

# **Article 2: Limited Liability Professional Organizations.**

*(Originally adopted June 16, 1999.)*

## **§ 3-201. Permissible business organizations; name restrictions; membership professional liability; insurance required; dissolution.**

(A) As of December 1, 1999, attorneys who are licensed to practice law in Nebraska may do so in the form of professional corporations, limited liability companies, or limited liability partnerships (herein referred to as "domestic professional organizations") permitted by the laws of Nebraska to conduct the practice of law, provided that such professional organizations maintain the mandatory minimum levels of professional liability insurance set forth at § 3-201(C)(7) and are established and operated in accordance with the provisions of this rule and the Nebraska Rules of Professional Conduct, and provided that a certificate of authority is granted by the Nebraska Supreme Court pursuant to § 3-202(A). For purposes of these rules, "organizing document" shall mean articles of incorporation, articles of organization, certificate of organization, statement of qualification, or partnership agreement for domestic professional organizations.

(B) As of December 1, 1999, attorneys may practice law in Nebraska in forms similar to domestic professional organizations formed pursuant to the laws of a jurisdiction other than Nebraska (herein referred to as "foreign professional organizations"), and the laws of such other jurisdiction shall govern (i) the organization, (ii) internal affairs, and (iii) all its other corporate aspects, provided that such foreign professional organization is operated in accordance with the applicable provisions of this rule, including the mandatory minimum professional liability insurance requirement and liability provisions of § 3-201(C)(7). Whether or not such provisions are set forth in the organizational documents of a foreign professional organization, they are applicable and binding by operation of this rule.

(C) The provisions of this rule shall apply to all foreign and domestic professional organizations (hereinafter collectively referred to as "professional organizations") having as shareholders, officers, directors, partners, employees, members, or managers one or more attorneys who engage in the practice of law in Nebraska, whether such professional organizations are formed under Nebraska law or under laws of another state or jurisdiction. All professional organizations conducting the practice of law in Nebraska shall comply with the following requirements, and the organizing document of any domestic professional organization shall contain provisions complying with the following requirements:

(1) The name of the professional organization organized under this rule shall contain the words "professional corporation," "limited liability company," or "limited liability partnership," or abbreviations thereof such as "P.C.," "L.L.C.," or "L.L.P." In addition, any professional corporation organized under this rule shall have as a part of its firm name the words "A Limited Liability Organization," or an abbreviation thereof such as "L.L.O.," following its designation as a professional corporation or P.C. The name of the professional organization shall meet the ethical standards established for the names of law firms according to the standards of professional conduct promulgated by the Supreme Court and the Nebraska Rules of Professional Conduct;

(2) All members of the professional organization who engage in the practice of law within the State of Nebraska shall be persons duly licensed by the Nebraska Supreme Court to practice law in the State of Nebraska, and at all times own their own interest in their own right, and all members of the professional organization who engage in the practice of law outside this state shall be persons duly licensed by the states, territories, or other jurisdictions in which such persons engage in the practice of law, and at all times own their own interest in their own right;

(3) Provisions shall be made requiring any member who ceases to be eligible to be a member to dispose of all of his or her interest in the professional organization forthwith, either to the professional organization or to a person having the qualifications described in § 3-201(C)(2);

(4) The management of the professional organization shall have the qualifications of the persons described in § 3-201(C)(2);

(5) The professional organization shall be organized solely for the purpose of conducting the practice of law, and only through persons qualified to practice law in the State of Nebraska if such persons engage in the practice of law within this state, or through persons qualified to practice law in the states, territories, or other jurisdictions in which such persons engage in the practice of law;

(6) No professional organization may engage in the practice of law except by and through the person or persons of its licensed member or members or licensed professional employees, all of whom shall retain their professional licenses in good standing and shall be subject to all rules, regulations, standards, and requirements pertaining to their professional activities. The provisions of this rule shall not be construed to abolish, repeal, modify, restrict, or limit the standards for professional conduct or the law now in effect applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional services;

(7)(a) A member or professional employee of a professional organization shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or her, or by any person under his or her direct supervision and control, while rendering professional services on behalf of the professional organization to the person for whom the professional services were being rendered.

