

ETHICS OPINION

RO-93-16

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QUESTION:

"This letter is in follow-up to my telephone conversation with Milton Moss of your office. In our conversation, we discussed the usage of the Alabama Limited Liability Company by lawyers who are licensed to practice law in the State of Alabama. Based on this discussion, Mr. Moss suggested that I write this letter to you and request a formal written opinion from the Disciplinary Commission concerning this matter.

Basically, Section 45 of the Alabama Limited Liability Company Act allows professionals to render professional services as a member or as an employee of a Limited Liability Company. Paragraphs (d) and (e) of Section 45 appear to limit this authority to the discretion of the licensing authority. Paragraphs (d) and (e) read as follows:

- (d) Nothing in this act shall restrict or limit in any manner the authority or duty of a licensing authority with respect to individuals rendering a professional service within the jurisdiction of the licensing authority. Nothing in this act shall restrict or limit any law, rule, or regulation pertaining to standards of professional conduct.
- (e) Nothing in this act shall limit the authority of a licensing authority to impose requirements in addition to those stated in this act on any limited liability company or foreign liability company rendering professional services within the jurisdiction of the licensing authority.

Based upon the foregoing, we are concerned that without the issuance of a formal opinion by the Disciplinary Commission, lawyers attempting to utilize the Alabama Limited Liability Company in the delivery of legal services either as members or as employees, may be subject to disciplinary procedures. Therefore, we would appreciate your providing us with a written declaratory ruling as to the following question:

Under the Alabama Rules of Professional Conduct, Rules of Disciplinary Procedure, Alabama Standards for Imposing Lawyer Discipline, and any other rules of the Alabama State Bar which may be applicable, may lawyers who are licensed to practice law in the State of Alabama practice law, either as members or as employees, using the Alabama Limited Liability Company under the new Alabama Limited Liability Company Act?

This question appears to be a relatively simply question; however, a written opinion would be helpful to allow us to advise our clients concerning the usage of Alabama Limited Liability Companies."

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ANSWER:

It does not violate the Alabama Rules of Professional Conduct or any other disciplinary rule of the Alabama State Bar for two or more lawyers to organize a law firm as an Alabama Limited Liability Company (hereinafter "LLC") under the Alabama Limited Liability Company Act (Act 93-724) which will be effective October 1, 1993.

DISCUSSION:

Section 45 of the Alabama Limited Liability Company Act contains special rules for LLC's performing professional services. With regard to licensing, §§45(d) and (e) maintain the authority of the Alabama State Bar to regulate lawyers and the practice of law pursuant to the inherent authority of the Alabama Supreme Court. With regard to liability, §45(a) provides that an individual who renders professional services as a member of an LLC shall be liable "for any negligent or wrongful act or omission to the same extent the individual would be liable if the individual renders the services as a sole practitioner".

Section 45 also subjects an LLC that renders professional services to all of the restrictions imposed on professional corporations by the revised Alabama Professional Corporation Act. (Code of Alabama, 1975 §§10-4-380 through 10-4-440). Section 45 also limits an LLC to rendering only one specific type of professional service and services ancillary to the provision of that professional service, and also contains provisions for transfer of members' interests.

In view of the above, it is the opinion of the Disciplinary Commission of the Alabama State Bar that Alabama lawyers may organize a law firm in the form of a limited liability company. The entire text of §45 is attached to this opinion.

RWN/vf

8/11/93

1 PROFESSIONAL SERVICES

2 Section 45. Special Rules for Limited Liability
3 Companies Performing Professional Services.

4 (a) Every individual who renders professional
5 services as a member or as an employee of a limited liability
6 company shall be liable: for any negligent or wrongful act or
7 omission in which the individual personally participates to
8 the same extent the individual would be liable if the
9 individual rendered the services as a sole practitioner.

10 (b) The personal liability of a member, manager, or
11 other employee of any limited liability company engaged in
12 providing professional services shall be no greater than that
13 of a shareholder, employee, director, or officer of a
14 corporation organized under the Alabama Business Corporation
15 Act or any successor act.

16 (c) The personal liability of a member, manager, or
17 employee of a foreign limited liability company shall be
18 determined under the law of the jurisdiction in which it is
19 organized.

20 (d) Nothing in this act shall restrict or limit in
21 any manner the authority or duty of a licensing authority with
22 respect to individuals rendering a professional service within
23 the jurisdiction of the licensing authority. Nothing in this
24 act shall restrict or limit any law, rule, or regulation
25 pertaining to standards of professional conduct.

26 (e) Nothing in this act shall limit the authority of
27 a licensing authority to impose requirements in addition to
28 those stated in this act on any limited liability company or
29 foreign limited liability company rendering professional
30 services within the jurisdiction of the licensing authority.

31 (f) A limited liability company organized to render

1 professional services under this act may render only one
2 specific type of professional services, and services ancillary
3 to them, and may not engage in any business other than
4 rendering the professional services which it was organized to
5 render, and services ancillary to them. In addition, a
6 limited liability company organized to render, professional
7 services shall be subject to the restrictions imposed on
8 professional corporations by the Revised Alabama Professional
9 Corporation Act Sections 10-4-380 through 10-4-404 inclusive,
10 Code of Alabama 1975, as amended from time to time.

11 (g) A limited liability company organized to render
12 professional services, domestic or foreign, may render
13 professional services in Alabama only through individuals
14 permitted to render those services in Alabama; but nothing in
15 this act shall be construed to require that any individual who
16 is employed by a limited liability company rendering
17 professional services be licensed to perform services for
18 which no license is otherwise required or to prohibit the
19 rendering of professional services by a licensed individual
20 acting in an individual capacity, notwithstanding that the
21 individual may be a member, manager, employee or agent of a
22 domestic or foreign limited liability company rendering
23 professional services.

24 (h) A member's interest in a limited liability
25 company organized to render professional services may be
26 voluntarily transferred only to a person who is licensed or
27 registered to render the professional services for which the
28 company was organized.

29 (i) If a membership interest is transferred by gift
30 or inheritance to a person who is not licensed or registered
31 to render the professional services for which the limited

1 liability company, was organized or if a member's license or
2 registration to perform the professional services for which
3 the limited liability company, was organized is terminated or
4 suspended for a period of more than 12 months, the person or
5 member shall not be treated as owning a financial interest or
6 an ownership interest in the limited liability company and
7 shall be entitled only to receive the buyout price of the
8 membership interest in accordance with Section 30.

9 ARTICLE 9

10 FOREIGN LIMITED LIABILITY COMPANIES

11 Section 46. Foreign Limited Liability Companies.

12 (a) Subject to the Constitution of Alabama, the laws
13 of the state or other jurisdictions under which a foreign
14 limited liability company is organized govern its
15 organization, its internal affairs, and the liability of its
16 members.

17 (b) Subject to the Constitution of Alabama, a
18 foreign limited liability company may not be denied
19 registration by reason of any difference between those laws
20 and the laws of this state; provided, however, that no foreign
21 limited liability company shall be allowed to carry on in this
22 state any business of a character that may not lawfully be
23 carried on by a domestic limited liability company.

24 Section 47. Registration.

25 (a) Before transacting business in this state, a
26 foreign limited liability company shall register with the
27 Secretary of State. To register, a foreign limited liability
28 company shall submit to the Secretary of State, in duplicate,
29 on forms furnished by the Secretary of State, an application
30 for registration as a foreign limited liability company,
31 signed by an authorized member or manager setting forth the
32 following: