

percent of special grant funds available; and to Child Law Services of Mercer County 5.355 percent of special grant funds available; and

(c) Seventy-five percent (75%) of the remaining funds to Legal Aid of West Virginia and twenty-five percent (25%) of the remaining funds to Mountain State Justice or such other method of distribution as may hereinafter be adopted by order of the Supreme Court of Appeals. Any funds distributed by the West Virginia State Bar pursuant to this subdivision shall not be used by the recipient organization to support any lobbying activities.

[CLERK'S COMMENTS: Rule 1.15 of the Rules of Professional Conduct requires that lawyers keep client funds in separate accounts conforming to that Rule. R.P.C. 1.15 further provides that lawyers who receive client funds that are nominal in amount or are expected to be held for a brief period must establish and maintain an IOLTA account for such funds. In conjunction with the most recent revisions to R.P.C. 1.15, the detailed IOLTA provisions in that Rule pertaining to the administration of those accounts and distribution of IOLTA-generated funds by the State Bar were removed from the ethics code and more appropriately incorporated into the State Bar Administrative Rules. By Administrative Order entered September 29, 2014, the Supreme Court approved and put into effect State Bar Administrative Rule 10. Other than stylistic changes, minor revision to Rule 10.07 clarifies that active non-practicing attorneys fall within the exemptions from the IOLTA program.]

Rule 11 Legal Corporations

11.01 Prior approval

Any one or more persons wishing to practice law in the State of West Virginia through a legal corporation shall file an application for approval with the West Virginia State Bar. Professional services shall not be provided through any legal corporation until such time as the corporation's application has been approved by the State Bar, and a certificate of incorporation has been issued by the West Virginia Secretary of State.

11.02 Application

(a) An application for approval to provide legal services through a legal corporation shall be submitted to the West Virginia State Bar. Each application shall be submitted in the form required by the State Bar and accompanied by a \$50 application fee. Each application shall be signed by an incorporator of the proposed legal corporation, and shall also contain the 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) In the case of a legal corporation with any shareholder or other lawyer associated with the entity 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 corporation who shall be responsible for compliance by the corporation 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 corporation has sufficient policies and procedures in the place to prevent the unauthorized practice of law in West Virginia by any person associated with the corporation.

11.03 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 any such request.

11.04 Requirements

(a) Prior to approval of an application to operate as a legal corporation, or any renewal application, the West Virginia State Bar must be satisfied that:

(1) 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;

(2) The proposed corporate name contains the last name or names of one or more of its shareholders, or of lawyers who were associated with a predecessor partnership or other legal organization, and contains the words “legal corporation” or the abbreviation “L.C.” at the conclusion of the name; and

(3) Any trade name to be used by the corporation complies with the applicable requirements of the Rules of Professional Conduct.

(b) The legal corporation must provide, by written disclosure in the form required by the State Bar, information as to whether the legal corporation has professional liability insurance or a designated and segregated fund for the satisfaction of judgments against the legal corporation, and its shareholders and employees, for acts, errors, and omissions occurring in the practice of law.

11.05 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.

11.06 Annual renewal

Each year, by no later than November 1, in a manner prescribed by the West Virginia State Bar, any legal corporation approved under this rule to provide professional services in West Virginia shall file a renewal application with the State Bar. The renewal application shall disclose all changes in the legal corporation and its shareholders since the prior application or prior renewal application. 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 West Virginia State Bar determines that the authority to render professional services in West Virginia by such legal corporation 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 with 30 days following receipt of the notice, the applicant shall cease rendering professional services in West Virginia; and the State Bar shall notify the West Virginia Secretary of State that the renewal application has been denied.

11.07 Transition requirements

Any legal corporation 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 legal corporation 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 Rule is new. The specific requirements in Rule 11.04(a) are drawn from the statute on legal corporations (W. Va. Code § 30-2-5a), and the Rules of Professional Conduct (principally Rules 5.4 and 7.5).

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