(b) All professional organizations operating under this rule shall maintain professional liability insurance as set forth herein. The organizing document shall provide that any shareholder, partner, or member who has not directly and actively participated in the act, error, or omission for which liability is claimed shall not be liable, except as provided in § 3-201(C)(7)(b)(v), for any of the damages caused if at the time the act, error, or omission occurs the professional organization has professional liability insurance which meets the following minimum standards:

(i) The insurance shall insure the professional organization against liability imposed upon it arising out of the practice of law by attorneys employed by the professional organization in their capacities as attorneys.

(ii) Such insurance shall insure the professional organization against liability imposed upon it by law for damages arising out of the professional acts, errors, and omissions of all nonprofessional employees.

(iii) The policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, exclusions, and other matters.

(iv) The insurance shall be in an amount for each claim of at least \$250,000 multiplied by the number of attorneys employed by the professional organization, and if the policy provides for an aggregate top limit of liability per year for all claims, the limit shall not be less than \$500,000 multiplied by the number of attorneys employed by the professional organization; provided, however, that no professional organization shall be required to carry total limits of insurance in excess of \$1,000,000 for each claim or be required to carry an aggregate top limit of liability for all claims per year of more than \$5,000,000.

(v) The policy may provide for a deductible or self-insured retained amount and may provide for the payment of defense or other costs out of the stated limits of the policy. In either or both such events, the liability assumed by the shareholders, partners, or members of the professional organization shall include the amount of such deductible or retained self-insurance and shall include the amount, if any, by which the payment of defense costs may reduce the insurance remaining available for the payment of claims below the minimum limits of insurance required by this rule if the ultimate liability for the claim exceeds the amount of insurance remaining to pay for it.

(vi) A professional act, error, or omission is considered to be covered by professional liability insurance for the purpose of this rule if the policy includes such act, error, or omission as a covered activity, regardless of whether claims previously made against the policy have exhausted the aggregate top limit for the applicable time period or whether the individual claimed amount or ultimate liability exceeds either the per claim or aggregate top limit.

(c) The organizing document shall also provide, and each shareholder, partner, or member shall be deemed to agree, that if it is determined that the mandatory professional liability

insurance as set forth above has lapsed or is otherwise not in effect at the time of the commission of any professional act, error, or omission by any of the shareholders, officers, directors, partners, members, managers, or employees of the professional organization, each of the shareholders, partners, or members of the professional organization at the time of the commission of any such professional act, error, or omission shall be jointly and severally liable to the extent that the assets of the organization are insufficient to satisfy any liability incurred by the corporation for the acts, errors, and omissions of the shareholder, partner, or member and other employees of the organization while they are shareholders, partners, or members, to the same extent as if the shareholder, partner, or member were practicing in the form of a general partnership.

(8) Except as provided by § 3-201(C)(7), the relevant states' rules of liability applicable to the particular foreign professional organization shall apply to limited liability organizations organized hereunder.

(9) The liability assumed by the shareholders, partners, or members of the professional organization pursuant to § 3-201(C)(7) is limited to liability for professional acts, errors, or omissions which constitute the practice of law and shall not extend to actions or undertakings that do not constitute the practice of law. Liability, if any, for any and all actions or undertakings, other than professional acts, errors, or omissions, shall be as generally provided by law and shall not be changed, affected, limited, or extended by this rule.

(10) A professional organization that discontinues the practice of law may nevertheless continue in operation for an additional period of up to 2 years for the purpose of dissolving and winding up the administrative business of the professional organization.

*Rule IC(1) amended January 12, 2000; Rule IA and IC(1) amended July 13, 2005, effective September 1, 2005. Renumbered and codified as § 3-201, effective July 18, 2008; §§ 3-201(A), (C), and (C)(7)(b)-(c) amended December 22, 2010.*

## **§ 3-202. Filing requirements; ethical obligations; attorney-client privilege.**

(A) All professional organizations, both domestic and foreign, shall file with the Clerk of the Supreme Court an application, in the form of a cover letter, along with a \$25 issuance fee as required by statute or this rule, for a Certificate of Authority from the Nebraska Supreme Court to operate in this state. Such applications by domestic professional organizations shall be accompanied by the organizing document of such organization. If such accompanying documents meet with the Supreme Court's approval, the Supreme Court will issue a Certificate of Authority to the domestic professional organization to operate under this rule. Applications by foreign professional organizations shall be submitted as set forth at § 3-202(D)

The Certificate of Authority issued by the Supreme Court under this rule shall expire 1 year from its date of issuance. All professional organizations operating under this rule, both

domestic and foreign, shall annually apply in writing for a Certificate of Authority from the Supreme Court. Such application, in the form of a cover letter, shall be accompanied by (1) a current list of the names and addresses of shareholders, members, or partners and a current list of the names and addresses of professional employees; (2) if not previously filed, any certified copies required to be on file pursuant to § 3-202(C); and (3) a \$25 issuance fee.

