

Professional corporations for attorney's, dentists and other professionals
PREVIEW
General rules applicable to professional corporations

1. Shareholders must be licensed

a. Perhaps the most single significant factor that determines whether an organization should be a regular corporation or a professional corporation is the legal requirement that professional corporations and professional legal corporations may only have shareholders who are duly licensed or otherwise duly authorized to render professional services. For instance, only licensed attorneys may be shareholders in a professional legal corporation.

2. Limitation of services:

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a. Professional corporations may only perform one service. Unlike regular corporations, a professional corporation may not have general powers to do any type of business which is legal in Texas. They must only provide the specific professional service which its shareholders are licensed to perform.

3. A professional corporation is defined under the act as one organized for the sole and specific purpose of providing professional services by shareholders who are licensed or otherwise duly authorized to perform those services.

4. Examples of professional services covered by the act include the following occupations: The Act lists examples of such services. Persons that may form professional corporations include the following:

- accountants,
- attorneys,
- chiropractors,
- dentists,
- insurance agents
- licensed insurance adjusters,
- licensed professional counselors,
- nurses,
- occupational therapists.
- optometrists,
- physical therapists,
- podiatrists, (they may form a professional association or corporation,
- psychologists,
- registered public surveyors,
- respiratory care therapists, and
- veterinarians.

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The following persons form business corporations rather than professional corporations:

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- architects,
- audiologists,
- engineers,
- pharmacists,
- private security investigators,
- real estate agents or brokers,
- security broker dealers, and
- speech pathologists.

Reasons to form a professional organization

1. The primary goal of professional organizations allowed by law is to achieve the professional a number of tax advantages available to corporate executives.

2. Prior to the enactment of the 1982 Tax Equity and Fiscal Responsibility Act, the principal benefit of incorporation was the opportunity to achieve substantial tax savings for the employees through the utilization of qualified pension or profit-sharing plans.

3. While the disparity between corporate and private pension planning opportunities has been narrowed substantially and some of the other advantages of corporate existence have been subsequently reduced by the Tax Reform Act of 1986, there are sufficient benefits remaining so that parties considering incorporation or disincorporation, should weigh all factors carefully.

4. Professionals should consider forming a professional limited liability company as an alternative to a professional corporation.

Non-tax considerations of incorporation or association

1. Before incorporating or associating a professional practice, prospective members of the organization should consider the arguments for and against incorporation and association, as well as alternative business structures, such as limited liability companies, professional limited liability companies and registered limited liability partnerships to determine the form of organization that will best meet their particular needs.

2. Principal non-tax advantages of incorporation or association include limited liability for the acts of others in the corporation, centralization of management, continuity of existence and free transferability of interests.

3. One disadvantage of incorporation or association is the additional expense involved, including fees generally required in the incorporation process and for the registration of shares, attorney fees and accountant fees.

4. Other continuing costs include payroll taxes, additional social security payments for shareholders, and for professional associations, the cost of preparing and filing annual reports.

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5. Professional corporations and associations must also comply with formation procedures and such corporate formalities as directors' and annual shareholders' meetings, the issuance of stock certificates and the keeping of accurate stock records in order to retain corporate status.

Formation of professional corporation or association

1. A professional corporation, including legal ones are formed by filing Certificate of Formation with the secretary of state's office.
2. The fees applicable to professional corporations and legal corporations are the same as fees applicable to general business corporations.

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Limitation as to Organizers, shareholders, or members professional corporation

1. The Texas Business Organization Code applies to corporations organized for the sole purpose of rendering any type of professional service that requires the obtaining of a license, permit, certificate of registration, or other legal authorization.
2. The Code permits organization of a professional corporation by one or more individuals, each of whom is licensed or otherwise legally authorized to render the professional service for which the corporation is formed.
3. All shareholders, officers and directors must be licensed or otherwise legally qualified to render the professional service of the corporation.

