

Unlike the statutory financial responsibility requirements applicable to law firms operating as limited liability partnerships and professional limited liability companies, there is no statutorily imposed financial responsibility requirement for legal corporations in this State. Rule 11.04(b) was added to require disclosure by legal corporations as to whether these entities have professional liability insurance or a designated fund to satisfy professional liability claims. This disclosure requirement is parallel to the financial responsibility disclosure provisions for individual members in private practice covered by Administrative Rule 4.

There are timeframes added into Rule 11.05 (regarding initial applications) and Rule 11.06 (regarding renewal applications) to allow opportunity for corrective action by an applicant and reconsideration by the State Bar in the event of a denial of an application by the State Bar.]

Rule 12 Limited Liability Partnerships and Professional Limited Liability Companies

12.01 Prior Approval

Professional legal services shall not be provided in this State through any limited liability partnership or professional limited liability company (collectively, “limited liability organizations”) until such time as the West Virginia State Bar has approved the application for State Bar registration and all applicable registration or filing requirements of the West Virginia Secretary of State have been satisfied.

12.02 Application

(a) *Limited Liability Partnerships.* Any two or more partners wishing to become registered as a limited liability partnership (LLP) governed under the laws of West Virginia to provide professional legal services, or any foreign LLP wishing to provide such services in West Virginia, shall file an application for registration with the West Virginia State Bar in the form required for this purpose, accompanied by a fee of \$100. The application shall be signed by a partner, and shall include the name, office address, email address, telephone number, and facsimile transmission number for the person designated by the applicant as the contact person with regard to any questions concerning the application.

(b) *Professional Limited Liability Companies.* One or more persons wishing to provide professional legal services in the State of West Virginia in the form of a professional limited liability company (PLLC) organized under the laws of the State of West Virginia shall file an application for registration with the West Virginia State Bar. A foreign professional limited liability company wishing to provide such services in West Virginia must also file an application for registration with the West Virginia State Bar. An application for registration as a professional limited liability company shall be submitted to the State Bar

in the form required for this purpose, accompanied by a fee of \$100. Each application shall be signed by a member or manager of the proposed professional limited liability company or, in the case of a foreign PLLC, a member or manager having signature authority for such professional limited liability company. The application shall also contain the name, office address, email address, telephone number, and facsimile transmission number for the person designated by the applicant as the contact person with regard to any questions concerning the application.

(c) *Multijurisdictional organizations.* In the case of a limited liability organization with any partner, member, or other lawyer associated with the organization who is not admitted to practice law in West Virginia, the application must include: (1) a designation of one or more licensed West Virginia lawyers associated with the limited liability organization who shall be responsible for compliance by the organization and its lawyers with the unauthorized practice of law provisions of the West Virginia Rules of Professional Conduct; and (2) a certification by such licensed West Virginia lawyer or lawyers that the limited liability organization has sufficient policies and procedures in the place to prevent the unauthorized practice of law in West Virginia by any person associated with the limited liability organization.

12.03 Review

Upon receipt of a completed application, the West Virginia State Bar shall approve or disapprove the application within 30 days; provided however, that, should the applicant fail to respond satisfactorily to any request for additional information, or any request for clarification of the information submitted, the State Bar may decline to act upon such application until a reasonable time after the applicant has complied satisfactorily with the request.

12.04 Requirements

Prior to the approval of an application to operate as a limited liability organization, or any renewal application, the West Virginia State Bar shall be satisfied that:

(a) Those persons listed in the application who will engage in the practice of law in West Virginia are admitted to practice law in this State and are active members in good standing;

(b) Written documentation establishes that the limited liability organization has obtained at least \$1,000,000 of professional liability insurance as statutorily required or has a designated fund in compliance with the statutory requirements for satisfaction of judgments against the limited liability organization and its partners or members; and

(c) The ownership, management, and name (including any trade name) of the limited liability organization comply with the ethical requirements of the Rules of Professional Conduct.

