

L.E.I. 96-02
LAWYERS PRACTICING IN LIMITED LIABILITY PARTNERSHIPS
OR LIMITED LIABILITY COMPANIES

The Legislature has enacted two bills potentially affecting attorneys, one authorizing registered limited liability partnerships (W. Va. Code §§ 47B-10-1 *et seq.*) and the other adopting the Uniform Limited Liability Company Act of 1996 (W. Va. Code ~~§§ 31-1B-1 *et seq.*~~ ^{§§ 31B-1-101 *et seq.*}). Both of these statutes permit professionals to limit their liability for the acts of other partners or members with whom they practice if they are not directly supervising them. It is a requirement of both of these statutes that a limited liability partnership or limited liability company consisting of professionals such as lawyers carry malpractice insurance of \$1,000,000.00.

The passage of these statutes raises the question of whether a lawyer may participate in a limited liability partnership or a limited liability company without violating Rule 1.8(h) of the Rules of Professional Conduct, which provides in pertinent part:

(h) A lawyer shall not make an agreement prospectively limiting the lawyers' liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement

It is the opinion of the Lawyer Disciplinary Board that Rule 1.8(h) speaks to a lawyer's personal liability to a client, rather than the law firm's liability as a whole. Therefore, a client need not be independently represented before hiring a limited liability partnership or limited liability company for legal representation. This opinion is consistent with those of the following jurisdictions: New York City (Opinion 1995-7); District of Columbia (Opinion 254); Alabama (Opinion 93-16); Michigan (Opinion R-17) and Mississippi (Opinion 222).

This opinion does not purport to address any legal issues which may arise from the enactment of these two bills and only addresses the question of whether Rule 1.8(h) of the Rules of Professional Conduct prohibits participation in a limited liability partnership or a limited liability company.



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