Name of professional corporation or association

1. A professional corporation may adopt any name that is not contrary to the laws or ethics regulating the practice of the professional service for which the corporation is formed. It may use the initials "P.C." in its name in lieu of "corporation," "company," "incorporated," or their abbreviations.
2. Names of specific professional groups:

a. Accountants and public accounting firms: the name of the corporation must not include certified public accountant, public accountant, or CPA since that designation is reserved for the individual who is qualified.

b. The name of the practitioner does not need to be included in the corporate name and the corporate name may not include "and company" if there is only one practitioner in the corporation.

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c. Dentists and dental corporations: Trade names for dentists are governed by Section 109.8 of the rules and regulations of the State Board of Dental Examiners.

d. Veterinarians: a corporate name that includes the terms hospital or "clinic" must also include the word veterinary or "animal" thereafter.

e. Optometrists: .

f. Podiatrists:

g. Psychology professionals:

Certificate of Formation for a professional corporation

1. This may be used for a professional corporation.

2. The term professional service means any type of personal service to the public which requires a license, and which cannot be performed by a corporation. The term license includes a license, a certificate of registration, or any other evidence of the satisfaction of meeting state requirements.

3. A professional corporation may own in its own name and invest in real estate, mortgages, stock, bonds, or any other type of investment. Any investment or property owned may be transferred in the corporation's name by action of its board of directors or its executive committee.

4. The corporation shall have the power to sue and to be sued, complain and defend in its corporation name.

5. Each individual licensed in Texas to perform professional services, who is employed by a professional corporation, shall remain subject to reprimand or discipline for his or her conduct under the provisions of the statute under which he or she is licensed.

6. The Professional Corporation status does not alter the relationship between a person furnishing professional service and the person receiving professional service, including liability arising out of the professional service.

7. The certificate of formation for the corporation may provide that the professional corporation shall continue as a separate entity independent of its members for such period of time as stated in its certificate of formation, or until it is dissolved by a vote of 2/3 of its members.

8. The professional corporation may continue notwithstanding the death, insanity, incompetence, conviction, withdrawal or transfer of membership, retirement, or expulsion of any one or more of its members, except that a surviving member, if a new member, may be admitted to the corporation.

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9. The certificate of formation shall provide that no member of a professional corporation shall have the power to dissolve the corporation by his or her independent act of any kind.

10. Shares or ownership in a professional corporation shall be transferable to the persons licensed to perform the same type of professional service as that for which the professional corporation was formed.

11. The following form assumes the professional is a dentist. It may be modified for other professionals, simply change the provisions applicable to dentistry.

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Form: Professional corporation information form

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PROFESSIONAL CORPORATION INFORMATION FORM

Client's name _____

Contact person _____

Type of business _____

Purpose of business _____

Date business to begin _____

Financial structure of business _____

Loans to be made to the corporation _____

Name of accountant _____

Address _____

Phone no. _____ Fax no. _____

Name of Insurance agent _____

Address _____

Phone no. _____ Fax no. _____

Referred By _____

Name of financial consultant _____

Address _____

Phone no. _____ Fax no. _____

Names of previous attorneys _____

Addresses _____

Phone no. _____ Fax no. _____

Mark handled by the attorney _____

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Mark handled by the attorney _____

Name of corporation _____

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1st choice _____

2nd choice _____

3rd choice _____

Date checked for name availability _____

Application for reservation of corporate name required:

Yes _____ No _____

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Registered agent's name _____

Address _____

Phone no. _____ Fax no. _____

Principal place of business _____

Will the corporation use an assumed name certificate?

Yes _____ No _____

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If yes, assumed name to be used _____

Withdraw assumed name of unincorporated business

Yes _____ No _____

Counties to file assumed name in _____

File Assumed Name with secretary of state's office

Yes _____ No _____

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Fiscal or calendar year for corporation _____

Will corporation conduct business in other states?

