ETHICS OPINION NUMBER 222
OF THE MISSISSIPPI BAR
RENDERED NOVEMBER 17, 1994

CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS; AGREEMENTS AFFECTING LAWYER LIABILITY; RESPONSIBILITIES OF PARTNER OR SUPERVISOR FOR LAWYER AND NON-LAWYER ASSISTANTS; PROFESSIONAL INDEPENDENCE; UNAUTHORIZED PRACTICE OF LAW; COMMUNICATIONS REGARDING LAWYER SERVICES; FIRM NAMES AND LETTERHEADS -- The Mississippi Limited Liability Company Act does not alter or modify the existing responsibilities that law firms, their members, managers, agents or employees owe to their clients while they are engaged in providing professional services. Therefore, the Mississippi Rules of Professional Conduct do not prevent Mississippi lawyers from practicing in limited liability company structures created in accord with applicable state law so long as members of the newly created structure otherwise comply with the rules governing lawyer conduct in this state.

The Mississippi Bar has been requested to issue an opinion as to the ethical considerations concerning the 1994 enactment of a statute which allows attorneys to form limited liability companies, including those formed to provide legal services, effective July 1, 1994. See 1994 Miss. Gen. Laws, ch. 402 (codified at Miss. Code Ann. 79-29-101 et seq.)(Sections 79-29-901 through 912 deal with professional limited liability companies.) The Act states that it does not affect existing law applicable to: (1) the professional relationship and liabilities between the professional and his client; and (2) the standards for professional conduct.

Under the new law, any law firm, attorney, member, manager, agent or employee of a professional limited liability company remains personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by them, or by any person under their direct supervision and control, while rendering professional services on behalf of the professional limited liability company. Moreover, the professional limited liability company itself is liable to the full extent of its property for any negligent or wrongful acts or misconduct committed by any of its attorneys, members, managers, agents or employees while they are engaged on behalf of the professional limited liability company in the rendering of Professional services.

Specifically, the Bar has been asked the following questions:

> 1. Do the Mississippi Rules of Professional Conduct prevent Mississippi lawyers from using a limited liability company structure?
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> 2. If not, what disclosures must be made to clients, if any?
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> 3. May non-lawyers or lawyers from other states or countries become members in a Mississippi law firm formed as a limited liability company?

The new statute does not alter or change the responsibility that a law firm, its attorneys, members, managers, associates, agents, or employees owe to a client. Admittedly, the new statute may alter or affect the assets or property that may be shielded from liability for professional malpractice. The limitation of liability for legal malpractice contained in various professional corporation statutes recently enacted throughout this Country recognizes a narrowing of individual professional liability for members of firms who are not directly responsible for acts of malpractice.

The movement toward incorporation of law firms and the consequent diminution in partner (or stockholder) personal liability has become part of the statutory law of this state.(Miss. Code Ann. 79-9-11 reads: Nothing contained in this chapter [Professional Corporations] shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional services and to the standards for professional conduct. Any officer, shareholder, agent or employee of a corporation organized under this chapter shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable to the full extent of its property for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, agents or employees while they are engaged on behalf of the corporation in the rendering of professional services.) The guiding principles remain those originally established in Formal Opinion 303 (November 27, 1961) of the ABA Standing Committee on Ethics and Professional Responsibility, finding that the practice of law in corporate form was ethically permissible so long as:

> (1) The lawyer or lawyers rendering the legal services to the client must be personally responsible to the client.

(2) Restrictions on liability as to other lawyers in the organization must be made apparent to the client.

The Rules of Professional Conduct condemn and prohibit any agreement that seeks to limit professional liability of any attorney providing services to a client save in limited circumstances. (M.R.P.C. 1.8(h) reads: A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the agreement is permitted by law and the client is independently represented by other counsel in making the agreement or settling a claim for such liability. Alternatively, a lawyer may enter such agreement with an unrepresented client or former client if the client is first advised in writing that independent representation is appropriate in connection therewith.) It is a misnomer, however, to suggest that a limited liability company structure, authorized by state law, constitutes an "agreement" contemplated by M.R.P.C. 1.8(h). The limited liability company statute has no bearing upon the continued and unmodified responsibility of an attorney to his or her client under our Rules. We remind members of such associations that they remain personally liable for their own negligent or wrongful acts and omissions, and for such acts or omissions of persons under their direct supervision and control.

