

## **Rule 722. Limited Liability Legal Practice**

**(a)** For purposes of this rule:

(1) “Limited liability entity” means a corporation, association, limited liability company, or registered limited liability partnership engaged in the practice of law in Illinois pursuant to Rule 721.

(2) “Owner” means a shareholder, member, manager, or partner of a limited liability entity.

(3) “Wrongful conduct” means acts, errors, or omissions in the performance of professional services by any owners or employees of a limited liability entity while they were affiliated with that entity.

**(b)** The liability, if any, of owners of a limited liability entity, for a claim asserted against the limited liability entity or any of its owners or employees arising out of wrongful conduct, shall be determined by the provisions of the statute under which the limited liability entity is organized if that entity maintains minimum insurance or proof of financial responsibility, as follows:

(1) “Minimum insurance” means a professional liability insurance policy applicable to a limited liability entity, and any of its owners or employees, for wrongful conduct. Such insurance shall exist, in one or more policies, with respect to claims asserted during an annual policy period due to alleged wrongful conduct occurring during the policy period and the previous six years. Such policies shall have a minimum amount of insurance of \$100,000 per claim and \$250,000 annual aggregate, times the number of lawyers in the firm at the beginning of the annual policy period, provided that the firm’s insurance need not exceed \$5,000,000 per claim and \$10,000,000 annual aggregate. Evidence of any such minimum insurance shall be provided with each application for registration or renewal pursuant to Rule 721 by means of an affidavit or a verification by certification under section 1-109 of the Code of Civil Procedure of an authorized shareholder, member, or partner that his or her firm maintains the minimum insurance required by this rule. For purposes of Rules 721(d) and 722, the minimum amount of insurance required shall not be affected: (A) by any exceptions or exclusions from coverage that are customary with respect to lawyers professional liability insurance policies; (B) if, with respect to a particular claim, the limited liability entity fails to maintain insurance for wrongful conduct occurring before the annual policy period, so long as insurance coverage in the amount specified in this rule exists with respect to the claim in question; or (C) if, during an annual policy period, the per claim or annual aggregate limits are exceeded by the amounts of any claims, judgments, or settlements. If evidence of insurance is provided with a registration or renewal application pursuant to Rule 721 and it is ultimately determined that the limited liability entity failed to maintain minimum insurance during the period covered by that registration or renewal, unless such failure is fraudulent or wilful the joint and several liability of the owners for a claim arising out of wrongful conduct shall be limited to the minimum per claim amount of insurance applicable to the limited liability entity under this rule.

(2) Owners of a limited liability entity that has obtained minimum insurance shall be jointly and severally liable, up to the amount of the deductible or retention, for any claims arising out of wrongful conduct unless the limited liability entity has also provided proof of financial responsibility in a sum no less than the amount of the deductible or retention.

(3) “Proof of financial responsibility” means funds that are specifically designated and

segregated for the satisfaction of any judgments against a limited liability entity, and any of its owners or employees, entered by or registered in any court of competent jurisdiction in Illinois, arising out of wrongful conduct. At the beginning of an annual period covered by a certificate of registration pursuant to Rule 721, such funds shall be in a sum no less than the minimum required annual aggregate for minimum insurance by that limited liability entity, unless the proof of financial responsibility is provided solely to apply to the deductible or retention pertaining to the applicable minimum insurance, in which case the funds shall be no less than the amount of the deductible or retention. During the annual period covered by a certificate of registration pursuant to Rule 721, such funds may be used only to satisfy any judgments against the limited liability entity, and any of its owners or employees, entered by or registered in any court of competent jurisdiction in Illinois, arising out of wrongful conduct. Such funds may be in any of the following forms: (A) deposit in trust or in bank escrow of cash, bank certificates of deposit, or United States Treasury obligations; (B) a bank letter of credit, or (C) a surety bond. Evidence of any such proof of financial responsibility shall be provided with each application for registration or renewal pursuant to Rule 721 by means of an affidavit or a verification by certification under section 1-109 of the Code of Civil Procedure of an authorized shareholder, member, or partner that his or her firm maintains the funds required by this rule. Otherwise minimum proof of financial responsibility remains minimum, for purposes of this rule, if the individual or combined amount of any judgments during the annual period covered by the certificate of registration exceeds the amount of the segregated funds.

(4) If a limited liability entity maintains minimum insurance or proof of financial responsibility at the time that a bankruptcy case is commenced with respect to that entity, it shall be deemed to do so with respect to claims asserted after the commencement of the bankruptcy case.

(c) Nothing in this rule or any law under which a limited liability entity is organized shall relieve any lawyer from personal liability for claims arising out of acts, errors, or omissions in the performance of professional services by the lawyer or any person under the lawyer's direct supervision and control.

Adopted April 1, 2003, effective July 1, 2003; amended March 15, 2004, effective immediately.

Commentary  
(April 1, 2003)

Rule 721 imposes joint and several liability on lawyers with an ownership interest in law firms organized under statutes that purport to limit vicarious liability, for claims arising out of the performance of professional services by any firm lawyers or employees, unless the firm maintains minimum insurance or proof of financial responsibility in accordance with Rule 722. For lawyers with an ownership interest in such firms to obtain the limited liability authorized by statute, Rule 722 imposes additional obligations, beyond any statutory requirements, to provide sufficient professional liability insurance or other funds to protect clients with such claims.

Rules 721 and 722 do not reduce lawyers' liability for their own professional conduct or that of persons under their direct supervision and control. Nor do these rules affect lawyers' ethical responsibilities for their own conduct, or that of their law firm or their firm's lawyers or employees, under Rules 5.1, 5.2, or 5.3 of the Rules of Professional Conduct.