

# CHOOSING AN ENTITY STRUCTURE FOR YOUR PRACTICE

## WORLD DOMINATION

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**One of the first decisions that a legal practitioner will have to make is what type of entity to form for his or her practice. And, if the practice consists of two or more practitioners, a decision will have to be made as to what type of association to form.**

Aside from the issue of insulation from personal liability, the other large consideration is, of course, the tax ramifications. We will examine the pros and cons of different legal practice entities under different circumstances.

## Some Solo Statistics

Being a lawyer, you hardly need to have the mechanics of different business entities explained to you, so we will instead focus on how those differences impact the practice of law. But first, some interesting statistics: Just a decade ago, nearly half of all private lawyers in the U.S. were solo practitioners, meaning they did not work for a firm or even a partner. Today, there are over 42,925 solo practitioners working in the U.S., and the average age is 46 years old. According to the Bureau of Labor Statistics, the average starting salary for solo practitioners in 2021 was \$78,000, while the average annual salary was \$136,563.

## The Real You, and the Legal You

As you have likely counseled your clients, being a solo practitioner in any profession does not necessarily mean being a sole proprietor, and in the professional world, that is probably the least desirable entity within which to practice. Every profession has its liability exposures, and while professional liability insurance may seem like the ultimate 'safeguard' from liability and should be considered mandatory for any practice, the truth is, you will need an additional layer of protection from personal liability. It is not unheard of for 'Defenders of the Fund' representing insurance carriers to deny coverage for what might have been expected to be a covered claim. Separating the

personal you from the professional you is, in all cases, highly advised.

It is for this reason that the Single Member LLC (SMLLC) makes sense for a solo practitioner. As a separate legal entity from yourself, the debts of the practice are limited to your own personal stake in the undertaking, while earnings are reported on your personal 1040 tax return, subject to the self-employment taxes of Social Security and Medicare. It is important to note, however, that just as circumstances can arise leading to 'piercing the corporate veil' of a corporation, many jurisdictions have extended that notion to members of an LLC as well. Therefore, keeping the personal 'you' separate from the professional 'you' is critical.

## Electing Partnership Filing

A variation on the SMLLC entity is one in which there are two or more members of the LLC (obviously no longer a 'Single Member'), in which case, they can elect to be taxed as a partnership. A partnership tax return will be filed, with income and deductions being passed through to the partners personally. The flexibility of the multi-Member LLC allows for disparate proportional 'ownership,' which is reflected in different percentage allocations of income and deductions among the various Members in accordance with the LLC Operating Agreement provisions. This might be

## Executive Summary

### › The Issue

How to decide on the most appropriate entity structure for your law practice.

### › The Gravamen

A variety of organizational structures exist which, depending upon your own professional and career circumstances, will vary as to pros and cons for you.

### › The Path Forward

Learn your own state's requirements either limiting or enabling how professionals can organize and associate for both professional liability protection and flexibility.

particularly relevant where two successful lawyers have practiced in association for some time pursuant to their LLC arrangement but then decide to expand their firm and bring in a 'junior Member' whose revenue contributions have not yet matured. Clearly, the new associate's allocations from the LLC will be of a smaller percentage at the beginning of his or her career. If, on the other hand, another highly successful practitioner in his or her own right joins the practice, the flexibility of LLC Member allocation allows for that circumstance as well.

### LLC versus PLLC

In many states, professionals whose practices are subject to licensing by the state cannot legally form a regular LLC and must instead file for a Professional Limited Liability Company (PLLC). Although essentially the same features apply to an LLC as to a PLLC, the latter will require that all Members hold a license to practice law in that state. It is important to note that while the PLLC insulates Members from liability for each other's malpractice lawsuits, the PLLC will not protect the individual Member-lawyer from liability arising out of his or her own malpractice lawsuits. Because each Member remains responsible—and liable—for their individual malpractice matters, it is not only recommended but often required that each PLLC Member carry their professional liability insurance.

And, just as with an SMLLC, a solo practitioner not in association with

any other lawyers can form a Single Member PLLC.

### The Professional Corporation (PC)

A Professional Corporation (PC) is organized for the purpose of providing professional personal services. As is the case with the LLC or PLLC, the attorneys of a PC are insulated from personal liability. However, unlike the LLC or PLLC scenarios, the attorney shareholders are at the same time employees of the PC. Different states have quite varying rules regarding the formation and operation of a PC, so attorneys considering this type of entity must carefully study the requirements of their jurisdiction. By default, PCs will be categorized for tax purposes as C-corporations. However, depending upon qualifications, the PC may elect to be taxed as an S-corp. In addition to the IRS rules regarding such elections, state revenue agencies also have their requirements for allowing such an election.

