

NOTICE OF SECOND COMMENT PERIOD

From December, 3, 2010, through February 1, 2011, the Nebraska Supreme Court published for comment proposed new rules regarding Registration of In-House Counsel that are to be codified at Neb. Ct. R. §§ 3-1201 to 3-1204 and Appendix 1. The Court considered the comments received and, based thereon, made revisions to the proposed new rules. These revisions also resulted in proposed amendments to current court rules Neb. Ct. R. § 3-301(A) and Neb. Ct. R. of Prof. Cond. § 3-505.5(d)(1). The revised proposed new rules and related proposed amendments to Neb. Ct. R. § 3-301(A) and Neb. Ct. R. of Prof. Cond. § 3-505.5(d)(1) are now being published for a second comment period to address these matters.

The Nebraska Supreme Court invites interested persons to comment on the revised proposed new rules regarding Registration of In-House Counsel, Neb. Ct. R. §§ 3-1201 to 3-1204 and Appendix 1, and the related proposed amendments to Neb. Ct. R. § 3-301(A) and Neb. Ct. R. of Prof. Cond. § 3-505.5(d)(1). Anyone desiring to comment on any of the above-proposed rules, appendix, and 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, NE 68509-8910, or via e-mail to lanet.asmussen@nebraska.gov no later than July 1, 2011.

The full text of the revised proposed new rules and appendix and the proposed amendments is available on the following pages, 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
ARTICLE 12
REGISTRATION OF IN-HOUSE COUNSEL

Section.

3-1201. General provisions.

3-1202. Application requirements.

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

3-1204. Discipline and other applicable requirements.

Appendix 1. In-House Counsel Registration and/or Renewal Application.

§ 3-1201. General provisions.

(A) A lawyer admitted to the practice of law in another United States jurisdiction or the District of Columbia, not admitted in Nebraska, who is in active status in that jurisdiction, who is employed ~~as a lawyer in Nebraska as counsel 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 a continuous presence in the State of Nebraska ~~may shall be registered 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.~~ upon application to and approval by the Nebraska Supreme Court, if the lawyer:

(1) ~~Is employed in Nebraska as counsel 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;~~

(2) ~~Has filed such forms and application as prescribed by the Nebraska Supreme Court and paid the prescribed registration fee, which is nonrefundable; and~~

(3) ~~Receives approval for limited practice as in-house counsel from the Nebraska Supreme Court.~~

(B) Registration under Neb. Ct. R. §§ 3-1201 to 3-1204 is not a matter of right. 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 ~~lawyer's~~ 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 Nebraska on the effective date of Neb. Ct. R. §§ 3-1201 to 3-1204 shall not be ~~deemed to have been engaged in the unauthorized practice of law prior to registration under Neb. Ct. R. §§ 3-1201 to 3-1204~~ subject to

discipline 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 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 the Clerk of the Nebraska Supreme Court the following:

(A) A completed application in the form prescribed by the Nebraska Supreme Court.

(B) A certificate of good standing from the highest court of each jurisdiction of admission.

(C) A certificate from the disciplinary authority of each jurisdiction of admission which:

(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 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 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 payable to the Nebraska Supreme Court for credit to the Nebraska Supreme Court's Counsel for Discipline Cash Fund.

§ 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 and employer shall immediately notify the Clerk of the Nebraska Supreme Court 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 ~~remain in effect~~ be reinstated for the remainder of the calendar year after the new employer files 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 an annual statement on or before January 1 setting forth the requirements of § 3-1202 and pay the annual renewal fee of \$345 to the Nebraska Supreme Court for credit to the Nebraska Supreme Court's Counsel for Discipline Cash Fund.

(E) Any lawyer who fails to file the annual renewal on or before January 1 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 be subject to Neb. Ct. R. §§ 3-401.1 to 3-402.3, Mandatory Continuing Legal Education for Lawyers Rules.~~

~~(C)~~ A lawyer ~~who is practicing law in Nebraska~~ 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.

~~(D)~~ 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 shall be: ~~subject to professional discipline in this jurisdiction and may be referred to by the Counsel for Discipline to the disciplinary authority of the jurisdictions of licensure.~~

(1) Subject to professional discipline in this jurisdiction;

(2) Referred to 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.

NEBRASKA SUPREME COURT

IN-HOUSE COUNSEL REGISTRATION AND/OR RENEWAL APPLICATION

I, _____, request to be certified as in-house counsel in the State of Nebraska, pursuant to Neb. Ct. R. §§ 3-1201 to 3-1204.

Check one: Initial Registration (\$700) _____ Annual Renewal (\$345) _____

Name and Nebraska address of corporation/entity employer:

Nebraska telephone number of corporation or entity: _____

I declare, under penalty of perjury, that:

1. I am employed as in-house counsel for the above-named corporation/entity, and my employment conforms to the requirements of Neb. Ct. R. § 3-1202.
2. I am admitted to practice law in the following jurisdictions: _____
_____, and I am a member in good standing in the above-named jurisdiction(s).
3. I acknowledge that I am subject to the Rules of the Nebraska Supreme Court, including the rules for Registration of In-House Counsel, Neb. Ct. R. §§ 3-1201 to 3-1204; Rules of Professional Conduct, Neb. Ct. R. of Prof. Cond. §§ 3-501.0 to 3-508.5; and the Mandatory Continuing Legal Education for Lawyers Rules, Neb. Ct. R. §§ 3-401.1 to 3-402.3.
4. I have attached the documentation required by Neb. Ct. R. § 3-1202 and the requisite fee payable to the Nebraska Supreme Court.
5. I acknowledge that any change in status of my license to practice law in ~~my home~~ any jurisdiction in which I am licensed to practice law or any change in status of my employment may automatically terminate my registration as in-house counsel in the State of Nebraska.
6. ~~and that~~ I will immediately inform the Counsel for Discipline of the Nebraska Supreme Court in writing of any disciplinary action commenced against me or sanction imposed in ~~my home~~ any jurisdiction in which I am licensed to practice law.

Appendix 1

Full Legal Name: _____

Mailing Address: _____

Telephone Number: _____

E-mail Address: _____

Signature: _____ Date: _____

State of Nebraska)
) SS
County of _____)

Subscribed and sworn to before me on _____

Notary Public: _____ Commission expires: _____

Seal:

| |
|---|
| For official use only: Application received: _____, 20_____ Registration: _____ Granted _____ Denied By: _____ |
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Appendix 1

CHAPTER 3

ATTORNEYS AND THE PRACTICE OF LAW

ARTICLE 3

DISCIPLINE PROCEDURES FOR LAWYERS

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§ 3-301. Jurisdiction.

(A) Every attorney admitted to practice in the State of Nebraska, or required to register pursuant to Neb. Ct. R. §§ 3-1201 to 3-1204, is subject to the exclusive disciplinary jurisdiction of the Court.

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CHAPTER 3

ATTORNEYS AND THE PRACTICE OF LAW

ARTICLE 5

NEBRASKA RULES OF PROFESSIONAL CONDUCT

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§ 3-505.5. Unauthorized practice of law; multijurisdictional practice of law.

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(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission;~~or~~ and the lawyer is registered under Neb. Ct. R. §§ 3-1201 to 3-1204, Registration of In-House Counsel.

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

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