Nothing in the Code of Professional Responsibility prohibits a lawyer from associating himself with more than one law firm, including legal professional associations, engaged in practice in Ohio, provided that: the attorney is engaged in actual practice at each location; is generally and regularly available to render services to clients of each of the firms; avoids any activities that would impair the exercise of his independent judgment on behalf of any client of either practice; complies with rules concerning confidentiality and imputed conflicts of interest; and does not enter into such an arrangement for the purpose of serving as a conduit or forwarder-receiver of referrals among the firms.

Lawyer X is at present a member of a legal professional association known as W.X.Y. & Z. Co., L.P.A., which is organized for the purpose of engaging in the general practice of law in this county. Lawyer X proposes to become a member of a new legal professional association to be known as X. & A. Co., L.P.A., which will be organized for the purpose of engaging in the practice of domestic relations law, also in this county, and to thereafter practice with both firms simultaneously.

Whether a lawyer who is an active member of a legal professional association or other law firm may simultaneously become a member of, and actively practice with, another legal professional association or law firm in Ohio.

The issue of the ethical propriety of an attorney actively and simultaneously practicing law with more than one legal professional association or other law firm is not expressly treated by the Disciplinary Rules. Nonetheless, certain of the Disciplinary Rules do offer guidance in determining the propriety of such a practice. Chief among those is Disciplinary Rule 2-102(C):

A lawyer shall not hold himself out as having a partnership with one or more other lawyers or professional corporations unless they are in fact partners.

That Disciplinary Rule 2-102(C) is contained within that portion of Canon 2 which deals with “professional notices, letterheads and offices” signals that the primary area of concern over a so-called “simultaneous practice arrangement” will relate to the truthfulness of the implied representation made by the attorney as to his level of
involvement in the two separate law firms, and not to the fact of simultaneous practice itself.

The Code of Professional Responsibility makes several references to the elements which characterize a lawyer’s relationship to a law firm. For example, in order for a lawyer to be designated “of counsel” to another lawyer or law firm, he must have a “continuing relationship” with that other lawyer or law firm. DR Rule 2-102(A)(4). Similarly, a lawyer who assumes certain governmental or judicial posts outside of the private practice of law cannot ethically permit his name to continue to be utilized, either in the name of his past law firm or in its professional notices, during “any significant period in which he is not actively and regularly practicing law as a member of the firm. . .” (emphasis added). Disciplinary Rule 2-102(B).

Both Disciplinary Rule 2-102(A)(4) and Disciplinary Rule 2-102(B) focus on the fact that use of a particular lawyer’s name in connection with a law practice (be it by an “of counsel” designation or by its continued inclusion in the firm’s name) invites the public to believe that the named lawyer is in fact generally and regularly available to render services to that firm’s clients. Both Disciplinary Rule 2-102(A)(4) and Disciplinary Rule 2-102(B) properly recognize that there must be substantial basis in fact for such a representation to prevent the public from being misled. Disciplinary Rule 2-102(C) is of the same import, recognizing that even in situations not embraced by Disciplinary Rules 2-102(A)(4) and 2-102(B), a member of the public may well base his decision to retain a certain lawyer, at least in part, on his perception that the lawyer to be retained is engaged in an ongoing professional relationship with a particular law firm or another lawyer. “In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status.” Ethical Consideration 2-12.

Three American Bar Association opinions offer illumination on this issue. The first, being ABA Informal Opinion 1253 (December 15, 1972), considers a situation virtually identical to that involved herein, and states unequivocally that “[t]he Code of Professional Responsibility does not prohibit a lawyer from being associated with more than one law firm (emphasis added).” Consistent with ABA Informal Opinion 1253, ABA Formal Opinion 330 (August 1972) confirms that an attorney may also be designated “of counsel” to two law firms at the same time without offending Disciplinary Rules 2-102(A)(1), (2), (3), (4), (6), 2-102(C) or 2-102(D), provided that the relationship with each designating law firm is “a close, regular, personal relationship like, for

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1 See Ethical Consideration 2-11 (requiring that the attorney “actively continue to practice law” as a member of the firm as a prerequisite to the firm’s continued use of his name); American Bar Association Formal Opinion 330 (August 1972) (“The provisions of the Code evidence a desire. . . that the particular relationship existing among or between lawyers be stated clearly so that the public will not be misled”).

2 The Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court has signified its agreement with ABA Formal Opinion 330. See Supreme Court of Ohio, Opinion 88-023 (August 12, 1988).
example, the relationship of a retired or semi-retired former partner.” Id., p. 4. Finally, ABA Informal Opinion 83-1499 (June 14, 1983), which recognizes the continuing efficacy of ABA Informal Opinion 1253, concludes that there is no ethical prohibition to two lawyers who are partners in a law firm in one state simultaneously maintaining a partnership with another law firm in another state.

