

RULE CHANGE 2009 (05)

CHAPTER 22

PROFESSIONAL SERVICE COMPANIES

Rule 265.

~~I.~~

~~A. Attorneys (a) Rendering Legal Service Through a Professional Company. One or more attorneys who are licensed to practice law in Colorado may ~~do so~~ render legal services in the form of professional corporations, limited liability companies, limited liability partnerships, registered limited liability partnerships, or joint stock companies, herein collectively referred to as "professional companies," permitted by the laws of Colorado to conduct the practice of law through a professional company, as that term is defined in Section (e), provided that such professional companies are company is established and operated in accordance with the provisions of this Rule and the Colorado Rules of Professional Conduct. ~~The provisions of this Rule shall apply to all professional companies having as shareholders, officers, directors, partners, employees, members, or managers one or more attorneys who engage in the practice of law in Colorado, whether such professional companies are formed under Colorado law or under laws of another state or jurisdiction. All professional companies conducting the practice of law in Colorado shall comply with the following requirements:~~~~

(1) Professional Company Name. The name of the professional company shall contain comply with the words "professional company," "professional corporation," "limited liability company," "limited liability partnership," or "registered limited liability partnership" or abbreviations thereof such as "Prof. Co.," "Prof. Corp.," "P.C.," "L.L.C.," "L.L.P.," or "R.L.L.P." that are authorized by the laws provisions of the State of Colorado or the laws of the state or jurisdiction of organization. In addition, the name of the professional company shall always meet the ethical standards established by the Colorado Rules of Professional Conduct ~~for~~ regarding the names of law firms.

~~2. The~~

(2) Owners' Liability for Professional Acts, Errors, or Omissions. Each of the owners of the professional company shall be established solely for the purpose of conducting the practice

~~of law, and the practice of law in Colorado shall be conducted only by persons qualified and licensed deemed to practice law in the State of Colorado.~~

~~3. The agree, by reason of the rendering of legal services by any attorney through the professional company may exercise all of the powers and privileges conferred upon such types of entities by the laws of the State of Colorado or other state or jurisdiction of organization but only for the purpose of conducting the practice of law pursuant to this rule and the Colorado Rules of Professional Conduct.~~

~~4. The articles of incorporation, partnership agreement, operating agreement, or other governing document or agreement of the professional company shall provide, and each of the shareholders, partners, or members shall agree, that each of them who is a shareholder, partner, or member of the professional company an owner at the time of the commission of any professional act, error, or omission in the rendering of legal services by any of the shareholders, officers, directors, partners, members, managers, or employees of the professional company shall be owner or other person for whose acts, errors, or omissions the professional company is liable, assumes, jointly and severally liable to the extent provided by this Rule the liability of the professional company for the damages caused by such act, error, or omission; provided, however, that the governing document or agreement may provide that any such shareholder, partner, or member. Notwithstanding the preceding sentence, any owner who has not directly and actively participated in the act, error, or omission in the rendering of legal services for which liability is claimed shall incurred by the professional company does not be liable assume such liability, except as provided in clause (e) of this subparagraph I.A.4, for any of the damages caused thereby subsection (a)(3)(D), if, at the time the act, error, or omission occurs the professional company has professional liability insurance which that meets the following minimum standards: minimum requirements stated in subsection (a)(3).~~

~~(a)~~

(3) Professional Liability Insurance Policy Requirements. The professional liability insurance contemplated in subsection (a)(2) shall meet the following minimum requirements:

(A) Professional Acts Coverage. The professional liability insurance shall insure the professional company against liability imposed upon it arising out of the ~~practice of law by~~

~~attorneys employed by the professional company in their capacities as attorneys rendering of legal services by any attorney through the professional company and against the liability imposed upon it arising out of the acts, errors, and omissions of all nonattorney employees assisting in the rendering of legal services by any attorney through the professional company.~~

~~(b) Such insurance shall insure (B) Policy Language. The policy or policies for the professional company against liability imposed upon it by law for damages arising out of the professional acts, errors, and omissions of all nonprofessional employees.~~

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

~~(d) (C) Limits of Coverage. The professional liability insurance shall be in an amount for each claim of at least the lesser of \$100,000 multiplied by the number of attorneys employed by who render legal services through the professional company, and, if or \$500,000. If the policy provides or policies for the professional liability insurance provide for an aggregate top limit of liability per year for all claims, the top limit shall not be less than the lesser \$300,000 multiplied by the number of attorneys employed by who render legal services through the professional company; provided, however, that no professional company shall be required to carry total limits of insurance in excess of \$500,000 for each claim or be required to carry an aggregate top limit of liability for all claims per year of more than \$2,000,000.~~

~~(e) (D) Deductibles and Defense Costs. The policy or policies for the professional liability insurance 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 company shall include the amount of The liability assumed by each owner of the professional company who has not directly participated in the act, error or omission in the rendering of legal services for which liability is incurred by the professional company shall be the lesser of the actual liability of the professional company in excess of insurance available to pay such damages or the sum of the following:~~

(I) such deductible or retained self-insurance; and ~~shall include~~

(II) the amounts, if any, by which the payment of defense costs ~~may reduce~~ has reduced the insurance remaining available for the payment of ~~claims~~ damages incurred by reason of the liability of the professional company below the minimum limit of insurance required by ~~this Rule if the ultimate liability for the claim exceeds the amount of insurance remaining to pay for~~ itsubsection (a)(3)(C).

