

NEW LAWS FOR LAWYERS

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As members of the legal profession, we are generally on the lookout for legislation that has an impact on our professional or personal lives. Within the last several years, new laws that influence how we organize to practice law and how we meet our family obligations have gone into effect.

PROFESSIONAL FIRMS ACT

As you may be aware, Minn. Stat. § 481.02, subd. 2, addressing the unauthorized practice of law by corporations, prohibits business organizations organized for pecuniary profit from engaging in the practice of law in most instances. Up until 1997, this statute included an exception for an attorney's professional corporation organized under chapter 319A. In 1997, this section was amended to include "or professional firm organized under chapter 319B." Chapter 319B, the Minnesota Professional Firms Act, was enacted by the Legislature to be phased in as a replacement for chapter 319A, the Minnesota Professional Corporations Act, over a two-year period. The change was apparently enacted primarily because of the danger to a law firm's favorable tax status if the firm continued to be organized as a "corporation." As a result of the change in terminology--from "corporations" to "firms"--the members of said firms will presumably be able to retain their favorable tax status while remaining organized under this chapter.

INITIAL FILING

Minn. Stat. § 319B.11, subd. 3 provides that:

(a) No professional firm may furnish professional services within Minnesota until the firm files with each board having jurisdiction over the pertinent professional services:

1. A copy of the firm's organizational document, certificate of authority, or statement of qualification;
2. A report containing the same information as required by subdivision 4 (annual report); and
3. Except as stated in (b), a fee of \$100.

(b) If a firm has previously been organized under sections 319A.01 to 319A.22, that firm is not required to pay the filing fee under paragraph (a).

Since Minn. Stat. § 319A.21 provided for a filing fee of \$100 upon the filing of the first annual report, the amount of the fee has not changed. However, please note that this \$100 fee must now accompany the initial filing and the filing must contain the information submitted previously in the annual report. In the past, this fee and information were not required at the time of the initial filing.

ANNUAL REPORTS

Minn. Stat. § 319B.11, subd. 4, outlines the obligations of every professional firm as it pertains to the filing of an annual report on or before January 1. Subdivision 4(b) provides that with the filing of each annual report under paragraph (a), each firm must pay a fee of \$25 to the board with which the report is filed, in this case with the Office of Lawyers Professional Responsibility. Thus the \$25 fee formerly required under section 319A.21, is also required under this provision.

TRANSITION PROVISIONS

Minn. Stat. § 319B.12 provides the following:

- Subdivision 2 provides that no Minnesota firm may organize under chapter 319A after July 1, 1997.
- Subdivision 3 provides that at any time before January 1, 1999, a professional corporation organized under chapter 319A may elect to be governed by chapter 319B. Specific requirements for so electing are listed.
- Subdivision 4 provides that in any case, beginning January 1, 1999, chapter 319A ceases to apply to professional corporations and "a Minnesota professional corporation that has not elected to be governed by sections 319B.01 to 319B.12 will be considered to have made that election."

All law-related business organizations that were previously organized under chapter 319A as professional corporations should immediately review Chapter 319B, the Minnesota Professional Firms Act, if they have not already done so. Attention should also be given to the requirements of Minn. Stat. § 319B.11 as they apply to both initial filings and filings of annual reports. Both such filings are done with our office and should be accompanied by \$100 with an initial filing and \$25 with each annual report.

PERSONAL OBLIGATIONS

Recently, in the case of *In re Giberson*, the Minnesota Supreme Court was faced, for the first time, "with an attorney discipline case based primarily on an attorney's failure to comply with a court order to pay child support and spousal maintenance."^{Ftn 1} A little background is in order.

