



Committee on Professional Ethics

Opinion #381 - 3/26/75 (12-75)

Topic: Name of professional corporation.

Digest: Professional corporation name may not include former partner who is practicing law or an "Of Counsel" lawyer.

Code: EC 2-11; DR 2-102(B)

QUESTION

May a professional legal corporation include as part of its name the name of a former partner who is practicing law with another firm; or the name of an attorney who acted "of counsel" to the predecessor partnership but was never a partner and will not become a shareholder in the corporation?

OPINION

EC 2-11 provides, in pertinent part:

"...the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public."

Since the provisions of the Code applicable to "law firms" are equally applicable to "professional legal corporations", see Definition (2) of the "DEFINITIONS" provisions of the Code following Canon 9, the professional legal corporation name may not properly include the name of the former partner who is practicing law with another firm.

In ABA 330 (1972), the relationship indicated by the term "of counsel" was discussed at some length and it stated, in referring to the "of counsel" lawyer:

"His relationship with that lawyer or firm must not be that of a partner (or fellow member of a professional legal corporation) nor that of an employee; see DR 2-102(A)(4)."

In view of the special and recognized category of lawyers designated "of counsel" to a firm or professional corporation, it would be misleading as to the identity of the lawyers practicing as members of the professional corporation, and hence improper, to include in its name an attorney who only acted "of counsel" to the partnership and who will not be a shareholder in the corporation: DR 2-102(B). Cf. DR 2-102(A)(4); N.Y. State 262 (1972).

This opinion is limited to ethical considerations and does not take into consideration prohibitions, if any, contained in the Business Corporation Law. See e.g., BCL Sec. 1512(a).
