

PAYING ATTENTION TO “DETAILS”

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What does the lawyer discipline system have to do with the decision to practice law in a professional corporation format? What happens when an attorney fails to pay the annual registration fee on time? Do attorneys who have neglected to get their CLE credits completed by June 30th have to go to summer school? Unfortunately, a number of Minnesota attorneys have learned the hard way that regarding these questions as mere administrative “details” can significantly affect the right to practice law in this state.

PROFESSIONAL CORPORATIONS

Minn. Stat. §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 319A. Chapter 319A, the Minnesota Professional Corporations Act, sets forth various requirements and principles pertaining to professional corporations.[Ftn 1](#) The provisions of the act apply in addition to other statutes and regulations pertaining to corporate entities.

After filing their organization/incorporation documents with the Secretary of State’s Office, a professional corporation, professional limited liability company, or professional limited liability partnership must file a copy of these documents with the Lawyers Board.[Ftn 2](#) The documents that must be filed are:

PROFESSIONAL CORPORATIONS: a plain copy of the articles of incorporation containing the secretary of state’s filing stamps and a plain copy of the certificate of incorporation issued by the secretary of state.

PROFESSIONAL LIMITED LIABILITY COMPANIES: a plain copy of the articles of organization containing the secretary of state’s filing stamps and a plain copy of the certificate of organization issued by the secretary of state.

PROFESSIONAL LIMITED LIABILITY PARTNERSHIPS: a plain copy of the registration statement containing the secretary of state’s filing stamps.

A professional corporation may not commence doing business until it has filed the required documentation with the Lawyers Board. All documents require proof of filing by way of the secretary of state’s filing stamps. Recognizing that there is customarily a lag time between when the documents are filed with the secretary of state and when the documents are returned stamped and with a certificate, the Board will temporarily accept a plain, unstamped copy of the articles or registration statement until such time as the stamped copies are received.

Minn. Stat. §319A.21 also requires that all professional corporations shall file annually, on or before January 1, a report with the board having jurisdiction over them. (For lawyers, this is the Lawyers Board.)

Minn. Stat. §310A.20 provides that the Board may seek to suspend or revoke the charter of corporations that fail to comply with the provisions of the Professional Corporations Act. It is the Board's practice to mail an annual report form to all professional corporations on record in November of each year. Please note the following (helpful) suggestions:

| This report must be completed and filed by all professional corporations *regardless* of whether they actively conducted business during the year or the length of time they were in business during the year.

| The report must be notarized.[Ftn 3](#)

| Each report must be accompanied by a filing fee of \$100 for the first year of incorporation and \$25 per year thereafter.[Ftn 4](#)

The reporting obligation exists as long as the corporation exists. In order to eliminate the reporting requirement, the corporation must obtain a Certificate of dissolution issued by the secretary of state indicating that the corporation has been dissolved. A notice of intent to dissolve is *not* the same thing and *does not eliminate* the obligation to file the annual reports and pay the filing fees. Another way to avoid the annual reporting process is to amend the articles of incorporation, pursuant to Minn. Stat. §319A.12, subd. 1a, to relinquish the powers and privileges conferred by the Professional Corporations Act and elect to be governed solely by the provisions of Chapters 302A, 317A, 322B or 323. Please note, however, that the corporation can then no longer practice law.

Professional corporations that have been engaged in the practice of law but that have not yet filed with the Lawyers Board may file their articles or registration statements without the imposition of a penalty. Back-due reports and filing fees will, however, have to be submitted.

ATTORNEY REGISTRATION FEES

Every attorney admitted to practice law in Minnesota is required to pay the annual registration fee. Rule 3, Rules for Registration of Attorneys, provides that failure to pay the annual fee *automatically suspends* the right to practice in Minnesota. Importantly, failure to comply with such administrative "details" can have disciplinary consequences. Practice while suspended for nonpayment of the fee is a disciplinary offense. *In re Wertz*, 442 N.W.2d 781 (Minn. 1989) (90-day disciplinary suspension and payment of \$750 in costs).

Paying annual attorney registration fees is not something lawyers generally spend time thinking about until the fee statement arrives on the desk. If the attorney has changed locations, does not receive the statement, and hence does not pay, what happens? The answer is still automatic suspension. Failure to receive the registration fee statement *does not excuse* payment of the fee. Rule 4, Rules for Registration of Attorneys. The rule requires all attorneys to notify the clerk of appellate courts immediately of any change in address. Put "notification of address change to the clerk of appellate courts" on top of the "to-do" list when changing firms. Don't wait until briefing orders or decisions are sent to the wrong address, or worse.

CLE COMPLIANCE

Every Minnesota attorney is required to report to the continuing legal education board every three years that they have completed a minimum of 45 hours of continuing legal education courses approved by that board. Rule 4, Rules for Continuing Legal Education, provides that failure to file the report shall result in referral to the Supreme Court for appropriate disposition. The disposition generally imposed by the Court is a transfer to "restricted status."

Rule 3, Rules for Continuing Legal Education, defines restricted status as that of “one who may not represent any person in any legal matter or proceedings within the State of Minnesota other than himself except a spouse, son, daughter, father, mother, brother, sister, father-in-law, mother-in-law, brother-in-law or sister-in-law.” The CLE requirements also have teeth that are occasionally enforced by the discipline system. Attorneys have been publicly disciplined for practicing in violation of the restricted status conditions. *In re Beman*, 451 N.W.2d 647 (Minn. 1990) (90-day suspension); *In re Holmay*, 464 N.W.2d 723 (Minn. 1991) (18 months/including false notarization).

Paying attention to the details of a client’s case is *de rigueur* for lawyers. Paying attention to the administrative details of being a lawyer should be so also.

NOTES

¹ The act defines professional corporations to include corporations organized under Chapters 302A and 317A, limited liability companies organized under Chapter 322B, and limited liability partnerships. See Minn. Stat. §319A.02, subd. 7, and §319A.03.

² Minn. Stat. §319A.08 provides that “no professional corporation shall begin to render professional service in the State of Minnesota until it has filed with each board having jurisdiction of professional service of a type which the corporation is authorized to render a copy of its articles of incorporation, except that a limited liability company shall instead file a copy of its articles of organization and a limited liability partnership shall instead file a copy of its registration with the secretary of state pursuant to section 323.44.”

³ Every year at least one report, usually more, is returned to the Board notarized but not signed. Think about it. Try not to send the Board, which prosecutes improper notary practices, definitive proof of a violation of the MRPC.

⁴ Every year the Board also receives at least one filing fee check drawn on the trust account of the professional corporation doing the filing. While this is not necessarily definitive proof of misappropriation of clients funds from the trust account and/or commingling, it will at least cause the Board to write and inquire as to why office expenses are being paid with funds from the client trust account.