



Committee on Professional Ethics

Opinion #509 - 4/6/79 (5-79)

Topic: Professional corporation
as partner of law firm

Digest: Professional corporation
may be partner of law
firm provided corpora-
tion's status and partic-
ipation is made clear.

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

QUESTION

May a law firm, practicing in the name and form of a partnership, contain a professional corporation as one of its partners?

OPINION

Lawyers may practice as professional corporations to the extent permitted by law. See, e.g., N.Y. State 369 (1974) and N.Y. State 381 (1975); see also, EC 2-11 and DR 2-102(B).

Whether a professional corporation can itself be a partner of a law firm vel non, is essentially a matter of law, not ethics. Cf., N.Y. State 495 (1978) with Friedman v. Rogers, ___ U.S. ___. 47 U.S. Law Week 4151 (decided 2/21/79). If the substantive law of this State permits a professional corporation to be a member of a law firm, it is not for us to question the Legislature's judgment. On this point, however, we would observe that the law is somewhat unclear and that it is beyond the function of this Committee to resolve issues of law. See, N.Y. Bus. Corp. L., §§ 1500, et seq.

Assuming that the law of this State would permit the proposed arrangement, we believe that the ethics of our profession should require only that the professional corporation's status and participation be clearly noted on letterheads, directories and other listings where members of the partnership are identified. Where the individual members of the partnership are not enumerated and only the firm name used, a legend should be added indicating that the partnership includes one or more professional corporations.

This Committee is aware of a contrary opinion rendered by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association. That opinion (ABA Inf. 1383 [1977]) holds it inconsistent with EC 2-11 and DR 2-102(C) of the Code for a professional corporation to be a law partner, saying: that such an arrangement is a "hybrid" and not a partnership as traditionally understood; and, further, that any limitation of liability (which the ABA Committee assumes would follow from the "hybrid" form) is foreign to the concept of a true partnership.

Our Committee, however, finds the ABA opinion to be grounded upon an all too restrictive reading of the Code. DR 2-102(C) only serves to forbid lawyers from holding themselves out "as having a partnership with one or more lawyers unless they are in fact partners." Both EC 2-11 and DR 2-102(B) recognize the propriety of lawyers practicing in the name of a professional corporation where "permitted by law." The argument that the arrangement should be condemned as a "hybrid" loses all persuasive force when we assume that the substantive law of the State in fact sanctions such a "hybrid" and defines the extent of its liability, as well as the liability of each of its parts.

The ABA House of Delegates apparently recognized the problems created by its Standing Committee's interpretation of DR 2-102(C) when last month it amended that provision in order to permit professional corporations to become members of law firms.^{1/}

While we agree in principle with the action taken by the ABA House of Delegates, we do not believe that any amendment was required to accomplish the desired result. The unamended provisions of DR 2-102(C), as the same remain effective in this State, simply do not serve to prohibit the proposed arrangement.

For the reasons stated, and subject to the qualifications hereinabove set forth, the question posed is answered in the affirmative.

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1. As amended, DR 2-102(C) of the ABA Model Code now reads:
"A lawyer shall not hold himself out as having a partnership with one or more other lawyers or professional corporations unless they are in fact partners." (Matter underscored is new.)