

Is your firm complying with the Minnesota Professional Firms Act?

"For those of you who like to live on the edge, let me offer you some thoughts on compliance. Beyond the obvious fact that your firm is violating state law (and engaged in the unauthorized practice of law—a misdemeanor), there are some potential practical ramifications you may wish to take into consideration as well."

Did you know that a legal entity cannot engage in the practice of law in Minnesota unless it is organized under the Minnesota Professional Firms Act (MPFA)?¹ Did you know that no firm can provide legal services in Minnesota unless that firm has invoked the requirement of the act and filed certain documents with the board exercising jurisdiction over the professional firm?² Did you further know that the Office of Lawyers Professional Responsibility, on behalf of the Lawyers Professional Responsibility Board, is

charged with monitoring firms' compliance with the act?³

I suspect that many of you may not have known, and are now wondering whether someone has taken care of this for your legal entity. If you do not know, now is the time to take a minute to confirm that someone has been addressing this for your firm. If you just checked and no one has any idea what you are talking about, take heart! It is fairly easy to bring your firm into compliance

with the law, and with the annual filing deadline approaching, now is the perfect time to review your firm's compliance.

The law

The MPFA can be found in Chapter 319B. Please take a minute to review the act. Since 1973, Minnesota state law has required all corporations, limited liability companies, and limited liability partnerships that provide legal services in Minnesota—whether organized under the law of Minnesota or another state—to file an initial report before offering services, and annual reports thereafter by the first of each calendar year.⁴ The act does not apply to sole proprietorships. The initial report is straightforward, and can be found at our website (lprb.mncourts.gov) by selecting Professional Firms from the Lawyer Resources tab. You must include with this form the applicable organization document(s), which demonstrate that the firm has elected to invoke the act to provide specified professional services. The first-time fee is \$100.

Even though the first report is straightforward (it has only five questions), many reports are submitted with inaccurate or incomplete information. This causes a lot of back and forth correspondence with our office, which can be easily avoided. Some tips: Make sure you enclosed the required document(s), which must denote on its face that it has also been filed with the Secretary of State or with accompanying proof of filing with the Secretary of State. Use the name of your firm as registered with the Secretary of State; do not file under an assumed

name and make sure your firm name has the required name endings as specified by the act—we check.⁵ The first report must be signed by an owner of the firm who is a licensed attorney; non-lawyers cannot sign the report. (Non-lawyers or other disqualified individuals also cannot have an ownership interest in the firm.⁶) The signature should be notarized, since statements are being made under oath.

Thereafter, on an annual basis before January 1, the firm must file a report with this Office on the form specified, along with a \$25 annual fee. You must file this annual report even if no legal services were provided in the year; the filing obligation continues while the entity remains in legal existence. The annual report is also straightforward; it only contains six questions. It is very similar to the initial report and the same tips apply. Once you have filed a first report, every November the Office will helpfully mail you an annual report to complete before the January 1 deadline. That's it—all there is to it!

What if I don't file as required?

If you have inadvertently overlooked this legal requirement, please act now. You cannot fix what has already occurred, but you can bring your firm into compliance. For those of you who like to live on the edge, let me offer you some thoughts on compliance. Beyond the obvious fact that your firm is violating state law (and engaged in the unauthorized practice of law—a misdemeanor), there are some potential practical ramifications you may wish to take into consideration as well.



SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Securities Board. She has more than 20 years of litigation experience, as well as a strong ethics and compliance background. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

In an unpublished decision, the Minnesota Court of Appeals upheld a trial court's decision to hold an individual owner liable for the law firm debt, due in part to the fact that the owner had misrepresented his corporate status as compliant with Minnesota law.⁷ Similarly, in California, a law firm was unable to enforce its fee agreements in a tortious interference action because it was not lawfully registered as a law corporation under California's law corporation statute.⁸ Who wants to risk personal liability, or powerlessness to collect fees, when compliance is so straightforward? You should know that information filed by the professional firm is public data under the Minnesota Data Practices Act, and thus accessible to those who care to request it.⁹

Conclusion

Only duly organized professional firms should be providing legal services in Minnesota. Ownership of professional firms is limited to licensed professionals, and the filing requirements, which include disclosure of ownership interests, help this Office maintain oversight of this requirement. While it may involve a bit of annual busywork, this act (which covers not only legal services but other professional services such as engineering, social work, dentistry, and accounting) has been in place for several decades and deserves your attention. If you have any questions regarding required filings, please review the information at our website or call the Office at (651) 296-3952, and ask to speak with our professional firms staff. ▲

Notes

¹ See Minn. Stat. § 481.02, subd. 2 (2017) (providing no corporation organized for pecuniary profit may give legal advice or otherwise engage in the practice of law by or through its officers or employees unless organized as a professional firm).

² Minn. Stat. §319B.11, subd. 3 (2017).

³ Minn. Stat. §319B.02, subd. 2 (2017).

⁴ Minn. Stat. §319B.02, subd. 10 (2017); Minn. Stat. § 319B.04, subd. 2 (2017).

⁵ Minn. Stat. §319B.05, subd. 2 (2017).

⁶ Minn. Stat. §319B.07 (2017).

⁷ *Miles v. Cohen*, 1999 WL 451336 (Minn. 7/6/1999).

⁸ *Cappiello v. Boyle*, 87 Cal.App.4th 1064 (2001).

⁹ Minn. Stat. §319B.11, subd. 8 (2017).