

Topic: Definition of "Individual" in administrative rules

Question By: Kathleen Vasquez

Jurisdiction: California

Date: December 10, 2013

Jurisdiction	Question(s)
Alabama	
Alaska	
Arizona	
Arkansas	
California	
Colorado	
Connecticut	
Delaware	
District of Columbia	
Florida	
Georgia	
Hawaii	
Idaho	
Illinois	Illinois uses the following definition. I suppose it may have been taken from MARS RA9, but not certain... "Individual" means a human being or a decedent, in the case of a debtor that is the decedent's estate.
Indiana	Indiana does not.
Iowa	
Kansas	
Kentucky	
Louisiana	Louisiana does not.
Maine	
Maryland	
Massachusetts	
Michigan	
Minnesota	Minnesota is the same as Illinois.
Mississippi	

Missouri	In Missouri, the Administrative Rule for the definition of Individual is as follows: "Individual" means a human being, or a decedent who was a debtor;
Montana	
Nebraska	
Nevada	Nevada does not.
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	Ohio does not.
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	
Tennessee	
Texas	
Utah	In Utah we don't for UCC but do for business entities.
Vermont	
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	

Additional Comments:

From Tom Wrosch (Oregon): I think your question is interesting, because neither the model rules nor RA9 define individual, yet each rely on the term for key concepts. Black's Law isn't particularly helpful. I've always been taught when interpreting statutes or rules, if the definition is not made explicit, you depend upon a plain reading, usually relying on a dictionary definition. The dictionary we use really defines individual as an indivisible entity as distinguished from a group or collection. To my mind, that could include a legal entity as well as organic. I contrast this to "person" which clearly includes humans and legal entities. It makes me wonder if individual is the right word, but if it is, I think we definitely need an explicit definition in rule.

Reply from Kathleen Vasquez (California): Thanks, Tom. Do we need to define "individual" in our rules?

Reply from Tom Wrosch (Oregon): I think, for those not as far-thinking as Dennis, it might be good to propose an amendment to the Model rules to include this. I know I'm thinking about updating Oregon's rules now. The reason I think individual needs a definition is that Rule 302 talks about "a debtor who is an individual," clearly implying humans. But we have sovereigns that will argue their "organizational/strawman" name should be included. Whether you care about taking bogus filings or not, it's an ambiguity that probably should be cleared up. Sure, it's common sense that when you juxtapose individual to organization, you know one's a human and the other is a legal entity, but these guys don't deal in common sense. I'm probably missing some key twist regarding trusts and decedent's estates, but that stuff is way over my head.

Comment from Kathleen Vasquez (California): In researching this a bit more, I find that the 2006 version of the Model Rules contained a definition for Individual, but the 2007 version does not (nor any subsequent version). I have no notes explaining the change. Does anyone recall or have better notes than I do?

I am updating our Admin Rules to dove-tail with our effective date of the RA9 revisions (July 1, 2014). The current California rules (adopted in 2004) include the definition. I want to remove it in our update, but need to understand why the definition was removed from the Model Rules. Any history would be appreciated.

Full Text of Original Email:

Does any jurisdiction include a definition of "individual" in their admin rules?