12.05 Notification

If the West Virginia State Bar determines that the application is proper, it shall so notify the applicant in writing and shall notify the West Virginia Secretary of State that the applicant has satisfactorily registered with the State Bar. In the event that the State Bar denies an application, it shall so notify the applicant in writing stating the reason or reasons for the denial. Within 14 days following such denial, the applicant may submit a written request for reconsideration, accompanied by any additional or revised information pertinent to such reconsideration. Following the expiration of the 14-day period or a decision by the State Bar upon a timely request for reconsideration, the application shall be deemed a completed and closed matter.

12.06 Annual Renewal

Each year, by no later than November 1, in a manner prescribed by the West Virginia State Bar, any limited liability organization that has been approved under this rule to provide professional legal services in West Virginia shall file a renewal application with the State Bar. The renewal application shall disclose all changes in the limited liability organization since the prior application or prior renewal application and shall provide confirmation of continued compliance with the statutory requirements for liability insurance or a designated fund for satisfaction of judgments. The same fee shall accompany each renewal application as is required for an original application. If any renewal application discloses a basis upon which the State Bar determines that the authority to render professional legal services in West Virginia by such limited liability organization should not be renewed, the State Bar shall so notify the renewal applicant in writing. If the basis for denial of the renewal application is not resolved to the satisfaction of the State Bar within 30 days following receipt of the written notice, the applicant shall cease rendering legal services in West Virginia; and the State Bar shall notify the West Virginia Secretary of State that the renewal application has been denied.

12.07 Amendments

If any limited liability organization seeks to amend its professional liability insurance coverage or designated fund for satisfaction of judgments, an application for amendment shall be filed in advance with the West Virginia State Bar, in the form required by the State Bar and accompanied by a fee of \$25. The application for amendment must include

documentation that substantiates whether the limited liability organization's changes regarding its financial responsibility for professional liability claims will be in compliance with all applicable statutory requirements, with the West Virginia Rules of Professional Conduct, and with this rule.

12.08 Transition requirements

Any limited liability organization providing legal services in West Virginia prior to the effective date of this rule shall be deemed temporarily approved under this rule. Temporary approval under this rule shall expire on October 31, 2020. Any limited liability organization deemed temporarily approved under this rule shall, prior to the expiration of this transition period, file an application for approval under this rule.

[CLERK'S COMMENTS: This new Rule covers both limited liability partnerships and professional limited liability companies. Although these two forms of legal entities are covered by different statutes (LLPs - W. Va. Code Ch. 48B, art. 10) and (PLLCs - W. Va. Code Ch. 31B, art. 13) there are enough similarities to combine both under one rule. Any requirements distinct for one legal entity form are set out separately. Rule 5.8 (Limited Liability Legal Practice) of the Rules of Professional Conduct takes a similar approach.

Review of the various statutory requirements for the transaction of business in West Virginia by domestic and foreign LLPs and PLLCs present some conflicts with particular ethical obligations in the legal profession. For example, nothing in Chapter 48B, article 10 would limit partners in a law firm operating as an LLP to members of the legal profession; and under Chapter 31B, article 13, members of different professions are expressly allowed to be members and managers of the same PLLC. These statutory provisions are in conflict with the ethical requirement that lawyers may not practice law in any professional corporation or limited liability organization wherein a nonlawyer has any ownership interest or management control. Rule 5.4(d), W. Va. Rules of Prof. Conduct. Rule 15.04 provides that any LLP or PLLC show compliance with this ethical requirement before being approved to provide legal services in this state. This Rule also clarifies that the statutory provisions for meeting the \$1,000,000 financial responsibility requirements apply to all limited liability organizations providing legal services. Both West Virginia and foreign LLPs must satisfy this statutory condition. W. Va. Code § 47B-10-5. With PLLCs, those organized under West Virginia law are also clearly required to meet this condition (W. Va. Code § 31B-13-1305), but the applicable statutes do not expressly impose this requirement with respect to foreign PLLCs. See W. Va. Code §§ 31B-13-1306 and 31B-10-1001.

While statutory amendments specific to legal services through a limited liability organization would provide some clarity, the rules applicable to the practice of law are not dependent upon such legislative changes. These rules of the State Bar and the ethical rules