Yes _____ No _____

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If yes, file in _____

Names under business will be conducted

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Subchapter S status

Yes _____ No _____

Business location

own _____ lease _____ assignment of lease _____

Preparation of lease _____

Name of landlord _____

Organizers' names _____

Addresses _____

Phone no. _____

Initial director's name _____

Address _____

Phone no. _____

Initial director's name _____

Address _____

Phone no. _____

Initial registered agent's name _____

Address _____

Phone no. _____

Period of duration

perpetual _____ other _____

Corporate purposes:

General purpose clause _____

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Specific purpose clause _____

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Capitalization

common stock _____ number of authorized shares _____

Par value \$ _____ classes _____ pre-emptive rights _____

Full _____ limited _____ denied _____

Cumulative voting--granted _____ denied _____

Other rights and preferences _____

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Preferred stock _____ no. of shares _____ par value \$ _____

Original Shareholders:

Name _____

Address _____

Phone no. _____ Fax no. _____

Number of shares _____

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Name _____

Address _____

Phone no. _____ Fax no. _____

Number of shares _____

Name _____

Address _____

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Phone no. _____ Fax no. _____

Number of shares _____

Name _____

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Phone no. _____ Fax no _____

Number of shares _____

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Order Corporation minute book

Yes _____ No _____

Type _____

Date ordered _____

Cost \$ _____

Bylaws

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long _____ short _____

Date and place for annual meeting of shareholders _____

Add to calendar each year--Yes _____ No _____

Date and Place for special meeting of shareholders _____

Location _____

Who may call special meetings other than the President or Board of Directors

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Quorum requirements _____

Number of votes needed for action of which a quorum is required _____

Record Date for determination of shareholders entitled to vote or

Receive dividends _____

Proxy information for shareholders _____

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Directors:

Number of directors _____

Name _____

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Address _____

Phone no. _____ Fax no. _____

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Name _____

Address _____

Phone no. _____ Fax no. _____

Name _____

Address _____

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Phone no. _____ Fax no. _____

Name _____

Address _____

Phone no. _____ Fax no. _____

Term of directors _____

Staggered terms, if desired _____

Qualifications for serving _____

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Compensation _____

Meeting of directors

Annual meeting--date _____ time _____

Place _____

Notice requirements _____

Regular meeting--date _____ time _____

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Place _____

Notice requirements _____

Special meeting--date _____ time _____

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Place _____

Notice requirements _____

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Quorum requirements for directors _____

Organizational meeting:

Date _____ time _____

Place _____

Names of initial directors named in the Certificate of Formation _____

Names of persons to serve as directors if different from the initial directors _____

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Date of filing Certificate of Formation with secretary of state _____

Name of the chairman of the organizational meeting _____

Name of the secretary of the meeting _____

Names of persons who were elected to serve as corporate officers:

President _____

Vice-President _____

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Secretary _____

Treasurer _____

Corporate Chairman _____

Other _____

Bank information:

Name and address where bank account will be located _____

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Name _____

Address _____

Bank officer _____

Account no. _____

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Banking resolutions to be prepared or use bank standard form

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Yes _____ No _____

Name and corporate office of persons authorized to draw checks or make loans on the corporation's behalf _____

Purchase of stock/shares

Name _____

Amount _____ no. of shares _____

Address _____

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No. of shares purchased by each person _____

Health and accident plan--Yes _____ No _____

1244 Stock Plan--Yes _____ No _____

Maximum number of shares to be issued _____

Consideration _____

Maximum number of shares to be received _____

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Other agreements:

Buy-sell agreement--Yes _____ No _____

Employment or management agreement--Yes _____ No _____

Compensation agreement--Yes _____ No _____

Expense agreement--Yes _____ No _____

Restrictive covenant agreement--Yes _____ No _____

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Retirement plan requested--Yes _____ No _____

Wills, estate plan or financial planning--Yes _____ No _____

Fee _____
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Special handling fee requested \$25

Regular mail _____ Other _____

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NOTES

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Certificate of Formation for a professional corporation

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1. The following form may be used to incorporate a professional corporation. This form should not be used to form a professional association.

