

Nebraska Ethics Advisory Opinion for Lawyers
No. 98-1

UNLESS A FOREIGN PROFESSIONAL CORPORATION HAS COMPLIED WITH THE RULES OF THE NEBRASKA SUPREME COURT PERTAINING TO PROFESSIONAL SERVICE CORPORATIONS, INCLUDING BUT NOT LIMITED TO RULES 1C AND 1E, IT MAY NOT PRACTICE LAW THROUGH ATTORNEYS ADMITTED IN NEBRASKA, EXCEPT ON A PRO HOC VICE BASIS, EVEN THOUGH IT HAS OTHERWISE PROPERLY REGISTERED IN NEBRASKA AS A FOREIGN PROFESSIONAL CORPORATION.

NEBRASKA COUNSEL MAY NOT DIRECTLY SHARE FEES WITH A FOREIGN CORPORATION DOING BUSINESS IN NEBRASKA AS A PROFESSIONAL CORPORATION UNLESS THE CORPORATION HAS COMPLIED WITH THE NEBRASKA SUPREME COURT RULES RELATIVE TO PROFESSIONAL SERVICE CORPORATIONS BECAUSE UNTIL SUCH COMPLIANCE, THE FOREIGN CORPORATION IS A NON-LAWYER.

FACTS

A professional corporation duly established under the laws and professional practice rules of a foreign state wishes to establish a Nebraska office which would be staffed exclusively by Nebraska resident licensed attorneys, some of whom would also become shareholders in the foreign corporation. The foreign corporation wishes to file for a certificate of authority as a foreign corporation doing business in Nebraska. All shareholders of the foreign corporation are not admitted to the practice of law in Nebraska.

STATEMENT OF QUESTION OR ISSUE

May a foreign professional corporation, with shareholders who are not admitted to the practice of law in Nebraska, ethically practice law in Nebraska by amending its Articles of Incorporation to comply with the provisions of the Revised Rules of the Nebraska

Supreme Court by requiring shareholders of the corporation to be jointly and severally liable for errors and omissions of the corporation and by obtaining a Certificate of Authority in accordance with the Nebraska Professional Corporation Act?

APPLICABLE CODE PROVISIONS

DR 3-101 (A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law.

DR 3-101 (B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of the regulations of the profession in that jurisdiction.

DR 3-102 (A) A lawyer or law firm shall not share legal fees with a non-lawyer, ..

EC 3-9 Regulation of the practice of law is accomplished principally by the respective states. Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he or she is not permitted by law or by court order to do so

DR 5-107 (C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

- (1) A non-lawyer owns any interest therein
- (2) A non-lawyer is a corporate director or officer thereof; or
- (3) A non-lawyer has the right to direct or control the professional judgment of a lawyer.

DR 6-102 (A) A lawyer shall not attempt to exonerate himself or herself from or limit his or her liability to a client for the lawyer's personal malpractice.

DISCUSSION

The delivery of professional services by and through a corporation is authorized and made possible by the Nebraska Professional Corporation Act. Neb. Rev. Stat. § 21-2201 to § 21-2222 (Reissue 1997). The Act also allows foreign professional corporations to register in Nebraska and provide services. Neb. Rev. Stat. § 21-2209 (Reissue 1997).

However, with regard to lawyers, the legislature has authorized the Nebraska Supreme Court to pre-empt the Act. Neb. Rev. Stat. § 21-2220 (Reissue 1997) provides as follows:

"Sections 21-2201 to 21-2222 shall be applicable to attorneys at law only to the extent and under such terms and conditions as the Supreme Court of Nebraska shall determine to be necessary and appropriate. Articles of incorporation of professional corporations organized to practice law shall contain such provisions as may be appropriate to comply with applicable rules of the court." (Emphasis supplied).

Rule IV of the Nebraska Supreme Court Rules with regard to Professional Service Corporations provides as follows:

"Except as provided by this Rule, corporations shall not practice law ..."

However, paragraph 1 provides, in part as follows:

"Lawyers may incorporate for the practice of law under the Nebraska Professional Corporation Act, providing that such corporations are organized and operated in accordance with the provisions of this Rule ..."

It is the opinion of the Committee that because the Act recognizes properly registered foreign corporations, the term "corporation" or "corporations" includes such registered foreign corporations.

Paragraph 1 continues, in part, as follows:

"The articles of incorporation of such corporation shall contain provisions complying with the following requirements:

* * *

C. "All shareholders of the corporation shall be persons duly licensed by The Supreme Court of the State of Nebraska to practice law in the State of Nebraska, and who at all times own their shares in their own right.

* * *

E. "The president shall be a shareholder and a director, and all other directors and officers shall be persons having the qualifications described in paragraph C above."

In the facts under consideration, a foreign corporation has agreed to amend its articles of incorporation to provide for joint and several liability of its shareholders for malpractice judgments flowing from its Nebraska activities. It is the opinion of the Committee that this does not bring the foreign corporation in compliance with the Rules of the Nebraska Supreme Court. Rule 1C and 1E must also be complied with as well as the remaining Rule requirements. Without having complied with the Rules of the Nebraska Supreme Court relative to professional service corporations, even though registered in Nebraska pursuant to the Foreign Corporation Act, the foreign company is a non-lawyer.

It is the opinion of the Committee therefore, that local counsel cannot perform legal services in Nebraska as a foreign professional corporation unless the corporation has complied with The Professional Service Corporation Rules of the Nebraska Supreme Court. It is further the opinion of the Committee that fees of local counsel performing services for others as employees of a foreign professional corporation may not directly be shared with such corporation until and unless it has complied with the Professional Service Corporation Rules of the

Nebraska Supreme Court.

The Committee also notes the dictates of DR 9-102 (A) concerning the requirement for a separate trust account in the State of Nebraska.

CONCLUSION

Unless a foreign professional corporation has complied with the Rules of the Nebraska Supreme Court pertaining to Professional Service Corporations, including but not limited to Rules 1C and 1E, it may not practice law through attorneys admitted in Nebraska, except on a Pro Hoc Vice basis, even though it has otherwise properly registered in Nebraska as a foreign professional corporation.

Nebraska counsel may not directly share fees with a foreign corporation doing business in Nebraska as a professional corporation unless the corporation has complied with The Nebraska Supreme Court Rules relative to Professional Service Corporations because until such compliance, the foreign corporation is a non-lawyer.