

NOTICE OF COMMENT PERIOD

On September 11, 2019, the Nebraska Supreme Court directed that proposed amendments to Neb. Ct. R. §§ 3-1002 to 3-1004, of the Unauthorized Practice of Law rules, and §§ 3-1201 to 3-1204, of the Registration of In-House Counsel rules, be published for a public comment period.

The Nebraska Supreme Court invites interested persons to comment on the proposed amendments. Anyone desiring to comment on the proposed amendments should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via email to wendy.wussow@nebraska.gov, with the rule section(s) listed in the subject line of the email, no later than October 31, 2019.

The full text of the proposed amendments is available below, or a hard copy may be obtained from the office of the Clerk of the Supreme Court and Court of Appeals upon request.

CHAPTER 3: ATTORNEYS AND THE PRACTICE OF LAW

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Article 10: Unauthorized Practice of Law.

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§ 3-1002. Other definitions.

(A) Definition of “Nonlawyer”: The term “nonlawyer” means any person not duly licensed or otherwise authorized to practice law in the State of Nebraska. The term also includes any entity or organization not authorized to practice law by specific rule of the Supreme Court whether or not it employs persons who are licensed to practice law. “Nonlawyer” does not include lawyers who are admitted to practice law in another jurisdiction, but have not been admitted or otherwise authorized to practice law in Nebraska.

(B) Definition of “Entity”: The term “entity” means a sole proprietorship, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, two or more persons having a joint or a common interest, or any other legal or commercial entity.

(C) Definition of “Organization”: The term “organization” means two or more entities characterized by common administrative and functional structure or common ownership and/or control.

§ 3-1003. General prohibition.

No nonlawyer or lawyer shall engage in the practice of law in Nebraska or in any manner represent that such nonlawyer or lawyer is authorized or qualified to practice law in Nebraska except as may be authorized by published opinion or court rule.

§ 3-1004. Exceptions and exclusions.

Whether or not they constitute the practice of law, the following are not prohibited:

(A) Title insurance companies authorized to do business in the State of Nebraska and their nonlawyer licensed agents, real estate rental agencies, nonlawyer licensed real estate brokers and their affiliated licensees, and nonlawyer employees of such entities, preparing certain documents that would normally involve the practice of law subject to the following:

(1) The transaction involved is merely incidental to their lawful business as a title insurance company or licensed agent thereof, rental agency, real estate broker, or affiliated licensees of a real estate broker.

(2) The transaction arises in the usual course of business for the title insurance company issuing title insurance, the rental agency as agent for the lessor or the lessee, the broker who is the listing or selling broker, or the real estate licensee affiliated with the broker.

(3) Nonlawyer ~~L~~icensed real estate brokers and their affiliated licensees, as agents for the seller and/or buyer, may prepare purchase agreements and contracts of sale.

(4) Real estate rental agencies representing the lessor and/or lessee may prepare residential, commercial, or farm leases.

(5) In closing a real estate sale, nonlawyer licensed real estate brokers and title insurance companies and their licensed agents may prepare deeds, releases which do not affect judgment liens, deeds of reconveyance, title affidavits, closing statements, and related documents.

(6) The documents referred to in § 3-1004(A)(3), (4), and (5) to be prepared by nonlawyers shall be on standardized forms which may contain various blanks to be filled in, the completion or selection of which does not require the knowledge, judgment, or skill of one trained as a lawyer.

(7) No counsel or advice shall be given with respect to the meaning, validity, or legal effect of the document or regarding the rights and obligations of the parties.

(B) Nonlawyer ~~L~~icensed abstractors preparing or extending abstracts without rendering opinions as to the character of the title. A title insurance company authorized to do business in the State of Nebraska, including its licensed agents, may review public records and specify any curative work or describe conditions which must be fulfilled before it will issue a title insurance policy in connection with a proposed real estate transaction, but may not render opinions, counsel, and advice to others regarding the marketability or status of titles.

