ETHICS OPINION
RO-93-16

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 simple 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.

RWR/vF

8/11/93
PROFESSIONAL SERVICES

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

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

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

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

(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 limited liability company rendering professional services within the jurisdiction of the licensing authority.

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

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

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

(i) If a membership interest is transferred by gift
or inheritance to a person who is not licensed or registered
to render the professional services for which the limited
liability company, was organized or if a member's license or
registration to perform the professional services for which
the limited liability company, was organized is terminated or
suspended for a period of more than 12 months, the person or
member shall not be treated as owning a financial interest or
an ownership interest in the limited liability company and
shall be entitled only to receive the buyout price of the
membership interest in accordance with Section 30.

ARTICLE 9

FOREIGN LIMITED LIABILITY COMPANIES

Section 46. Foreign Limited Liability Companies.
(a) Subject to the Constitution of Alabama, the laws
of the state or other jurisdictions under which a foreign
limited liability company is organized govern its
organization, its internal affairs, and the liability of its
members.

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

Section 47. Registration.
(a) Before transacting business in this state, a
foreign limited liability company shall register with the
Secretary of State. To register, a foreign limited liability
company shall submit to the Secretary of State, in duplicate,
on forms furnished by the Secretary of State, an application
for registration as a foreign limited liability company,
signed by an authorized member or manager setting forth the
following: