

You have presented a situation in which an attorney set up his own professional corporation through which he wishes to serve as "of counsel" to other attorneys who are either in a partnership or a professional corporation. In either case, the attorney's professional corporation would be listed as "of counsel" on the other attorneys' letterhead, but the name would not be included in the name of the other attorneys' partnership or professional corporation. You have also provided two hypothetical letterheads on which the attorney's professional corporation is shown as "of counsel" to either a partnership or another professional corporation and a third on which the parenthetical statement "including a professional corporation" appears below the name of the partnership.

You have asked the Committee to opine as to the propriety of the professional corporation serving as, and being listed on letterhead as, "of counsel" to a law partnership or another professional corporation.

The appropriate and controlling Disciplinary Rule related to your inquiry is DR:2-102(A), which states that a lawyer or law firm may use or participate in the use of a letterhead or similar professional notice or device unless it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

The Committee has earlier opined that the term "of counsel" contemplates that the lawyer either practices in the office of the lawyer or law firm to which he is "of counsel" or enjoys a relationship that has led to a continuing close association such that he is in regular and frequent contact with the firm and its clients. See LE Op. 1293.

The Committee is of the view that the attorney's formation of a professional corporation would not per se affect the relationship between that professional corporation and a partnership or another professional corporation. Thus, the Committee is of the opinion that, provided that the requisite close, regular, personal relationship exists between two firms, one firm may be of counsel to another firm. See ABA Committee on Ethics and Professional Responsibility Formal Opinion 90-357 (decided May 10, 1990) (no reason that a firm should not be of counsel to another firm); see also Nassau County Bar Association LE Op. 81-7 (4/29/81), ABA/BNA Law. Man. on Prof. Conduct, 801:6203; Massachusetts Bar Association LE Op. 82-10 (11/18/82), ABA/BNA Law. Man. on Prof. Conduct, 801:4606. To the extent that this conclusion is in conflict with that portion of LE Op. 1293 which determined that it was improper for one law firm to serve as of counsel to another law firm, that opinion is overruled only as to that conclusion.

As to whether the professional corporation may be listed as of counsel to the other entities, the Committee finds no improprieties on the first two hypothetical letterheads on which the attorney's professional corporation is shown as "of counsel" to either a partnership or another professional corporation. As to the third hypothetical letterhead, on which the parenthetical statement "including a professional corporation" appears below the name of the partnership, the Committee is of the opinion that, if such phrase is meant to refer to the attorney's professional corporation, it would be misleading under DR:2-102(A) since, under the facts you provide, the attorney's professional corporation will be acting as "of counsel" to the partnership, a relationship which is not synonymous with partner status.

Committee Opinion
June 23, 1992