2. The Certificate differ from a regular corporation in that two provisions are required in a professional corporation:

a. that the corporation is a professional corporation, and

b. name the one specific kind of professional service to be rendered by the corporation.

3. **PLEASE DO NOT COPY** certain basic statements must be set forth in the Certificate of Formation of association and certain formalities as to the execution by each person named in the Certificate must be observed.

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Certificate of Formation for a professional corporation Matters to be included in
Certificate of a professional corporation

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1. The following mandatory provisions must be included in the Certificate of Formation for professional corporations:

- a. a statement that the corporation is a professional corporation, and
- b. a statement of the one specific kind of professional service to be rendered by corporation, (only one service may be stated).

2. The following mandatory provisions must be included in the Certificate of Formation for professional associations:

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- a. the name and address of the association,
- b. the period of the association's duration,
- c. the type of professional service to be performed,
- d. the names and addresses of each of the original members,
- e. a statement that each of the original members is licensed to perform the type of professional service for which the association is formed, and

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3. The Certificate should contain a statement that no member of the association shall have the power to dissolve the association by his or her independent act.

4. Suggested provisions to include in the Certificate,.

- a. the name of the corporation,
- b. the names and addresses of the initial shareholders,
- c. the number of initial directors and their names and addresses,
- d. the corporation's principal address,
- e. the corporation's duration: perpetual or the number of years,
- f. the names and addresses of the Organizers,

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- g. the total number of shares of stock authorized and par or stated value, and
- h. the voting rights.

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Form: Certificate of Formation for a professional corporation

PREVIEW
CERTIFICATE OF FORMATION
OF A PROFESSIONAL CORPORATION
[NAME], P.C.

The undersigned, acting as Organizers of a professional corporation do hereby adopt the following Certificate of Formation for such corporation:

ARTICLE 1. CORPORATE NAME

1.1 The name of the Professional Corporation is [Name]. The corporation shall be a professional corporation, as that term is defined in law.

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ARTICLE 2. DURATION

2.1 The period of its duration is perpetual or until dissolved on a vote of the shareholders as later provided for in these Certificate.

ARTICLE 3. PURPOSES

3.1 The purposes for which this corporation is formed are:

a. To engage in the professional practice of [state the professional purpose for example: general dentistry, [then continue with the specific functions i.e., to diagnose, treat, remove stains or concussions from teeth, provide surgical and corrective treatment for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, oral cavity, alveolar process, gums, jaw or directly related and adjacent masticatory structures;]

b. To induce, administer, prescribe and dispense anesthesia, anesthetic drugs, medicines or agents incidental to the above practices;

c. To fabricate, process, construct, produce, reproduce, duplicate, repair, realign, or fix any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration, or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof;

d. To own property, enter into contracts and carry on the business which is necessary or incidental to the accomplishment or furtherance of the professional service to be rendered by the corporation;

e. The professional services of the corporation shall be carried on only through officers, employees and agents who are licensed in the State of Texas to render professional dental services.

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3.2 The foregoing shall be construed as objects, purposes and powers, and enumeration thereof shall not be held to limit or restrict in any manner the powers hereafter conferred on this Professional Corporation by the laws of the State of Texas.

3.3 The Professional Corporation may in its bylaws confer powers, not in conflict with law, upon its directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon them by statute.

ARTICLE 4. NUMBER OF SHARES OF STOCK

4.1 The aggregate number of shares which the Professional Corporation has authority to issue is One thousand (1,000) at no par.

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5.1 No shares shall be sold, transferred or owned by any person who is not licensed or otherwise duly authorized to perform the professional service which the corporation shall render.

