

Frequently asked questions about professional firm filings

by

Cassie Hanson, Assistant Director

Minnesota Office of Lawyers Professional Responsibility

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Every year at this time, the Office of Lawyers Professional Responsibility (OLPR) receives numerous calls from attorneys with questions about professional firm filings. Here are some of the more frequent ones.

Am I still required to file if my law firm has ceased doing business as a professional firm?

Yes. Owners of a professional firm may not simply stop providing legal services, close the doors and assume the firm is dissolved. As long as the firm is in existence there is an ongoing obligation to file the annual report and pay the filing fee, regardless of whether any business was conducted.

How do I dissolve a professional firm?

A professional firm can be formally dissolved by obtaining and filing a certificate of dissolution with the Secretary of State's Office indicating the firm has been dissolved. Please note that filing a notice of intent to dissolve is not the same as filing a certificate of dissolution. Once the certificate is obtained from the Secretary of State's Office, it must be filed with the OLPR.

Pursuant to Minn. Stat. sec. 319B.03, subd. 3, a professional firm can also be dissolved by amending its articles of incorporation to rescind the election to be governed by the Minnesota Professional Firms Act. However, this means that no legal services can be performed under the professional firm's name.

A professional firm may also be statutorily dissolved by not making annual filings with the Secretary of State's Office for four years. During this period the firm is still required to annually file with the OLPR and pay the \$25 filing fee until the Secretary of State's Office statutorily dissolves the firm.

By what date do I need to dissolve my professional firm in order to avoid having to complete an annual report and pay the \$25 filing fee?

A professional firm must be dissolved by the end of the year to avoid having to complete an annual report for that year. Any professional firms dissolved after Jan. 15 of the calendar year will be required to complete an annual report and pay the filing fee.

If a professional firm established in another state, such as Wisconsin, represents clients in the state of Minnesota, does the professional firm have to file as a foreign firm with the Secretary of State?

Yes. Minn. Stat. sec. 481.02, subd. 2, provides that, with certain exceptions, a corporation organized for

pecuniary profit may not engage in the practice of law unless it is organized under Chapter 319B of the Minnesota Professional Firms Act. Thus, foreign firms that practice as corporations cannot practice law in the state of Minnesota unless they first elect to be governed by the Minnesota Professional Firms Act under Minn. Stat. sec. 319B.04, subd. 2, and comply with the necessary filing requirements.

What about instances where a client retains an out-of-state attorney individually and not the professional firm?

Since the client retained the attorney individually, the professional firm would not be required to elect to be governed by the Minnesota Professional Firms Act. However, if the attorney is not licensed to practice law in the state of Minnesota, the attorney still has to comply with Rule 5.5 of the Minnesota Rules of Professional Conduct (MRPC), which governs the ethics dimension of the unauthorized practice of law.

What happens if the professional firm does not file?

Pursuant to Minn. Stat. sec. 319B.11, subd. 3, the professional firm is not formally established as a corporation and the protections derived from the firm's corporate status are open to challenge.

What is the effect of disbarment or lengthy suspension?

An attorney who is a solo practitioner and has been disbarred or suspended for a period of more than 90 days cannot own a professional firm. Therefore, the owner/shareholder of the firm must either sell his or her interest in the firm or the firm, as such, ceases to exist.

For more information, please visit the professional firms section of the OLPR Web site at www.courts.state.mn.us/lprb