The statute itself acknowledges implicitly the precedence of the Mississippi Rules of Professional Conduct. The law does not affect existing law applicable to (1) the professional relationship and liabilities between lawyer and client, and (2) the standards for professional conduct.(Miss. Code Ann. 79-29-904 (Supp. 1994).) Hence, while a lawyer cannot be shielded from his or her own acts of negligence or malpractice, fellow shareholders or interest holders are protected from said actions or omissions, so long as they are not their own.

The limited liability structure will have no bearing upon the continuing liability of a lawyer rendering services to a client, or to a lawyer charged with supervisory responsibilities in reference to the rendition of services, or to the firm. An attorney, member, manager, employee, or agent of the limited liability company remains personally and fully liable for any negligence or misconduct committed by him or her, or by any person under the lawyer's supervision or control. The company remains fully liable up to the full value of its property for any negligent conduct committed by its attorneys, members, managers, employees or agents while they are engaged on behalf of the company in the rendering of professional services. See M.R.P.C. 5.1, 5.3. Accordingly, we conclude that the Mississippi Rules of Professional Conduct do not prevent Mississippi lawyers from using a limited liability company structure.

While changing the form of practice from a professional corporation or general partnership to a "Professional Limited Liability Company" does not constitute an

"agreement" to limit liability under M.R.C.P. 1.8(h), we must consider other rules in determining what disclosures, if any, must be made to clients or prospective clients. Rule 7.1 prohibits lawyers from making false, deceptive or misleading communications about the lawyer or the lawyer's services. New Rule 7.7(e) (adopted by the Mississippi Supreme Court on June 22, 1994) provides, as did prior Rule 7.5, that lawyers "may state or imply that they practice in a partnership or other organization only when that is the fact." The comment to new Rule 7.7 states that:

> . . . lawyers sharing office facilities, but who are not in fact partners and who share no responsibility for the services of each other, may not denominate themselves as, for example, "Smith & Jones," for that title suggests partnership in the practice of law.

The comment to the predecessor to new Rule 7.7 (former Rule 7.5), speaking specifically to professional corporations and associations, provides further guidance: A firm which is so organized may be designated as a professional corporation or professional association by "P.C." or "P.A." or similar symbols indicating the nature of the organization.

The Act itself specifies how a professional limited liability company must be identified, whether to clients, potential clients, or the public generally:

> The professional limited liability company name shall end with the words "Professional Limited Liability Company" or the abbreviation "P.L.L.C." or "PLLC." [emphasis supplied]

Mississippi Limited Liability Company Act, 1994 Miss. Gen. Laws, ch. 402, art. 9, 63 (effective July 1, 1994) (codified at Miss. Code Ann. 79-29-909).

Based upon the foregoing, the Board of Bar Commissioners concludes that the Act itself provides for adequate disclosure of the organizational structure and of any changes in the organizational structure by requiring that the professional limited liability company name end with the words "Professional Limited Liability Company," or the abbreviation "P.L.L.C." or "PLLC."

This holding applies to the identification of a firm choosing this structure on whatever written material emanates from its Mississippi offices and lawyers, including by way of example and not by way of limitation, stationery, envelopes, Legal

Registers, Martindale-Hubbell, business cards, professional announcements, brochures, media advertisements and telephone listings.

In response to the final question posed, we conclude that a law firm organized under the Act may admit a member from another jurisdiction as any other combination, association, or law firm, so long as said admission is made in accord with the Mississippi Rules of Professional Conduct. See, M.R.P.C. 5.4, 5.5, 7.7. Moreover, under the provisions of M.R.P.C. 5.4(b) a non-lawyer may not become a partner in such an association.