

Committee Opinion  
April 19, 1989

LEGAL ETHICS OPINION 1211

ATTORNEY/CLIENT RELATIONSHIP –  
IN-HOUSE COUNSEL – LIMITING  
LIABILITY: CORPORATION ENTERING  
INTO A HOLD HARMLESS  
AGREEMENT WITH EMPLOYED  
ATTORNEY.

You have earlier advised the Committee that a corporation employs attorneys who perform two functions. First, they may provide advice to or represent an affiliate organization, another unrelated organization, associate members or individual citizens in litigation or administrative hearings. Second, the same attorneys may render professional services to the corporation itself.

You indicated your belief that with respect to the first type of services, i.e., those provided to third parties, the employer can agree to indemnify the employee for any damages or costs connected with a claim made against the attorney for malpractice, since the attorney has not limited his liability to those third party clients but merely transferred the coverage from a malpractice insurance carrier to the corporation's self-insured arrangement. With regard to the second issue, the attorneys rendering legal services to the corporation itself, you inquired whether an attorney employed in-house by a corporation may enter into an agreement by which his employer shall hold the attorney harmless for personal malpractice committed in the course of his employment without contravening DR:6-102(A) of the Virginia Code of Professional Responsibility.

Your question was treated as a Legal Ethics Inquiry since the issue had previously been addressed and resolved as LE Op. 877. It was then requested that the Committee reconsider your inquiry in view of the facts that: (1) LE Op. 877 provided no factual basis for the analysis; (2) in that opinion, indemnification was solicited by the attorney, whereas in your situation it is the corporation's business decision to provide its staff attorneys with indemnification for any liability arising out the services rendered to the corporation; and (3) your organization would have independent legal representation if permitted to enter into a hold harmless agreement with its employed attorneys, as required under the ABA Model Rules.

The Committee is of the opinion that based upon the facts you presented, and despite the availability of independent legal representation and the lack of solicitation of indemnification, the hold harmless agreement limiting the in-house attorney's liability for personal malpractice committed in the course of his employment is not proper under DR:6-102(A). Thus, the Committee is still of the view that LE Op. 877 is dispositive of your inquiry and that the Virginia Code of Professional Responsibility does not permit the attorney and his employer to enter into a hold harmless agreement for personal malpractice.

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**Legal Ethics Committee Notes.** – This LEO was overruled by Rule 1.8(h), which permits such indemnity agreements if the corporation is separately represented.

**Editor's Note.** – See also L E Op. No. 1738 stating that lawyers or their agents may secretly tape record telephone conversations in which they participate, but only in situations involving criminal or housing discrimination investigations or if the lawyers are protecting themselves from possible criminal action.