

NOTICE OF COMMENT PERIOD

The Nebraska State Bar Association proposed rules to create a designated attorney for sole practitioners in Nebraska. The Nebraska Supreme Court directed that the proposed rule amendments to Neb. Ct. R. §§ 3-803, 3-322, and 3-328 be published for a public comment period.

The Nebraska Supreme Court invites interested persons to comment on the proposed rule amendments. Anyone desiring to submit a public comment for the Supreme Court's consideration should do so via email to erika.schafer@nejudicial.gov with the following text listed in the email subject line: **Neb. Ct. R. §§ 3-803, 3-322, and 3-328**. Comments will be accepted through May 1, 2024.

The full text of the proposal is available below. To obtain a paper copy, please call the Clerk's Office at 402-471-3731.

CHAPTER 3: ATTORNEYS AND THE PRACTICE OF LAW

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Article 8: State Bar Association; Creation; Control; and Regulation.

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§ 3-803. Membership.

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(K) Designated Attorney for Sole Practitioners.

(1) Each attorney who is a sole practitioner shall name an attorney ("designated attorney") to protect the interests of the designating attorney's clients in the event the designating attorney dies, becomes disabled, disappears, or abandons or otherwise temporarily or permanently ceases the practice of law. The designated attorney may take whatever actions may be required or deemed appropriate under any such circumstance, including but not limited to reviewing client files of the designating attorney, notifying the designating attorney's clients of the situation, maintaining the designating attorney's practice to the extent feasible or practicable, so long as or until the designated attorney and a client engage in their own attorney-client relationship. The attorney designated

under this rule also is authorized to prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records. The designated attorney shall be provided with the location of user credentials to allow the designated attorney to access the needed e-mail, the location of a list of active clients, bank account information, trust account information, and the location of client files and other case management programs in the case of the inability to practice by the designating attorney.

(2) The annual designation shall be submitted through the attorney's online portal account with the Supreme Court's Attorney Services Division by filling in the required form that identifies the designated attorney and requires the attorney to certify that the designated attorney has agreed to serve as such.

(3) For attorneys not practicing as a sole practitioner, each partnership, corporation, or limited liability organization consisting of more than one attorney shall be responsible to assume all professional duties owed by an attorney member or employee of the firm in the event of the attorney's inability to practice. All active attorneys in multi-attorney firms representing members of the public shall indicate within their attorney services portal account the identity of the attorney, partnership, corporation, or limited liability organization designated to practice in their stead in the event of death, disability, or other inability to practice and certify that the firm has a process in place to deal with an inability to practice and provide the name of a specific individual within the firm that will take over. Further, the designated attorney, partnership, corporation or limited liability organization must certify the designated attorney has agreed to serve as such as provided herein.

(4) A designated attorney, entity, or the Nebraska Counsel for Discipline, may petition the Supreme Court, at any time, for appointment as the trustee or appointment of the designated attorney as the trustee or appointment of an independent trustee under the provisions of § 3-328, as applicable.

(5) Payment for designated attorney. A designated attorney may seek reimbursement for expenses related to the duties outlined in this rule and may seek compensation not to exceed the hourly rate allowed for appointed trustees under § 3-328. The designated attorney shall seek payment from the following sources, in the following order:

(a) The designated attorney may seek payment first from the lawyer's firm operating or business account and/or;

(b) The designated attorney may seek payment from the lawyer's estate, if deceased, with the personal representative or administrator of the lawyer's estate. If those funds are insufficient to compensate the designated attorney, then;

(c) The designated attorney may seek payment from the Counsel for Discipline Cash Fund as a trustee by making a filing with the Nebraska Supreme Court for appointment as a trustee under § 3-328.

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CHAPTER 3: ATTORNEYS AND THE PRACTICE OF LAW

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Article 3: Discipline Procedures for Lawyers.

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§ 3-322. Immunity and privileges.

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(B) The Counsel for Discipline, his or her representatives, and members of the Disciplinary Review Board, Committees on Inquiry, and Advisory Committee; the director and any members of the Nebraska Lawyer's Assistance Program; an attorney designee acting pursuant to § 3-803(K); a trustee appointed pursuant to § 3-328; and all others (whether or not members of the Association) whose assistance is requested by any of the foregoing in connection with the enforcement of these rules shall be immune from suit for any conduct in the course of their official duties under these rules.

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§ 3-328. Appointment of a trustee.

In addition to any of the foregoing procedures within these rules relating to disability inactive status, disbarment, or suspension of an attorney, the following measures may be taken for the protection of client interests and secondarily for the protection of the lawyer's interests:

(A) Appointment of a Trustee. If an attorney (i) has been suspended by an order of the Court placing the member on disability inactive status pursuant to § 3-311; (ii) is shown to be unable to properly discharge his or her responsibilities to clients due to disability, disappearance, death, or abandonment of a law practice and there is no showing that an arrangement has been made for another lawyer to discharge the responsibilities; or (iii) has been disbarred or suspended pursuant to §§ 3-310 or 3-312 or has surrendered his or her license under § 3-315 and there has been a failure to comply with § 3-316 client notification requirements, the Court may appoint a lawyer to serve as trustee to inventory the files, sequester client funds, and take whatever other action seems indicated to protect the interests of the clients, affected attorney, and any other affected parties.

(1) Trustee Bound by Lawyer-Client Privilege. The trustee should be bound by the lawyer-client privilege with respect to the records of individual clients, except to the extent necessary to carry out the order of the Court.

(2) The trustee shall notify in writing all of the present clients of the ~~disbarred or suspended member~~ affected attorney of the ~~fact of such disbarment or suspension~~ reason for appointment and shall also notify in writing all members and nonresident attorneys involved in pending legal or other matters being handled by the ~~disbarred or suspended member of his or her altered status~~ affected attorney of the reason for appointment.

(3B) Report and Compensation. The trustee shall make reports to the Supreme Court as directed by order of the Court. The trustee shall may receive compensation for his or her services as established by the Court and may be reimbursed for travel and other expenses incidental to the performance of his or her duties. The trustee shall first seek to be compensated from the affected attorney's law firm business or operating account and, if the affected attorney is deceased, may secondarily seek payment from the affected attorney's estate with the personal representative or administrator of the estate. If those funds are insufficient to compensate or reimburse the trustee, the trustee may seek payment from the Counsel for Discipline Cash Fund upon motion and affidavit to the Supreme Court. At its discretion, the Counsel for Discipline may seek reimbursement for the trustee's fees and expenses from the affected attorney's estate, if deceased, through an administrative claim.

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