These ABA opinions and others cited herein do contain various caveats concerning such simultaneous practice arrangements, including that the attorney must actually practice in both locations; must avoid misleading clients relative to the manner in which he is practicing; must avoid any activities that would impair his exercise of independent judgment on behalf of a client; must comply with rules concerning confidentiality and imputed conflicts of interest; and must avoid any arrangement in which the association of the lawyer with both law firms is intended to serve as a conduit for the referral of legal matters between the two firms. Nonetheless, the underlying issue - whether a lawyer may engage in two simultaneous practices without running afoul of his professional responsibilities under the Code of Professional Responsibility - is clearly resolved in favor of permitting such arrangements.

In Opinion 89-35, the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court, however, has opined that “an attorney at law may not practice with more than one legal profession association or law firm in Ohio at the same time.” In so concluding, Opinion 89-35 asserts that the Code of Professional Responsibility “does not address this issue directly,” but instead relies on Governing Bar Rule III, Section 3(D), which states as follows:

No attorney at law shall be associated in any capacity with a legal profession association other than the one with which he is actively and publicly associated.

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3 However, firms may not use reciprocal “of counsel” relationships as a way of testing their compatibility for an eventual merger of two separate practices. See American Bar Association Informal Opinion 1378 (August 21, 1976).

4 See also, ABA Informal Opinion 1315 (January 9, 1975) (approving of reciprocal “of counsel relationship” between two law firms in different cities, where a partner of each law firm is designated “of counsel” to the other) and ABA Formal Opinion 84-351 (October 29, 1984) (law firm may show an “affiliation” or “association” with another law firm on its letterhead so long as the description is not misleading, i.e., that the relationship between the two firms is “close and regular, continuing and semi-permanent, and not merely that of a forwarder-receiver of legal business”). Pennsylvania Bar Association, Opinion 88-176, (A lawyer may become a partner in two separate law firms; however, such a role may involve conflicts of interest and confidentiality problems). New York City Bar Association Opinion 80-61, (An attorney incorporated as a professional corporation may become a member of a separate professional corporation provided his letterhead does not confuse the public as to the separate identity of the two professional corporations).
The Board of Commissioners evidently relies on the use of the phrase “other than the one with which he is actively and publicly associated (emphasis added)” as prohibiting association with more than one law firm. However, such a view is irreconcilable with the language of Disciplinary Rule 2-102(C), which by use of the plural phrase, “one or more lawyers or professional corporations . . . (emphasis added),” clearly contemplates the possibility of more than one practice relationship.

If Governance of the Bar Rule III (3)(D) did prohibit plural membership among legal professional associations, the result would leave the applicable ethical rules in the incongruous position of permitting membership in more than one law firm, but prohibiting the arrangement if both happen to have been organized as legal professional associations. No other jurisdiction has accepted such a double standard in the treatment of associations between law firms. Virginia, for example, explicitly permits membership in two professional corporations (Opinion 971, 9/30/87, partners of a professional corporation may form a separate subsidiary professional corporation and may advertise the separate corporation’s services), as does Pennsylvania (Opinion 88-176, Supra, N. 4) and New York City (Opinion 90-61, Supra N. 4).

It is clear that when Governance of the Bar Rule III (3)(D) was first promulgated in 1972, membership in separate law firms hardly ever occurred. Since that time, with the rise of large firms in different locations, and the cross-membership of lawyers between smaller law firms, the practice has been approved by Professional Ethics Co across the nation, with proper ethical safeguards. Those ethical safeguards are the very ones that Governance of the Bar Rule III (3)(D) emphasizes, viz., that one cannot be a member of a legal professional association or other law firm unless one is actively and publicly associated with it. It seems evident that Rule III (3)(D) was designed to prevent attorneys of national notoriety from attaching their names (for a fee) to Ohio legal professional associations as an advertising device, and merely presumed (rather than required) that in normal circumstances a lawyer would be a member of only one law firm organized as a legal professional association or otherwise. Although Opinion 89-35 correctly indicates that simultaneous practice arrangements may bring with them additional ethical challenges in the area of avoidance of potential confusion to the public; potential disclosures of confidential information; and potential conflicts of interest, the mere potential for such difficulties does not warrant the prohibition of the underlying arrangement, because the underlying arrangement itself in no way violates the Code of Professional Responsibility. It simply means that the lawyer engaged in such an arrangement will have to exercise heightened diligence so that his responsibilities to the public at large and to clients of both practices continue to be met in an ethically acceptable fashion.5

5 Maryland State Bar Association, Opinion 88-45. (A lawyer may be a member of separate law firms or professional associations but is cautioned to be aware of potential ethical problems).
CONCLUSION

A lawyer may ethically associate himself with more than one law firm, including legal professional associations engaged in practice in Ohio.