

LEGAL ETHICS OPINION 1743

VIRGINIA LAW FIRM FORMING  
PARTNERSHIP WITH A FOREIGN  
LEGAL CONSULTANT (FLC) WHEN  
THE FLC IS A NONLAWYER UNDER  
THE UNAUTHORIZED PRACTICE  
RULES AND IS NOT LICENSED IN THE  
U.S.

You have inquired whether a non-United States attorney, i.e., an attorney licensed and admitted to practice in another country, and who is licensed in a state other than Virginia as a Foreign Legal Consultant (FLC), would be considered a non-lawyer for purposes of Virginia's Unauthorized Practice of Law Rules. Va. S. Ct. R., Part Six, Section I. This portion of your inquiry has been addressed in UPL Opinion 195.

Under the facts you have presented, and taking into consideration that UPL Opinion 195 deems the FLC to be a nonlawyer under Virginia law, you have asked the committee to opine as to the propriety of a Virginia attorney forming a partnership with an FLC to practice law in Virginia.

The Rules of Professional Conduct applicable to your inquiry are:

Rule 5.4 Professional Independence Of A Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased, disabled, or disappeared lawyer may pay to the estate or other representative of that lawyer that portion of the total compensation that fairly represents the services rendered by the deceased, disabled or disappeared lawyer; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

The committee has previously opined, applying former DRs 3-103(A) [DR:3-103] and 5-106(C) [DR:5-106], that a law firm may not engage in the practice of law in Virginia,

<sup>1</sup> Although some states may authorize the FLC to render advice on the law of the country where the FLC is admitted to practice, this does not mean that those states have also amended their laws or rules to permit FLCs to be partners in the law firms where they practice.

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even if through a licensed Virginia Bar member, if a non-lawyer is a partner in the firm. LE Op. 1584 (1994).

The ability of Virginia licensed lawyers to form partnerships or professional limited liability companies with attorneys not licensed in Virginia, but licensed to practice elsewhere in the United States, is well settled. LE Op. 762 (1986) (not improper to form multi-jurisdictional law firm where all attorneys in the firm are licensed in various jurisdictions but not all are licensed in Virginia or any other single jurisdiction); LE Op. 858, LE Op. 1026, LE Op. 1342 (establishment of multi-jurisdictional law firms is not improper provided that appropriate denominations of jurisdictional limitations are included in all communications of the firm). Such associations are permissible because lawyers admitted to practice in states other than Virginia must adhere to the same or substantially similar educational, ethical and professional regulatory requirements that govern attorneys admitted to practice in Virginia.

In determining what status to accord the FLC, it would be necessary to evaluate the similarity of the foreign legal consultant's educational requirements as well as the compatibility of those standards of professional conduct and discipline to which the FLC is required to adhere in the delivery of legal services. While some states may recognize some form of limited practice status for a foreign legal consultant and permit it to partner with licensed attorneys in that state, this is a regulatory issue beyond the purview of this committee.<sup>1</sup>

In the facts you present, the committee believes that it would be improper for a Virginia attorney to form a partnership or professional limited liability company with a foreign legal consultant (FLC), if any of the activities constitute the practice of law, where the FLC is not admitted to practice and in good standing in any state in the United States.

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