Minn. Stat. § 518.551, subd. 12(b), provides in part that government authorities responsible for child support enforcement are authorized to report an arrearage to our office if the obligor is a licensed Minnesota attorney and is in arrears to a substantial extent.^{Ftn 2}

In response to this statutory provision, the Court adopted Rule 30, Rules on Lawyers Professional Responsibility, in June of 1996, directing our office to petition the Court for administrative suspension of an attorney upon receipt of a report pursuant to this statute. Once suspended, the lawyer has a number of obligations under subdivision (b).^{Ftn 3} The rule also provides that an attorney suspended under this provision may be reinstated by filing an affidavit with supporting documentation proving that they have met their obligations or that they are in compliance with an approved payment agreement. Finally, Rule 30 also provides for disciplinary proceedings against the attorney "if the attorney's conduct also violates the Minnesota Rules of Professional Conduct."

The provisions of the MRPC found applicable in *Giberson* were:

- 3.4(c), prohibiting a lawyer from knowingly disobeying an obligation "under the rules of a tribunal";
- 8.4(d), providing that it is misconduct for a lawyer to act in a way that is prejudicial to the administration of justice; and
- 8.1(a)(3), outlining the duty owed by an attorney to cooperate with investigations undertaken by our office.

While Giberson was clearly in violation of these provisions, the Court was careful to note that it was "not prepared to say that every failure to pay a civil judgment is professional misconduct." Previous decisions involving discipline for attorneys who had failed to pay judgments generally have involved debts related in some fashion to the practice of law along with other conduct surrounding the failure to pay the debt, leading the Court to impose sanctions.^{Ftn 4}

Members of the profession should be aware that we are held to a high standard as it regards our obligation to pay judgments, particularly when they are in any way related to the practice of law or statutorily mandated, as with child support. *Giberson* is an unusual case involving, as the Court noted, a "willful refusal to comply with court-ordered child support and spousal maintenance payments pursuant to a stipulated marital termination agreement, resulting in arrearages in excess of \$170,000." While the Court has made it clear that not every failure to pay a civil judgment will result in a professional investigation or discipline, attorneys should do their best to meet their financial obligations--particularly income and withholding taxes as well as court-ordered child support--to avoid problems with our office and the Court.

CONCLUSION

As those in private practice know, in recent times law increasingly has become more of a business. Firms have expanded and, perhaps, excessive attention has been given to the "bottom-line." Yet we have retained our "professional" identity. While we are engaged within business organizations, we are granted special status as members of "professional firms." This serves as a reminder that we are both professionals and businessmen and that we have obligations in both capacities. Please ensure that your firm is in compliance with Chapter 319B, the Minnesota Professional Firms Act.

We have other obligations too, in other roles. Here we are rightfully held to a higher standard. Flaunting tax obligations has been a disciplinary offense in Minnesota for over a quarter of a century; the Court has served notice in recent years that the failure to pay judgments either related to the business of law in some way or mandated by statute will also result in discipline.

Some attorneys bemoan being held to a higher standard than other members of the public. In doing so they fail to comprehend that with privileges come responsibilities. To practice law is a privilege, and with it comes the responsibility to meet one's obligations under the law rather than engaging in conduct that undermines the very legal system that is the source of our livelihood and that we are sworn to uphold.

NOTES

¹ In re *Giberson*, C9-96-2392, ___ N.W.2d ___ (Minn. July 30, 1998).

² Minn. Stat. § 518.551, subd. 12(b), provides in part for suspension if . . . "the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and is not in compliance with a written payment agreement regarding

both current support and arrearages"

³ *These obligations include sending written notice of the suspension to all clients, adverse counsel, and courts before whom matters are pending. See 30(b), RLPR.*

⁴ *See e.g. In re Stanbury, 561 N.W.2d 507 (Minn. 1997), suspending an attorney for 30 days, in part for "refusal to voluntarily pay law library's judgment against him for computer research services" in violation of 8.4(d), MRPC, and In re Pokorny, 453 N.W.2d 345 (Minn. 1990), suspending an attorney indefinitely, in part for failure to pay two judgments for law-related debts (court-awarded-fees), in violation of 3.4(c) and 8.4(c) and (d), MRPC.*