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(S) An entity or organization in the business of insurance or a self-insured entity or organization may, for the purpose of adjusting claims against it or its insured, may have nonlawyers prepare certain documents, provide information to, and negotiate with other persons or entities if all of the following conditions are met:

(1) The transaction involved is incidental to the lawful business of the insurance company or self-insured;

(2) The transaction arises in the usual course of business of the insurance company or the self-insured;

(3) The transaction may be carried out by ~~an~~ a nonlawyer employee, a third party administrator, or a nonlawyer agent legally authorized to adjust claims on behalf of the insurance entity or organization or the self-insured; and

(4) There shall be no charges to any person or entity making a claim against the insurer or self-insured.

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Article 12: Registration of In-House Counsel.

§ 3-1201. General provisions.

(A) ~~A~~ All lawyers admitted to the practice of law in another U.S. jurisdiction or the District of Columbia, not admitted in Nebraska, who ~~is~~ are in active status in that jurisdiction, who ~~is~~ are employed in Nebraska as counsel in any capacity exclusively for a single corporation, partnership, association, or other legal entity, as well as any affiliate thereof, whose lawful business consists of activities other than the practice of law or provision of legal services, and who ~~has~~ have a continuous presence in the State of Nebraska shall register ~~to act~~ as in-house counsel within 90 days of the commencement of employment as a lawyer under this rule or if currently so employed then within 90 days of the effective date of this rule as amended on (DATE). Initial registration terminates on December 31 of the year of original application and annual renewal pursuant to § 3-1203 is required thereafter. There are no exceptions to the requirement of registration as in-house counsel, and all lawyers admitted to the practice of law elsewhere but not admitted in Nebraska shall register as in-house counsel through the on-line system hosted by the Nebraska Supreme Court Attorney Services Division.

(B) Registration under Neb. Ct. R. §§ 3-1201 to 3-1204 is not a matter of right. In-house counsel registration is required of all lawyers working exclusively for a single corporation, partnership, association, or other legal entity, as well as any affiliate thereof, regardless of the job title assigned to the attorney. At the discretion of the Nebraska Supreme Court, any applicant for such in-house counsel registration may be required to provide proof of good moral character and fitness to practice law by the jurisdiction in which he or she was admitted to practice law or the Supreme Court may procure the character investigation services of the National Conference of Bar Examiners, at the lawyer's expense, in any matter in which substantial questions regarding the lawyer's character or fitness to practice law are implicated.

(C) Any lawyer not licensed in Nebraska who is employed ~~as in-house counsel~~ in any capacity exclusively for a single corporation, partnership, association, or other legal entity, as well as any affiliate thereof in Nebraska on [insert date], 2020, the effective date of Neb. Ct. R. §§ 3-1201 to 3-1204 shall not be subject to discipline for the failure to register under the Nebraska Rules of Professional Conduct, Neb. Ct. R. Prof. Cond. §§ 3-501.0 to 3-508.5, if application for registration is made within 90 days of [insert date], 2020 the effective date.

(D) Pro bono practice. A lawyer registered under this section is authorized to provide pro bono legal services through an established not-for-profit association, pro bono program, or legal services program or through such organizations specifically authorized in Nebraska

§ 3-1202. Application requirements.

To qualify, the lawyer must ~~file with~~ submit to the Clerk of the Nebraska Supreme Court the Attorney Services Division of the Nebraska Supreme Court the following:

(A) A completed application by responding to the questions posed in the form prescribed by the Nebraska Supreme Court found at Appendix 1 herein through the Attorney Services Division on-line portal.

(B) A certificate of good standing from the highest court of each jurisdiction of admission which shall be uploaded through the on-line portal account.

(C) A certificate from the disciplinary authority of each jurisdiction of admission which shall be uploaded through the on-line portal account and:

(1) States that the lawyer has not been suspended, disbarred, or disciplined and that no charges of professional misconduct are pending; or

(2) Identifies any suspensions, disbarments, or disciplinary sanctions and any pending charges.

