawyers how to meet the MSELPA, but provides guidance. Lawyers must submit the self-assessment to the Executive Director’s Office of the NSBS. The MSELPA are akin to the ten objectives for appropriate management systems used in New South Wales.

The goal of this proactive system is to prevent problems that could lead to disciplinary action or malpractice complaints. As explained to lawyers in the FAQ about the MSELPA, they are intended: “To help you and everyone else: (1) be more productive, (2) be less vulnerable to complaints, (3) be less vulnerable to claims, (4) as others do the same, incur less cost over time than would otherwise be the case, (5) be less stressed, (6) be more able to serve your clients through ethical and effective practice, and (7) when the time comes, be more able to leave practice.” Lawyers will have to do the self-assessment every three years to ensure their management systems remain optimal. Responses that the lawyer gives to the MSELPA self-assessment cannot result in a disciplinary investigation. The NSBS works proactively with the lawyers and their firms to answer questions and to help them complete the self-assessment.

The Prairie Law Societies in Canada (Saskatchewan, Alberta and Manitoba) are also exploring a more proactive approach to regulation, including the regulation of law firms. These Law Societies worked together, and as noted on the Law Society of Saskatchewan website: “To determine the most meaningful way to engage with law firms through proactive regulation, the Prairie Law Societies conducted a pilot project in 2017 to test a new resource which helps firms assess the robustness of their practice management systems and firm culture. The Law Firm Practice Management Assessment Tool (the “Assessment Tool”) helps a firm recognize its strengths and provides “things to consider” in areas where opportunities for improvement have been identified. These include examples of how a law firm might put practices, policies or procedures into place, along with links to further resources that law firms can use in addressing practice management

41 https://nsbs.org/glossary-terms#20
46 Id. See also Regulation 4.9.6 of the Nova Scotia Barristers’ Society Regulations Made Pursuant to the Legal Profession Act, current through January 18, 2019. https://nsbs.org/sites/default/files/cms/menu-pdf/CurrentRegs.PDF.
The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

concerns. . . The content of the Assessment Tool is designed to help firms think about ways to best serve their clients, their lawyers and their employees. This fosters both public protection in terms of ethical, efficient practice as well as good business.”47 Generally, the Law Societies received positive feedback from the pilot program, and used the information it received to make necessary changes.48 The Law Society of Saskatchewan intends to implement the program in 2019.

PMBR Aligns With and Furthers ABA Policy

This Resolution is consistent with ABA policy supporting state-based judicial regulation of the profession. In that regard, the Resolution is also consistent with the 1992 Recommendations of the ABA Commission on Evaluation of Disciplinary Enforcement (“McKay Commission”). The McKay Commission was created in 1989 to conduct a national evaluation of lawyer disciplinary enforcement and provide a model for responsible regulation in the future. The Commission was named after its original Chair, Robert McKay, who passed away before the Commission completed its work. The Recommendations of the Commission, most of which were adopted by the House of Delegates at the February 1992 Midyear Meeting, were published as “Lawyer Regulation for a New Century.”

The McKay Commission Report recommended that state supreme courts move away from a purely prosecutorial model of lawyer regulation to one that not only protects the public, but helps lawyers. That expanded system of regulation called for a focus on increased public service and accessibility, as well as the creation of programs designed to help lawyers avoid the disciplinary process.49 It was from these recommendations that the ABA Model Rules for Lawyer Disciplinary Enforcement were amended to provide for the alternatives to discipline/diversion programs described above.

PMBR is the logical next step in the evolution of this expanded system of regulation. PMBR is consistent with the letter and spirit of the McKay Recommendations and Model Rule for Lawyer Disciplinary Enforcement 11(G) that sets the parameters for alternatives to discipline programs. The components of PMBR are similar to those in the alternatives to discipline programs; it is the timing of the lawyer’s participation that is different. PMBR frontloads the preventive measures which are not part of the disciplinary process.

PMBR is also consistent with many of the ABA Model Regulatory Objectives for the Provision of Legal Services, and inconsistent with none. The House of Delegates adopted the Model Regulatory Objectives in February 2016.50 In particular, PMBR is consistent with the following Model Regulatory Objectives: protecting the public; advancing the administration of justice and the rule of law; providing transparency about the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections; enhancing the delivery of affordable and accessible legal services; helping lawyers

47 https://www.lawsociety.sk.ca/initiatives/innovating-regulation/.
48 Id.
49 Supra note 4, at 14 - 21.
50 https://www.americanbar.org/content/dam/aba/directories/policy/2016_hod_midyear_105.docx.
The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

provide efficient, competent, and ethical legal services; protecting confidential and privileged information; advancing appropriate preventive or wellness programs; and advancing diversity and inclusion among legal services providers. This Resolution is consistent also with ABA Goal II, which encourages the promotion of high quality legal education; competence, ethical conduct and professionalism; and pro bono and public service by the legal profession.

Conclusion

In developing this Resolution, the Professional Regulation Committee not only collaborated with the YLD, but sought input and incorporated suggestions from individuals and other entities inside and outside the ABA. This Resolution is consistent with the PMBR Resolution adopted by the YLD Assembly in January 2019. The Professional Regulation Committee respectfully requests that the House of Delegates adopt this proposal for state supreme courts to study and adopt jurisdictionally appropriate PMBR programs.

Respectfully Submitted,

Paula J. Frederick, Chair
ABA Standing Committee on Professional Regulation
August 2019

---

51 Illinois and Colorado PMBR program includes lawyer well-being.
52 Illinois and Colorado PMBR program includes diversity and inclusion.
53 https://www.americanbar.org/about_the_aba/aba-mission-goals/