

Committee Opinion
July 24, 1990

Reconsidered and Modified
January 22, 1991

LEGAL ETHICS OPINION 1356

ADVERTISING AND SOLICITATION –
DUAL EMPLOYMENT – NAME OF LAW
PRACTICE: LAW FIRM ENGAGING IN
A SEPARATE ENTERPRISE
OPERATING UNDER A DIFFERENT
NAME.

You have indicated that your firm, a professional corporation which operates a sizeable claims or collection practice, wishes to convert that portion of the practice into a separate enterprise operated under a different name. You have outlined three alternative methods by which this could be accomplished: (1) the formation of a new professional corporation, the stock of which would be owned by the stockholders of the present professional corporation; (2) a new corporation which would be a wholly-owned subsidiary of your current professional corporation; and (3) retention of the Claims Department within the firm but operated under a trade name.

You have asked that the Committee consider the propriety of each alternative and have posed several questions with regard to each of the three methods.

The appropriate and controlling disciplinary rules relevant to the facts you describe are DR:2-101(A) which permits a lawyer or law firm to utilize public communications so long as the communications do not include false, fraudulent, misleading or deceptive statements or claims; DR:2-101(B) which permits a lawyer to use a trade name so long as the name does not imply a connection with a government agency or with a public or charitable organization and is not otherwise in violation of DR:2-101(A); and DR:2-104(B) which permits a lawyer to state, announce or hold himself out as limiting his practice to a particular area or field of law so long as his communication of such limitation of practice is in accordance with other rules governing public communication.

The Committee believes that prior LE Op. 971 is dispositive of the first two alternatives you pose: the formation of a new professional corporation and the formation of a wholly-owned subsidiary of your firm. That Opinion found acceptable the establishment of a separate professional corporation by three of twelve partners of an existing firm for the purpose of marketing to the general public the personal injury services offered by the firm. The Committee found no impropriety in the establishment of the separate corporation which would be a wholly-owned subsidiary of the existing (professional) corporation. While the Committee also suggested in LE Op. 971 that it would be appropriate to advise potential clients that the three-member firm is a wholly-owned subsidiary of the original corporation, this Committee believes that such indication of the ownership of the subsidiary is required.

Based on the assumption that the new professional corporation would be providing legal services, the Committee is of the view that the situation you describe is not

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analogous to prior LE Op. 591 and LE Op. 545 involving title insurance companies since those entities, by definition, involve the provision of non-legal services. Thus, in those businesses, the lawyer becomes a stockholder in an entity which is not a law firm and ethical improprieties may arise should he refer his law practice clients to a business in which he has a personal interest. In the circumstances you describe, the Committee is of the opinion that remuneration methods may take whatever form is proper for the members and employees of a law firm operating as a professional corporation. There is clearly no impropriety in a Virginia lawyer being simultaneously a member of two or more organizations for the practice of law. (See LE Op. 802, LE Op. 1293)

With regard to the third alternative you pose, the operation of the Claims Department under a trade name while still a division of the original professional corporation, the Committee has been of the consistent opinion that the use of trade names is not improper provided that the name complies with the requirements of DR:2-101(A) and DR:2-102(B). The Committee is of the view that the key factor in the use of a trade name is the avoidance of any possible misleading of the public. (See LE Op. 589, LE Op. 853, LE Op. 935, LE Op. 937)

Furthermore, the Committee directs your attention to the requirements of DR:2-104(B), which permit a lawyer to indicate that his practice is limited to a particular area so long as such communication is not false, fraudulent, misleading or deceptive.

Finally, the Committee cautions that adherence to Canon 4, regarding preservation of a client's secrets and confidences, and Canon 5, regarding conflicts of interest, is incumbent upon the members and employees of both professional corporations. Thus, it would be critical that appropriate disclosures of conflicts be made to clients and their consent secured before accepting employment which may conflict with other clients' interests.

This Opinion does not address the legal question as to whether shares of a professional corporation may be owned by another professional corporation. (See Va. Code § 13.1-544(B) and § 13.1-549)

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