

MALPRACTICE WITHIN A PROFESSIONAL CORPORATION—IS THE ATTORNEY PERSONALLY LIABLE?

Intuitively, the answer is yes and, at least in this instance, the law follows your intuition.

NRS 89.060 provides that “[t]he provisions of this chapter relating to professional entities do not modify any law applicable to the relationship between a person furnishing professional service and a person receiving such service, including liability arising out of such professional service[.]”

Surprisingly, there is no definitive law by the Nevada Supreme Court on this issue¹, but persuasive case law generally suggests that an attorney is personally liable. For example, in Henderson v. HSI Financial Services, Inc., 471 S.E.2d 885 (Ga. 1996), the court held that “[l]awyers practicing in a professional corporation still owe a duty to clients and remain personally liable to them for acts of professional negligence.” Id. at 886. The Henderson court also noted that the “ABA ruled in 1961 that an attorney may practice in a form of organization that limits liability to clients for legal malpractice . . . so long as the lawyer rendering the legal services remains personally responsible to the client.” Id. at 887.

In Sanders, Bruin, Coll & Worley, P.A. v. McKay Oil Corp., 943 P.2d 104 (N.M. 1994), the court held that, “as a general matter, membership or shareholder status in a professional corporation does not shield an attorney from individual liability for his own mistakes or professional misdeeds.” Id. at 106. The court went on to find that “[t]he clear majority of jurisdictions . . . have held that professional corporations provide no protection from personal liability for an attorney’s own malpractice or obligations individually incurred by a breach of duty.” Id. at 108.

In We’re Associates Co. v. Cohen, Stracher & Bloom, P.C., 103 A.D.2d 130 (N.Y. App. Div. 1984), the court noted, in discussing attorneys engaging in the practice of law within the protections of a professional corporation, that “[i]nsofar as liability for malpractice is concerned, each attorney [remains] personally liable for his own acts or omissions.” Id. at 135 (quoting Rotgin, The Professional Corporation for Lawyers, 52 NY State Bar J 634, 634-635).

In London, Anderson & Hoeft, Ltd. v. Minnesota, 530 N.W.2d 576 (Minn. Ct. App. 1995), the appellate court held that an attorney is personally liable for the deductible arising out of a malpractice carrier’s defense of a malpractice lawsuit in accord with a statutory provision similar with respect to NRS 89.060 pertaining to a P.C. Id. at 579.

Finally, in In re Rhode Island Bar Ass’n, 263 A.2d 692 (R.I. 1970), the court discussed how the relevant statutes permitting lawyers to practice law in the form of a P.C. did not eliminate the standing principle that a lawyer remains individually and personally liable to a client for malpractice claims arising from services rendered. Id. at 696-98.

¹ However, see Grayson v. Jones, 101 Nev. 749, 750, 710 P.2d 76, 76-77 (1985) (“A member of [a] professional legal corporation in Nevada is not individually liable for the tortious acts of other members of that professional legal corporation unless he/she personally participated in those tortious acts.”).

We believe that the law in Nevada tracks the law of our sister states and that a lawyer committing malpractice can not stand behind the shield of a professional corporation's limitation of liability.