

Proposal 02-07

(P.R. 0104)

Offered by the Illinois State Bar Association and the Chicago Bar Association

Rule 721. Professional Service Corporations, Professional Associations and Limited Liability Companies, and Registered Limited Liability Partnerships for the Practice of Law

(a) Professional service corporations formed under the Professional Service Corporation Act (805 ILCS 10/1 *et seq.*), professional associations organized under the Professional Associations Association Act (805 ILCS 305/1 *et seq.*), limited liability companies organized under the Limited Liability Company Act (805 ILCS 180/1--1 *et seq.*), or registered limited liability partnerships organized under the Uniform Partnership Act (805 ILCS 205/8.1 *et seq.*), or professional corporations, professional associations, or limited liability companies formed, or registered limited liability partnerships formed under similar provisions of successor Acts to any of the foregoing legislation or under similar statutes of other States or jurisdictions of the United States, may engage in the practice of law in Illinois provided that

(1) each natural person shall be licensed to practice law who is (A) a shareholder, officer, or director of the corporation (except the secretary of the corporation) or each member of the association or each member (and/or manager, if any) of the limited liability company and each of its employees, or partner of the registered limited liability partnership, (B) a shareholder, officer, or director of a corporation (except the secretary of the corporation), member of an association, member (or manager, if any) of a limited liability company, or partner of a registered limited liability partnership that itself is a shareholder of a corporation, member of an association, member (or manager, if any) of a limited liability company, or partner of a registered limited liability partnership engaged in the practice of law shall be licensed to practice law, or (C) engaged in the practice of law and an employee of any such corporation, association, limited liability company, or registered limited liability partnership; and

(2) one or more shareholders of the corporation or members of the association or limited liability company permitted to engage in the practice of law in Illinois hereunder persons shall be members of the bar of Illinois, and engaged in the practice of law in Illinois, who are either (A) shareholders of the corporation, members of the association or limited liability company, or partners of the registered limited liability partnership permitted to engage in the practice of law in Illinois hereunder, or (B) shareholders of a corporation, members of an association or limited liability company, or partners in a registered limited liability partnership permitted to engage in the practice of law in Illinois hereunder that itself is a shareholder of the corporation, member of the association or limited liability company, or partner of the registered limited liability partnership permitted to engage in the practice of law in Illinois hereunder; and

(3) the corporation or association or limited liability company, or registered limited liability partnership shall do nothing which, if done by an individual attorney, would violate the standards of professional conduct applicable to attorneys licensed by this court; and

(4) no natural person shall be permitted to practice law in Illinois who is a shareholder, officer, director of the corporation, ~~or~~ member of the association ~~or~~ member (or manager, if any) of the limited liability company ~~or any,~~ or partner of the registered limited liability partnership, or an employee of the corporation, association ~~or~~ limited liability company ~~who is not,~~ or registered limited liability partnership, unless that person is either a member of the bar in Illinois or ~~is not~~ specially admitted by court order to practice in Illinois shall be permitted to practice law in Illinois.

(b) This rule does not diminish or change the obligation of each attorney engaged in the practice of law in behalf of the corporation ~~or~~ association ~~or~~ limited liability company, or registered limited liability partnership to conduct himself or herself in accordance with the standards of professional conduct applicable to attorneys licensed by this court. Any attorney who by act or omission causes the corporation ~~or~~ association ~~or~~ limited liability company, or registered limited liability partnership to act in a way which violates standards of professional conduct, including any provision of this rule, is personally responsible for such act or omission and is subject to discipline therefor. Any violation of this rule by the corporation ~~or~~ association ~~or~~ limited liability company, or registered limited liability partnership is a ground for the court to terminate or suspend the right of the corporation ~~or~~ association ~~or~~ limited liability company, or registered limited liability partnership to practice law or otherwise to discipline it.

(c) No corporation ~~or~~ association ~~or~~ limited liability company, or registered limited liability partnership shall engage in the practice of law in Illinois, or open or maintain an establishment for that purpose in Illinois, without a certificate of registration issued by this court.