5.2 Any shareholder who becomes disqualified to perform the services to be rendered by the corporation or in the event a person succeeds to shares of the corporation and that person is not licensed or otherwise duly authorized to perform the professional service which the corporation shall render, he or she shall immediately transfer the shares to the corporation or other shareholders for the consideration stated in the shareholder's stock purchase agreement or in any other manner allowed by law if the shares cannot be transferred by the shareholder agreement.

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6.1 The shareholders of this Professional Corporation shall not have the preemptive right to subscribe to any and all issues of shares and securities of this Professional Corporation.

ARTICLE 7. CUMULATIVE VOTING

7.1 The shareholders [shall or shall not] have the right of cumulative voting.

ARTICLE 8. REGISTERED AGENT

8.1 The Name of the Professional Corporation's Registered Agent is:

[Name]

8.2 The address of the Professional Corporation's registered office is:

[Address]

9.1 The number of directors constituting the initial board of directors is One (1) and the names and addresses of the persons who are to serve as initial directors until the first annual meeting of the shareholders or until their successors are elected and qualified are:

[Name & address]

9.2 All of the initial directors and each subsequent director of the corporation are licensed or otherwise duly authorized to perform the professional service which the corporation shall render.

9.3 All of the initial shareholders and each subsequent shareholder of the corporation are licensed or otherwise duly authorized to perform the professional service which the corporation shall render.

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10.1 The Professional Corporation shall indemnify every director or officer, his or her heirs, executors and administrators, against expenses actually and reasonably incurred by him or her, as well as any amount paid upon a judgment, in connection with any action, suit or proceeding, civil or criminal, to which he or she may be made a party to by reason of having been a director or officer of the Professional Corporation.

10.2 This indemnification is being given since the directors will be requested to act by the corporation, for the corporation's benefit.

10.3 The indemnification shall not be exclusive of other rights to which the director may be entitled.

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ARTICLE 11 MISCELLANEOUS

11.1 No contract or other transaction between the Professional Corporation and any other Professional Corporation shall be affected by the fact that one or more of the directors or officers of this Professional Corporation is interested in or is a director or officer of such other Professional Corporation.

11.2 The corporation may be dissolved at any time by the affirmative vote of the holders of 75 % of the outstanding shares of the corporation at a meeting called for that purpose or by unanimous written consent of all the shareholders without a meeting.

11.3 In the event of such dissolution, the corporate property and assets shall, after payment of all debts of the corporation, be distributed to the shareholders, each shareholder to participate in such distribution in direct proportion to the number of shares held by such shareholder.

11.4 No one shareholder may cause the dissolution of the corporation by his or her own independent action.

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ARTICLE 12. ORGANIZER

12.1 The name and address of the Organizer is

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[Name and Address]

SIGNATURE

For the purpose of forming the above named Professional Corporation under the laws of the State of Texas, I, the undersigned Organizer of this Professional Corporation have executed these Certificate of Formation on _____.

Organizer
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Filing letter to the secretary of state's office for a professional corporation.

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[Date]

Office of the Secretary of State of Texas
Statutory Filings Division
Corporations Section
Special Handling
P.O. Box 13697
Austin, Texas 78711-3697

Regarding: [Name of the Professional corporation.]

Enclose **PLEASE DO NOT COPY** please find duplicate original of the Certificate of Association for the above-named professional corporation and a check for \$[Amount] from the Organizer in the required amount for the filing fees and the special handling costs.

Your expeditious cooperation is appreciated. Thank you in advance for your assistance and cooperation.

Very truly yours

[Attorney's Name]

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Form Letter to the internal revenue service for a professional corporation's federal I.D. number

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[Date]

Internal Revenue Service Center
3651 South Interregional Highway
Austin, Texas 78740

Regarding: [Name of the professional corporation]

Enclosed please find an application for an employer identification number for the above captioned professional corporation.

Thank you in advance for your assistance.

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Very truly yours

[Attorney's Name]

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