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PARTNERSHIP WHICH INCLUDES PROFESSIONAL CORPORATION

Undated.

Addendum issued 1995.

Syllabus

It is ethically proper for a professional corporation, consisting of one or more lawyers, to practice law in partnership with one or more individual lawyers or professional corporations. A partnership which has a professional corporation as a partner must clearly designate the corporate status of the partner when such a partner is listed on its letterheads, announcements, cards, signs, and other written notices.

Facts

1. An existing partnership of lawyers desires to merge its practice with a professional corporation, consisting of one or more lawyers, the result of which will be a new partnership which includes a professional corporation as a partner.
2. A lawyer in an existing partnership desires to form a professional corporation and have that professional corporation substituted for him as a general partner in the partnership.

Opinion

The ethical propriety of the existence of the professional corporation within a law partnership is not addressed directly by the ethical considerations or disciplinary rules of the Code of Professional Responsibility. The question was addressed in Informal Opinion No. 1383 of the American Bar Association dated May 11, 1977. According to that Opinion, such a practice had been ruled unethical in Florida but the Oregon Attorney General has opined that a professional corporation could ethically participate as a partner in a law partnership.

The Committee rejects the reasoning of Informal Opinion No.1383 and determines that there is nothing in the arrangement set forth in the facts above which is inconsistent with the Code of Professional Responsibility if the proper disclosures are made.

Professional service corporations are authorized and permitted under Rule 265 of the Colorado Rules of Civil Procedure. That rule safeguards the attorney/client relationship. There is nothing in Rule 265 that changes the attorney/client relationship merely because one or more lawyers are practicing as shareholder/employees of a professional corporation.

DR 2-102(C) provides: "A lawyer shall not hold himself as having a partnership with one or more other lawyers unless they are in fact partners." EC 2-11 prohibits the use of a trade name or an assumed name and requires that a lawyer should practice only under his own name, the name of a lawyer employing him, the names of lawyers practicing in a partnership, or the name of a professional legal corporation. It is our view that the words "other lawyers" include other professional legal corporations.

The Committee believes that DR 2-102(C) does not prohibit the type of partnership approved in this Opinion. The partnership should, however, in compliance with EC 2-11, designate on its letterhead, cards, and announcements which list attorneys, those partners in the partnership which have formed a professional corporation. All usages of the partnership name which identify individual partners shall designate the professional corporation status of those partners. Any such usage must contain and show the corporate status to avoid misleading the public as to the relationship of the lawyers in the firm. In addition to the foregoing, the professional corporation electing to maintain professional liability insurance as one of the alternatives in Rule 265, should maintain such insurance in the same amount as all other members of the partnership.

Having met the above criteria and complied with Rule 265 C.R.C.P., a partnership of this nature does not differ from a partnership in the traditional sense.

The Committee concludes therefore that a partnership formed in accordance with this Opinion is ethically proper.

1995 Addendum

The Colorado Rules of Professional Conduct became effective on January 1, 1993, replacing the Code of Professional Responsibility. While the language of the Rules is somewhat different from the Code, the Ethics Committee considers this Opinion to continue to provide guidance to attorneys in this area. Attorneys are cautioned to review Tables A & B: Related Sections in the Colorado Rules of Professional Conduct and The Colorado Code of Professional Responsibility (found in the *Colorado Ethics Handbook*), to update the research contained in this Opinion and to conduct any independent research necessary.

A relevant provision of the Colorado Rules of Professional Conduct, which should be examined together with this Opinion, is Rule 7.5 (regarding firm names and letterheads). Lawyers should also give consideration to the amendment to Rule 265, C.R.C.P., which includes Limited Liability Companies.