(d) The Unless the corporation, association, limited liability company, or registered limited liability partnership maintains adequate insurance or proof of financial responsibility in accordance with Rule 722, the articles of incorporation or association or organization, or the partnership agreement, shall provide, and in any event the shareholders of the corporation ~~or~~ members of the association or limited liability company, or partners of the registered limited liability partnership shall be deemed to agree by virtue of becoming shareholders ~~or~~ members, or partners, that all shareholders ~~or~~ members, or partners shall be jointly and severally liable for the acts, errors, and omissions of the shareholders ~~or~~ members, or partners, and other employees of the corporation ~~or~~ association ~~or~~ limited liability company, or registered limited liability partnership, arising out of the performance of professional services by the corporation ~~or~~ association ~~or~~ limited liability company, or registered limited liability partnership while they are shareholders ~~or~~ members, or partners.

(e) An application for registration shall be in writing signed by ~~all shareholders~~ an authorized shareholder of the corporation ~~or members,~~ member of the association or limited liability company, or partner of the registered limited liability partnership, and filed with the clerk of this court with a fee of \$50. The application shall contain the following:

- (1) the name and address of the corporation ~~or~~ association ~~or~~ limited liability company, or registered limited liability partnership;
- (2) the statute under which it is formed;

(3) the names and residence addresses of the shareholders of the corporation ~~or~~, members of the association or limited liability company, **or partners of the registered limited liability partnership**;

(4) a statement of whether the corporation ~~or~~, association ~~or~~, limited liability company, **or registered limited liability partnership** is on a calendar or fiscal year basis and if fiscal, the closing date;

(5) a statement that each shareholder, officer ~~or~~, and director of the corporation (except the secretary of the corporation) ~~or~~, each member of the association ~~or~~, each member (and each manager, if any) of the limited liability company, **or each partner of the registered limited liability partnership** is a member of the bar of each jurisdiction in which such person practices law and that no disciplinary action is pending against any of them; and

(6) such other information and documents as the court may from time to time require.

(f) A certificate of registration shall continue in effect until it is suspended or revoked, subject, however, to renewal annually within 30 days following the close of each calendar year. The application for renewal shall be signed by ~~all shareholders or members~~ **an authorized shareholder, member, or partner** and filed with the clerk of this court with a filing fee of \$40. It shall state the name of the corporation ~~or~~, association ~~or~~, limited liability company, **or registered limited liability partnership** and the names and residence addresses of the shareholders of the corporation ~~or~~, members of the association or limited liability company, **or partners of the registered limited liability partnership**, and shall certify that each shareholder or member, manager (if any), director and officer (except the secretary of the corporation), **and partner** is a member of the bar of each jurisdiction in which such person practices law. No certificate is assignable.

(g) Nothing in this rule modifies the attorney-client privilege.

(h) To the extent that the provisions of this rule **or Rule 722** are inconsistent with any provisions of the Professional Service Corporation Act ~~or~~, the Professional Associations **Association** Act ~~or~~, the Limited Liability Company Act, **or the Uniform Partnership Act**, such provisions of said acts shall have no application.

Comment to Rule 721

As amended, Rule 721: (i) includes registered limited liability partnerships among the kinds of entities that may engage in the practice of law in Illinois; (ii) facilitates registration and renewal by permitting a single authorized member of such law firms to execute the application for registration or renewal; and (iii) clarifies that a corporation, association, limited liability company, and registered limited liability partnership properly registered under the rule can itself be a shareholder of a corporation, member of an association or limited liability company, or partner of a registered limited liability partnership that is registered under the rule.

Rule 722. Limited Liability Legal Practice

(a) For purposes of this rule:

(1) “Limited liability entity” means a corporation, association, limited liability company, or registered limited liability partnership engaged in the practice of law in Illinois pursuant to Rule 721.

(2) “Owner” means a shareholder, member, manager, or partner of a limited liability entity.

(3) “Wrongful conduct” means acts, errors, or omissions in the performance of professional services by any owners or employees of a limited liability entity while they were affiliated with that entity.