### The LLP

It is not uncommon to see 'LLP' following the name of a law firm, and in fact, the largest law firm in the world, Kirkland & Ellis, is organized as a Limited Liability Partnership. Unlike a Limited Partnership, all partners in an LLP can participate in the management of the partnership. However, along with the shared management rights of an LLP comes the corresponding shared liability. But the beauty of an LLP is

## Action

**1 Tax Consulting:** Meet with your tax professional to discuss which entity will best serve your interests as to tax ramifications and which IRS tax designation to elect.

**2 Going Solo:** Determine whether your goal is to start off as a solo practitioner or whether it might make more sense to pool resources with another attorney and form one of the professional associations discussed above.

**3 Malpractice Insurance:** Regardless of what entity you form for your practice, meet with your professional liability insurance agent and find out what coverages are best suited for your area of practice—and what are the exclusions from coverage.

**4 Multi-Jurisdictional Practice:** In the event that you or your partners are licensed in more than one state and intend to practice law in more than one state, be sure that the entity you are forming will also be appropriate in the neighboring state or is otherwise flexible enough to allow for multi-jurisdictional practice.



that such shared liability is at the same time limited, as the name suggests. In general, lawyers who have achieved significant professional standing and whose firms enjoy the fruits of that reputation form an LLP, pooling both financial and professional resources. The LLP can lower the cost of doing business and allow an organizational structure that is highly flexible for ongoing growth.

As with Members of a PLLC, LLP Shareholders are not liable for the professional liability of other practitioners at the firm but are, of course, liable for their malpractice claims. Furthermore, the LLP protects Shareholders from personal liability for LLP debts.

### **Putting It All Together**

Once you take that step to go solo or associate with an attorney colleague, where you are in your career, the experience and reputation you bring to the table, and your realistic expectations for growth of your solo practice or firm are all factors to be taken into consideration before choosing an entity in which to structure your practice. But just remember: unlike some of our decisions in life, the decision as to which entity to form is not carved in stone, and there is almost always the flexibility to make a change.



## Further Reading

1. <https://www.orba.com/what-entity-structure-for-law-practice/>
2. <https://practice.findlaw.com/how-to-start-a-law-firm/choosing-a-business-structure-for-your-law-firm.html>
3. <https://www.clio.com/blog/law-firm-partnership-structure/>
4. <https://foundersguide.com/basic-organizational-structure-of-a-law-firm/>
5. <https://startmyfloridalawfirm.com/portfolio/choose-a-corporate-structure-for-law-firm/>
6. <https://www.zippia.com/solo-practitioner-jobs/demographics/>
7. <https://www.nolo.com/legal-encyclopedia/limited-partnerships-limited-liability-partnerships-29748.html>





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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions.

Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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- ▶ By virtue of our unique methods and a proven history of providing top-tier legal services to our clients, the GPESR team is capable of supporting a diverse client base both in the US and globally. From solo practitioners to AmLaw 100 firms, legal publishers, Fortune 1000 companies, and in-house law departments, our team offers legal staffing solutions to suit any business needs. GPESR provides skilled attorneys in either permanent placements or temporary contracts through a selective recruiting process. Adherence to quality, value, and flexibility are hallmarks of our offerings.
- ▶ Ensuring privacy and security of client data is a critical component of our business. GreenPoint has instituted rigorous physical, administrative, and technical safeguards to protect the integrity, security, and privacy of client data, all of which comply with the most stringent US and global standards and regulations.

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## About GreenPoint Law & Compliance

- ▶ GreenPoint Global was founded in 2001 and since that time has faithfully served an expanding roster of clients. GreenPoint leverages a unique combination of US-trained attorneys and proprietary technology to deliver a unique offering of skill and flexibility to meet client needs.
- ▶ Our core team of experienced US attorneys is based in Israel and works US hours. The breadth of experience of our attorneys ensures high-quality, cost-effective results across a wide range of legal, compliance, and regulatory matters.
- ▶ GreenPoint's methodology and proven track record of achieving client objectives has resulted in a broad base of clients in the United States, ranging from Fortune 500 insurance companies to solo practitioners, law firms, in-house law departments, and legal publishers. GreenPoint attorneys are selectively recruited and deployed based on possessing demonstrable subject matter expertise covering a broad spectrum of substantive US laws and regulations. The work product of our attorneys is thoroughly vetted internally before delivery to client. Adherence to quality, value and flexibility is at the core of our foundation.

