

## **Professional Firms: If You Don't File, You Might Not Get Paid**

by

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Reprinted from *Minnesota Lawyer* (April 30, 2001)

In 1999 we wrote an article discussing the requirement that lawyers practicing as professional firms file annual reports with the Office of Lawyers Professional Responsibility. (See "Filing firms with the OLPR: It's not just for us," in the Aug. 9, 1999, edition of *Minnesota Lawyer*.) In that article we discussed the possibility that failure to make the required filings would provide creditors with the basis to pierce the corporate veil and hold individual shareholders liable for corporate debt. Now, a more frightening adverse consequence looms. If you don't make the required filings, you may not be able to enforce your fee agreements.

In *Cappiello, Hoffman & Katz, P.C. v. Thomas J. Boyle*, 105 Cal. Rptr. 2d 147 (Cal. Ct. App. 2001), the Cappiello firm sued the Boyle firm for intentional interference with prospective economic relationships. It alleged that the Boyle firm had improperly and successfully solicited the business of Cappiello's clients. The Cappiello firm had written fee agreements with the clients that the Boyle firm had solicited away and was seeking to use these as a measure of their damages.

The Boyle firm defended, in part, by asserting that Cappiello was not entitled to damages because their contracts with the clients in question were illegal and unenforceable. They argued that, because the Cappiello firm was organized as a corporation and had not complied with the provisions of the California Professional Corporation Act, they were engaged in the unauthorized practice of law. The court agreed. They noted that, by statute, a corporation in California could only practice law if it is organized as a professional corporation. The Cappiello firm was a corporation, but had never made the required filings with the state bar in order to qualify as a professional corporation. The court held that the Cappiello firm, having failed to properly qualify itself as a professional corporation, was engaged in the unauthorized practice of law, a misdemeanor. The court went on to state, "Like an unlicensed attorney, an unregistered corporation is barred from recovering compensation for any legal services it provides."

The court did not accept Cappiello's argument that, since their individual lawyers were licensed and authorized to practice law, the fee agreements were enforceable. They held that an unregistered corporation may not avoid the statutory requirements for professional practice simply by hiring licensed professionals.

While the California Professional Corporation Act differs in some respects from Minnesota's Professional Firms Act, Minn. Stat. Chapter 319B, they are similar and the same principles could apply here. Minnesota Stat. sec. 481.02, subd. 2, provides, in part, "No corporation, organized for pecuniary profit, except an attorney's professional firm organized under chapter 319B, by or through its officers or employees or any one else, shall [engage in the practice of law]."

Minnesota Stat. sec. 319B.11, subd. 3, provides that no professional firm may furnish professional services within Minnesota until it has made the initial filings and paid the fee set forth in that section. Further, the Professional Firms Act requires that annual reports be filed and filing fees be paid as well.

If you are practicing as a corporation, limited liability company, or limited liability partnership, drop whatever you are doing right now and check to make sure you have made the required filings under the Professional Firms Act. Your livelihood may depend upon it.