(D) A duly authorized and executed certification from the lawyer's employer utilizing the form provided by the Attorney Services Division shall be uploaded through the on-line portal account and provides that:

(1) It is not engaged in the practice of law or the rendering of legal services in violation of Neb. Ct. R. §§ 3-1001 to 3-1021, Unauthorized Practice of Law, whether for a fee or otherwise;

(2) It is duly qualified to do business under the laws of its organization and the laws of the State of Nebraska;

(3) The lawyer works exclusively as an employee of said employer for the purpose of providing legal services to the employer as of the date of the application; and

(4) It will promptly notify the Attorney Services Division ~~Clerk of the Nebraska Supreme Court~~ in writing of the termination of the lawyer's employment.

(E) Such other affidavits, proofs, and documentation as may be required by the Nebraska Supreme Court.

(F) The registration fee of \$700 shall be paid through the on-line portal ~~payable to the Nebraska Supreme Court~~ for credit to the Nebraska Supreme Court's Counsel for Discipline Cash Fund and the Attorney Services Cash Fund. If the application for registration as in-house counsel is denied by the Nebraska Supreme Court, ~~the Clerk of the Nebraska Supreme Court shall refund~~ the registration fee shall be refunded.

§ 3-1203. Termination or change of employment and renewal.

(A) Termination of employment. When a lawyer ceases to be employed as in-house counsel with the entity submitting the certification under § 3-1202(D), the lawyer's authorization to perform legal services under this rule terminates. The lawyer shall provide notice to the Attorney Services Division of the termination through the on-line portal account and the employer shall immediately notify ~~the Clerk of the Nebraska Supreme Court~~ the Supreme Court Attorney Services Division in writing that the employment has ended.

(B) Change of employers. If within 90 days of ceasing to be employed by the employer submitting the certification under § 3-1202(D), the lawyer becomes employed as in-house counsel by another employer who meets the requirements of this rule, the lawyer's registration shall be reinstated for the remainder of the calendar year after the new employer ~~files~~ provides the certification required under § 3-1202(D).

(C) Failure to maintain active status. If a lawyer who is registered under this rule fails to maintain active status in at least one jurisdiction, the rights and privileges under this rule automatically terminate.

(D) Any lawyer registered under this rule shall ~~file a completed renewal form found at Appendix 1 herein~~ renew registration through the on-line portal account on or before January 4 20 setting forth the requirements of § 3-1202(B) through (D) and pay the annual renewal fee of \$345 to the Nebraska Supreme Court through the on-line portal for credit to the Nebraska Supreme Court's Counsel for Discipline Cash Fund and the Attorney Services Cash Fund.

(E) Any lawyer who fails to file the annual renewal on or before January 4 20 shall pay an additional late fee of \$25.

§ 3-1204. Discipline and other applicable requirements.

(A) A lawyer registered under Neb. Ct. R. §§ 3-1201 to 3-1204 shall be subject to the disciplinary authority of this state to the same extent as lawyers licensed to practice law in the State of Nebraska.

(B) A lawyer registered under Neb. Ct. R. §§ 3-1201 to 3-1204 shall immediately inform the Counsel for Discipline of the Nebraska Supreme Court in writing of any disciplinary action commenced or any discipline or sanction imposed against the lawyer in any other jurisdiction.

(C) A lawyer who fails to register with the Nebraska Supreme Court within 90 days of beginning employment as in-house counsel with an employer who meets the requirements of Neb. Ct. R. §§ 3-1201 to 3-1204, or within 90 days of [DATE], or who fails to ~~or file an annual renewal~~ renew registration by March 1 shall be:

(1) Subject to professional discipline in this jurisdiction, including referral to Counsel on the Unauthorized Practice of Law pursuant to Neb. Ct. R. § 3-1012;

(2) Referred by the Counsel for Discipline of the Nebraska Supreme Court to the disciplinary authority of the jurisdictions of licensure; and

(3) Ineligible for admission on motion in the State of Nebraska.

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