

Incorporating a Solo Proprietorship Law Practice

A January 2011 discussion on SoloSez, the email listserv for general practice, solo and small firm lawyers

I would very much appreciate if any of you who have gone through this process could provide a few tips, particularly with respect to attorney-client fee agreements and trust account issues. I suspect there may be state law variations, but I'd love to hear your thoughts regardless of jurisdiction.

First off, a sole proprietorship exists de facto when you begin to offer your services alone. If you commence to do so with a colleague, you have created a de facto 50/50 partnership.

You need only incorporate if you wish to create a corporation. If you wish to create an LLC/PLLC, you organize it, you don't incorporate it.

Based on your subsequent questions, however, I suspect that you simply mean you want to *establish* a solo practice. You'll find lots on this subject in the archives, even recently, since you're just a few months behind most of the recent grads who were licensed last fall. Some top concerns for a newbie starting out (speaking from a whopping two years experience, these are fresh in my mind):

- MALPRACTICE INSURANCE: Get some. Start with your bar association. It'll keep you on your toes and your insurer probably provides some good risk management tools.
- MENTORS: Get some. At least one or two, but preferably enough that you don't overwhelm with startup questions.
- CASE MANAGEMENT: Even if it's just a spreadsheet, create a system for tracking your open matters. - ACCOUNTANT: Even if it's just Quicken, something that allows you to track income and spending will be invaluable come tax time.
- TAXES: Remember you'll have to pay 'em, so you'll want to set aside some of everything you make.
- RUN LEAN: Until you get some financial cushion, be prepared for quiet periods or cases that get delayed.

- BREAD AND BUTTER: Find something - traffic, court-appointed work, etc., that pays fairly consistently to help level out cash flow as you get the knack of things. This is especially true if you're going to do any litigation.

- RETAINERS: Get the fee up front. A client's perception of your value is directly related to the sense of urgency of the need for your services. The closer you get to done, the less they need you, and the less they are motivated to pay you. Get it up front and in the trust account (see your bar association for guidelines on this), and bill against that; nothing against bankruptcy attorneys, but you want to avoid becoming a client to one if at all possible.

- FEE AGREEMENTS: There are several examples on MyDocsOnline.

- STAFF: If you intend to grow your practice, make staff a priority by setting aside money to cover startup costs for the time of getting an assistant up to speed. A paralegal, clerk, secretary, gofer, whatever you want to call 'em - is essential to freeing you up from taking phone calls, opening mail, running to the clerk, doing client intake, etc., so you can be a lawyer.

ENJOY!

-Rick

Richard J. Rutledge, Jr., North Carolina

Great tips, Rick. I'll add that your state bar may have a LOMAS division (Law Office Management Assistance Service). If not, go to www.floridabar.org or <http://www.floridabar.org/tfb/TFBMember.nsf/840090c16eedaf0085256b61000928dc/3083f9e968b79823852575990059cd9d?OpenDocument> for helpful checklists for starting your own practice.

I bought insurance through a company the FL Bar recommended and I've been very pleased w/ the cost and customer service. In FL I are allowed to operate under the following business entities only:

1. Sole Proprietorship
2. General Partnership
3. Limited Liability Partnership (LLP)
4. Professional Service Corporation known as a Professional Association (P.A.)
5. Professional Limited Liability Company (P.L.)

The ABA Smart Soloing Center has helpful info. as well <http://new.abanet.org/solos/Pages/default.aspx>

Best Wishes, Susan Gregory Liammari, Florida

If I understand your question correctly, you're already practicing as a sole proprietor and you're looking at incorporating.

I did that in February of last year. Here is a simplified version of the checklist I created to make sure I didn't miss anything:

Articles of Organization Operating Statement Application for Certificate of Registration
Notification to clients (Virginia requires a notification to all current clients, if changing to a limited liability entity) EIN S Election (Form 2553) Virginia Tax Registration Virginia
Employment Commission Bank accounts Malpractice insurance Business insurance

It was all relatively simple, but a couple steps were a pain. For my bank accounts (operating & IOLTA), I had to open *new* accounts since the tax ID changed. That meant ordering new checks, etc. For insurance, I just had to notify the companies when I had the new entity name.

Andrew

Andrew Flusche, Virginia

Don't forget that if you are indeed incorporating (C or S corporation forms, plus any relevant state-level elections such as "close" corporations) or organizing ([P]LLC) a separate legal entity that you do need to obey the rules of the relevant form. A corporation in addition to having articles should have bylaws, directors, officers, shareholder meetings, resolutions, etc. in order to have the corporate form respected.

--Vince

Vincent Kan, Illinois

Thanks Andrew and everyone else who responded.

My apologies for not making myself clear. I have been practicing in a sole proprietorship for 6 years and would now like to incorporate and run as a professional corporation (law firms cannot operate as LLCs in California and I have no partners). Like Andrew, I plan to make the S election.

As a corporate and tax attorney, I understand the legal form. But I'm curious about application of some of some of the professional rules. According to Andrew, Virginia requires notification to all current clients. Would anyone know if this is sufficient in California? My concern is having to send out new engagement agreements to all my current clients with the new entity identified.

I plan to take the advice of one colleague and secure counsel on these types of issues, but I was hoping to see if anyone went through the process.

Thanks again, and I welcome more words of wisdom.