6-07/260.00 Corporation

A corporation is a separate legal entity created by state law. It has its own identity, separate and apart from the persons who created it and from its shareholders. It has the power to act in any way permitted by the law that created it and by its own charter, e.g., to contract, to own and convey property, to sue and to be sued. It is even capable of committing torts or crimes.

Although a corporation can sue or be sued in its name, it cannot appear in court in propria persona and must appear through an attorney. Nor can it appear on its own behalf as defendant in a criminal proceeding. However, any officer, director or employee may appear on the corporation's behalf in small claims court, or in superior court on a small claims appeal. (CCP 116.540(b), 116.770(c)) There are no other specific codes which determines how a corporation may appear in court. However logic dictates a natural person must represent the corporation whether it be an attorney or other representative determined by the corporation as indicated for small claims cases and examinations. (CCP 708.150 (b))

In forma pauperis (Fee Waiver) rights are limited to natural persons. Corporations and other artificial entities are not eligible to proceed in forma pauperis. (Rowland v. California Men's Colony, 506 US 194)

As a separate legal entity, the corporation is responsible for its own debts. Normally, the shareholders, directors or officers of the corporation are not legally responsible for corporate liabilities. If there are losses in the business, the corporation bears them to the extent of its own resources; the stockholders indirectly bear them as the value of their stock declines. However, shareholders may be held personally liable for corporate obligations if they have personally guaranteed them.

Normally, management and control is vested in the board of directors, elected by the shareholders of the corporation. The directors generally make policy and major decisions but do not individually represent the corporation in dealing with third persons. Rather, such dealings are conducted through officers and employees, to whom authority is delegated by the directors. The same person may be a stockholder, director and officer of the corporation, especially in small corporations. Although shareholders elect the board of directors, they do not directly control the board's activities or decisions.

A corporation can be created only by substantial compliance with the General Corporation Law, which requires filing of articles of incorporation containing certain essential provisions and the prepayment of certain fees.

As a separate legal entity, the corporation is capable of continuing indefinitely. Its existence is not affected by death or incapacity of its shareholders, officers or directors, or by transfer of its shares from one person to another.

A corporation may exercise some of the constitutional protections granted to natural

persons. A corporation is not a citizen protected by the privileges and immunities clause of the Fourteenth Amendment to the U.S. Constitution, which prohibits states from abridging the privileges and immunities of U.S. citizens. However, corporations do have the right to equal protection and due process of law under the Fourteenth and Fifth Amendments and under the California Constitution. Corporations enjoy First Amendment freedom of speech protection.

Although a corporation cannot be imprisoned, a criminal action can result in fines and other penalties that could harm innocent shareholders, officers and other persons. A corporate criminal defendant thus has a Sixth Amendment right to counsel. However, since a corporation faces no incarceration risk, it has no right to appointed counsel where it cannot afford to retain private counsel. On the other hand, corporations have no privilege against self-incrimination, e.g., to prevent disclosure of incriminating corporate records. Nor may individuals assert the Fifth Amendment privilege to avoid producing corporate records which they possess in a representative capacity as officer or director of the corporation. This is so even though the records may be personally incriminating and even though the person subpoenaed is the corporation's sole shareholder.

However, if the subpoenaed records are not in the officer's or director's possession, the Fifth Amendment privilege protects the individual from being compelled to disclose the records' location. The Fifth Amendment does not shield officers and directors from producing corporate records even where, prior to issuance of the records subpoena, the corporation dissolved or the officer's or director's relationship with the corporation terminated.