(B) At the time of filing the original organizing document with the Clerk of the Supreme Court, the domestic professional organization shall file a written list of members setting forth the names and addresses of each and a written list containing the names and addresses of all persons who are not members who are employed by the professional organization and who are authorized to practice law in Nebraska. The position in the professional corporation of each person identified in the firm name also shall be stated.

(C) A copy certified by the Secretary of State of the organizing document of any domestic professional organization formed pursuant to this rule shall be filed with the Clerk of the Supreme Court, together with a certified copy of all amendments thereto.

(D) Foreign professional organizations shall submit to the Clerk of the Supreme Court an application, in the form of a cover letter, for a Certificate of Authority from the Nebraska Supreme Court to operate in this state. Such application shall be accompanied by a written list of names and addresses as provided by § 3-202(B). The foreign professional organization's application for a Certificate of Authority, which is executed by a member of the professional organization, shall set forth or include the following:

(1) The name of the foreign professional organization;

(2) The state or other jurisdiction or country where organized, the date of its organization, and a statement or certificate issued by an appropriate authority in that jurisdiction that the foreign professional organization exists in good standing under the laws of the jurisdiction of its organization;

(3) The nature of the business or purposes to be conducted or promoted in the state;

(4) The address of the registered office and the name and address of the resident agent for service of process;

(5) An affirmative statement that the foreign professional organization will operate within the purview of this rule and the Nebraska Rules of Professional Conduct; and

(6) Such additional information as may be necessary or appropriate in order to enable the Supreme Court to determine whether such foreign professional organization is entitled to a certificate of authority to transact business in this state.

(E) The professional organization shall do nothing which if done by an attorney employed by it would violate the standards of professional conduct established for such attorney by the Supreme Court. The professional organization shall at all times comply with the standards of professional conduct and the provisions of this rule. Any violation of this rule by the professional organization shall be grounds for the Supreme Court to terminate or suspend its right to practice law or to revoke the professional organization's certificate of authority to practice under this rule.

(F) Nothing in this rule shall be deemed to diminish or change the obligation of each

attorney employed by the professional organization to conduct his or her practice in accordance with the standards of professional conduct; any attorney who by act or omission causes the professional organization to act, or fail to act, in a way which violates such standards of professional conduct, including any provision of this rule, shall be deemed personally responsible for such act or omission and shall be subject to discipline therefor.

(G) Nothing in this rule shall be deemed to modify the attorney-client privilege specified by statute, nor any comparable common-law privilege.

*Rule IIA and IIB amended January 12, 2000; Rule IID(5) amended July 13, 2005, effective September 1, 2005. Renumbered and codified as § 3-202, effective July 18, 2008; §§ 3-202(A), (B), and (C) amended December 22, 2010; §§ 3-202(A) and (D) amended April 17, 2013..*

## **§ 3-203. Employee benefits.**

Any such professional organization may adopt a pension, profit-sharing (whether cash or deferred), health and accident, insurance, or welfare plan for all or part of its employees including lay employees, provided that such plan does not require or result in the sharing of any specific or identifiable fees with lay employees and that any payments made to lay employees or into any such plan on behalf of lay employees are based upon their compensation or length of service or both rather than the amount of fees or income received.

## **§ 3-204. Professional organization practice of law prohibited; exceptions.**

Except as provided by this rule, professional organizations shall not practice law.

This rule shall not apply to organizations offering prepaid legal services to a defined and limited class of clients, to nonprofit charitable or benevolent organizations organized and operating primarily for a purpose other than the provision of legal services and which furnish legal services as an incidental activity in furtherance of their primary purpose, or to nonprofit organizations which have as their primary purpose the furnishing of legal services to indigent persons, provided that (1) the legal work serves the intended beneficiaries of the organizational purpose, (2) the staff attorney responsible for the matter signs all papers prepared by the organization, and (3) the relationship between the staff attorney and client meets the attorney's professional responsibilities to the client and is not subject to interference, control, or direction by the organization's board or employees except those of a supervising attorney licensed to practice law in Nebraska.

*Rule IV amended July 13, 2005, effective September 1, 2005. Renumbered and codified as § 3-204, effective July 18, 2008.*

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