

Some Important Reminders for Professional Firms

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The Office of Lawyers Professional Responsibility has authored several articles over the years on how to properly make professional law firm filings with the office. A small but constant percentage of lawyers and professional firms continue to submit incorrect filings or, in some cases, fail to properly register their professional firms or submit annual reports. These recurring issues, along with the recent adoption by the Lawyers Professional Responsibility Board of Opinion 20, provide an opportunity for another reminder.

By now most lawyers have heard that the LPRB recently adopted Opinion 20, which provides that a law firm's use of "Associates" or "& Associates" in the title of a law firm is misleading if it creates the impression that the law firm has more attorneys than it actually has.

The opinion will not be in effect until Jan. 1, 2010, at the earliest. Nevertheless, the OLPR has already received questions from lawyers and law firms about the opinion's impact on their professional firms. If it is determined that a change in law firm name is required in order to be consistent with Opinion 20's interpretation of the Minnesota Rules of Professional Conduct, then lawyers can act now and not wait, for example, until the OLPR sends professional firm annual reporting forms in November.

If you determine that removal of "Associates" or "& Associates" from your professional firm's name is appropriate, either the articles of incorporation (or articles of organization, depending on the type of professional firm) will have to be amended or an assumed name will have to be chosen.

If you amend the articles, you can report this to the Secretary of State's Office on a convenient online "typeable" form found on the office's website in both Adobe PDF and Microsoft Word formats. (Go to www.sos.state.mn.us/home/index.asp?page=1082) A copy of the form and amended articles then should be provided to the OLPR with your professional firm's 2009 annual report due on or before Jan. 1, 2010.

If you decide not to amend the articles and instead adopt an assumed name for your professional firm, you must file this with the Secretary of State and publish the assumed name in a registered legal newspaper prior to using it.

Once you obtain a certificate of assumed name, you may conduct business under the assumed name for 10 years. If you later amend or cancel the assumed name, however, you will have to file an amendment or cancellation with the Secretary of State. You should provide copies to the OLPR of all assumed name filings. Consult Minn. Stat. sec. 333 for more information.

As mentioned earlier, even though professional firms annual reporting time is a few months away, the following general reminders might be useful:

- Lawyers who have retired or ceased practicing law may overlook the fact that their professional firm remains active and must report to the OLPR. Your professional firm will be required to file an annual report each December until the Secretary of State considers your firm dissolved. The Secretary of State does not notify the OLPR of your firm's dissolution. You are responsible for informing the Director's Office of your change in status.

- Not all of the Secretary of State's initial filing forms contain language of the necessary election to "operate and acknowledge" subject to the Professional Firms Act, Minn. Stat. sec. 319B. In such cases, the election must be contained in the organizational documents of the profession firm, i.e., the articles of organization or incorporation, which are submitted to the OLPR. See Minn. Stat. sec. 319B.03 subd. 2.

- If you wish to maintain your professional firm as an entity for tax, liability or other reasons, be sure you are complying with the Secretary of State and OLPR's registration and filing rules and deadlines. There is caselaw (an unpublished Court of Appeals decision) allowing a judgment creditor to disregard a professional law firm entity and find the lawyer-owner individually liable in tort where the lawyer "misrepresented his corporate status" to his former employee (the plaintiff and judgment creditor), asserting that the law firm was "properly registered" when it was not. (See *Miles v. Law Office of James H. Cohen, P.C. and James Cohen*, 1999 WL 451336 (Minn. Ct. App. 1999).)

- If your professional firm entity is a corporation that you no longer need or want, consider the manner of dissolution and its possible effect on legal liability. If you voluntarily dissolve a corporation, you receive the benefit of a statutory bar on claims against dissolved corporations under Minn. Stat. sec. 302A.781 subd. 1. If your corporation is involuntarily dissolved – e.g., by the Secretary of State as a result of failure to file the annual registration – the statutory bar on claims against dissolved corporations might not apply. And where once the Secretary of State would involuntarily dissolve a corporation only after three consecutive years of nonrenewal, now, pursuant to Minn. Stat. sec. 302A.821 subd. 4, the office "must issue a certificate of administrative dissolution and certificate . . . if the corporation has not filed the registration *during any calendar year.*" (Emphasis supplied.)

For other questions related to registration and reporting by professional firms, review the OLPR website section on professional firms or contact the OLPR.