~~(f) A professional~~ (E) Determination of Coverage. An act, error, or omission ~~is considered in the rendering of legal services shall be deemed~~ to be covered by professional liability insurance for the purpose of this ~~subparagraph I.A.4 Rule~~ if the policy ~~includes or policies include~~ 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.

~~5-~~ (F) Limitation of Vicarious Liability. The liability assumed by the ~~shareholders, partners, or members~~ owners of ~~the a~~ professional company ~~pursuant to subparagraph I.A.4~~ under this Rule is limited to ~~the liability for of the professional company for~~ acts, errors, or omissions ~~which constitute the practice of law and shall not extend to actions or undertakings that do not constitute~~ incurred in the practice of law. The liability assumed rendering of legal services by the shareholders, partners, or members of the professional company pursuant to subparagraph I.A.4 may be pursued only by a citation brought under C.R.C.P. 106(a)(5) after entry of a judgment against the professional company. Liability, if any, for any and all actions or undertakings, other than professional any owner or other person for whose acts, errors, or omissions the professional company is liable and shall not extend to any other liability incurred by the professional company. Liability, if any, for any and all acts, errors, and omissions, other than acts, errors, or omissions incurred in the rendering of legal services by any owner or other person for whose acts, errors, or omissions the professional company is liable, shall be as generally otherwise provided by law and shall not be changed, affected, limited, or extended by this Rule.

~~B. Each attorney practicing law in Colorado as a shareholder, director, officer, member, manager, partner, or employee of a~~

~~professional company, whether formed under the laws of the State of Colorado or under the laws of any other state or jurisdiction, shall comply with the following standards of professional conduct:~~

~~1. No such attorney shall act or fail to act in a way which would violate any of the Colorado (b) Compliance with Rules of Professional Conduct adopted by this Court. The professional company shall also comply at all times with all standards of professional conduct established by this Court and with the provisions of this Rule. Nothing in this Rule shall be deemed to diminish or change the obligation of each attorney rendering legal services through a professional company to comply with the Colorado Rules of Professional Conduct promulgated by this Court.~~

~~(c) Violation of Rule: Termination of Authority. Any violation of or failure to comply with any of the provisions of this Rule by the professional company may be grounds for this Court to terminate or suspend the right of any attorney who is a shareholder, director, officer, member, manager, or partner an owner of such professional company to practice law render legal services in Colorado in the form of through a professional company.~~

~~2. Nothing in this Rule shall be deemed to diminish or change the obligation of each attorney employed by the professional company to conduct that attorney's practice in accordance with the Colorado Rules of Professional Conduct promulgated by this Court. Any attorney who by act or omission causes the professional company to act or fail to act in a way which violates such standards of professional conduct or any provision of this Rule shall be deemed personally responsible for such act or omission and shall be subject to discipline therefore.~~

~~II.~~

~~Any professional company established for the purpose of conducting the practice of law must comply with all of the following additional requirements:~~

~~A. Except as provided in paragraph II.B and II.C, all officers, directors, shareholders, partners, members, or managers of the professional company shall be individuals who are duly licensed by either the Supreme Court of the State of Colorado or some other state or jurisdiction to practice law either in the State of Colorado or in such other state or jurisdiction and who at~~

~~all times own shares or other equity interests in the professional company in their own right. In addition, all other employees or representatives of the professional company who practice law shall be duly licensed by either the Supreme Court of the State of Colorado or some other state or jurisdiction to practice law in the State of Colorado or in such other state or jurisdiction.~~

~~B. (d) Professional Company Constituencies. A professional company may have one or more shareholders, partners, or members which owners that are professional companies, so long as each such shareholder, partner, or member is owner that is a professional company and the professional company of which they are owners are both established and operated in accordance with the provisions of this Rule ~~and the Colorado Rules of Professional Conduct.~~~~

~~C. A professional company may have directors, officers, or managers who do not have the qualifications described in paragraph II.A, but no director, officer, manager, or employee of a professional company who is not licensed to practice law either in the State of Colorado or elsewhere shall exercise any authority whatsoever over any of the professional company's activities relating to the practice of law.~~

~~D. Provisions shall be made requiring any shareholder, partner, or other member who withdraws from or otherwise ceases to be eligible to be a shareholder, partner, or member of the professional company to dispose of all shares or other equity interests therein as soon as practicable either to the professional company or to any person having the qualifications described in paragraph II.A. Provisions may be made for the redemption or disposition of shares or other equity interests over a reasonable period of time so long as the withdrawing shareholder, partner, or member does not exercise any management or professional function during such period of time.~~

~~E. A professional company may adopt retirement, pension, profit-sharing (whether cash or deferred), health and accident insurance, or welfare plans for all or some of its employees, including lay employees, provided that such plans do not require or result in the sharing of specific or identifiable fees with lay employees and provided 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 upon the amount of fees or income received.~~

(e) "Professional Company" Defined. For purposes of this Rule, a professional company is a corporation, limited liability company, limited liability partnership, limited partnership association, or other entity that may be formed under Colorado law to transact business or any entity that can be formed under the law of any other jurisdiction and through which attorneys may render legal services in that jurisdiction, except that the term excludes a general partnership that is not a limited liability partnership and excludes every other entity the owners of which are subject to personal liability for the obligations of the entity.

Amended by the Court, En Banc February 26, 2009, effective immediately.

BY THE COURT:

Nancy E. Rice
Justice, Colorado Supreme Court