(b) The liability, if any, of owners of a limited liability entity, for a claim asserted against the limited liability entity or any of its owners or employees arising out of wrongful conduct, shall be determined by the provisions of the statute under which the limited liability entity is organized if that entity maintains adequate insurance or proof of financial responsibility, as follows:

(1) “Adequate insurance” means a professional liability insurance policy applicable to a limited liability entity, and any of its owners or employees, for wrongful conduct. Such insurance shall exist, in one or more policies, with respect to claims asserted during an annual policy period due to alleged wrongful conduct occurring during the policy period and the previous six years. Such policies shall have a minimum amount of insurance of \$ _____ per claim and \$ _____ annual aggregate[, times the number of lawyers in the firm at the beginning of the annual policy period, provided that the firm’s insurance need not exceed \$ _____ per claim and \$ _____ annual aggregate]. Evidence of any such adequate insurance shall be provided with each application for registration or renewal pursuant to Rule 721. For purposes of Rules 721(d) and 722, the adequacy of insurance shall not be affected: (A) by any exceptions or exclusions from coverage that are customary with respect to lawyers professional liability insurance policies; (B) if, with respect to a particular claim, the limited liability entity fails to maintain insurance for wrongful conduct occurring before the annual policy period, so long as insurance coverage in the amount specified in this rule exists with respect to the claim in question; or (C) if, during an annual policy period, the per claim or annual aggregate limits are exceeded by the amounts of any claims, judgments, or settlements. If evidence of insurance is provided with a registration or renewal application pursuant to Rule 721 and it is ultimately determined that the limited liability entity failed to maintain adequate insurance during the period covered by that registration or renewal, unless such failure is fraudulent or wilful the joint and several liability of the owners for a claim arising out of wrongful conduct shall be limited to the minimum per claim amount of insurance applicable to the limited liability entity under this rule.

(2) Owners of a limited liability entity that has obtained adequate insurance shall be jointly and severally liable, up to the amount of the deductible or retention, for

any claims arising out of wrongful conduct unless the limited liability entity has also provided proof of financial responsibility in a sum no less than the amount of the deductible or retention.

(3) “Proof of financial responsibility” means funds that are specifically designated and segregated for the satisfaction of any judgments against a limited liability entity, and any of its owners or employees, entered by or registered in any court of competent jurisdiction in Illinois, arising out of wrongful conduct. At the beginning of an annual period covered by a certificate of registration pursuant to Rule 721, such funds shall be in a sum no less than the minimum required annual aggregate for adequate insurance by that limited liability entity, unless the proof of financial responsibility is provided solely to apply to the deductible or retention pertaining to the applicable adequate insurance, in which case the funds shall be no less than the amount of the deductible or retention. During the annual period covered by a certificate of registration pursuant to Rule 721, such funds may be used only to satisfy any judgments against the limited liability entity, and any of its owners or employees, entered by or registered in any court of competent jurisdiction in Illinois, arising out of wrongful conduct. Such funds may be in any of the following forms: (A) deposit in trust or in bank escrow of cash, bank certificates of deposit, or United States Treasury obligations; (B) a bank letter of credit, or (C) a surety bond. Evidence of any such proof of financial responsibility shall be provided with each application for registration or renewal pursuant to Rule 721. Otherwise adequate proof of financial responsibility remains adequate, for purposes of this rule, if the individual or combined amount of any judgments during the annual period covered by the certificate of registration exceeds the amount of the segregated funds.

(4) If a limited liability entity maintains adequate insurance or proof of financial responsibility at the time that a bankruptcy case is commenced with respect to that entity, it shall be deemed to do so with respect to claims asserted after the commencement of the bankruptcy case.

(c) Nothing in this rule or any law under which a limited liability entity is organized shall relieve any lawyer from personal liability for claims arising out of acts, errors, or omissions in the performance of professional services by the lawyer or any person under the lawyer’s direct supervision and control.

Comment to Rule 722

Rule 721 imposes joint and several liability on lawyers with an ownership interest in law firms organized under statutes that purport to limit vicarious liability, for claims arising out of the performance of professional services by any firm lawyers or employees, unless the firm maintains adequate insurance or proof of financial responsibility in accordance with Rule 722. For lawyers with an ownership interest in such firms to obtain the limited liability authorized by statute, Rule 722 imposes additional obligations, beyond any statutory requirements, to provide sufficient professional liability insurance or other funds to protect clients with such claims.

Rules 721 and 722 do not reduce lawyers’ liability for their own professional conduct or that of persons under their direct supervision and control. Nor do these rules affect lawyers’ ethical responsibilities for their own conduct, or that of their law firm or their firm’s lawyers or employees, under Rules 5.1, 5.2, or 5.3 of the Illinois Rules of Professional Conduct.