

# Popular Threads on Solosez

## OF COUNSEL AND CONTRACT ATTORNEY RELATIONSHIPS

I know a number of Sezzers are of counsel to firms or handle work for firms on a contract basis. A few questions for you: (1) How do you deal with conflicts? (2) Do you sign documents (letters to clients, opinions, filings) on behalf of the firm? Are there issues regarding signing? (3) More pragmatically, how have you addressed the issue of keeping your own clients separate from the firm clients and avoid the concern that a client of the firm would just come straight to you as a solo, or vice versa? (4) Are there other ethical issues to be concerned about, particularly in NY?

Thanks in advance! Looking forward to benefiting from your wisdom and experience.

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As one of the attorneys doing this, who remains a little confused about what my status is/would be, I would also appreciate the input. How are each of these relationships defined (Of Counsel v. Contract Attorney). What differentiates them. What liability is attached to each status-- for both the hiring attorney/firm and the hired attorney?

I really want to know, because this is something the attorney I am contracting (or of counseling) with and I have both been uncertain of, title wise.

I am only doing this right now with one attorney, so far, so there haven't been any conflicts I have come across, yet. But as the relationship develops and/or as I begin to offer similar services to other attorneys/firms, I think I really need to know what I am getting into/proposing.

Here is how it is working for me and the 1 attorney right now. He and I have negotiated my fee for certain types of cases. Wills/estate planning- I get X flat fees for each type. Probate? I get \$X/hour (client is billed by law firm). The client hires the firm. I then do the work on the case. Letters are mostly still signed by the senior attorney, but most communication is between client and myself.

Prior to my working with this attorney, he referred out certain types of cases. Now, if he is asked by a client or contact whether he can handle a type of case, he asks me, and if I am interested, he says the firm can take the client, that I will be doing the work. This is allowing him to keep the client and make the firm a little money. And I get work fed to me. If the firm has not handled one of these types of cases before, or hasn't for a long time, the attorney and I discuss the rate to charge the client. This includes a discussion of my rate. Assuming my billable hour rate for a case is the same, no matter the type of case, I can expect to earn the same amount. So, for example, if I am getting 65% of the hourly rate that is charged to the client for probate, I expect I will get 65% of the rate for some other case (i.e., adoption, prenup, etc).

Our situation is that I think we are trying to build toward an association of some kind, but are not there yet.

Any clients I get on my own, are mine. I don't have to share bubkiss with the firm.

Dana K. West, North Carolina

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It is my understanding that as to "of counsel", as it is an ongoing relationship, and thus requires conflict checks to be run through both firms on all matters.

Craig McLaughlin, California

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A contract attorney *may* be of counsel to a firm. However, not all "of counsels" are contract attorneys.

A contract attorney is generally defined as a lawyer who works for another lawyer (or firm), as an independent contractor, on a project-by-project basis. The contract lawyer is considered to be working under the supervision of the hiring attorney, and does not become counsel of record.

If a contract attorney works on a regular basis for a firm, the contract lawyer and firm might agree that the contract lawyer will be identified as "of counsel" to the firm. I have been "of counsel" to a number of firms during the course of my solo career as a contract lawyer.

A lawyer who is "of counsel" need not *also* be a contract attorney, as "of counsel" is a fairly broad term that can apply to a variety of relationships between an individual lawyer and a firm.

For more information and guidance about working with contract lawyers, see my chapter, "Outsourcing Legal Research and Writing Projects," which appeared in *Effectively Staffing Your Law Firm* (edited by our own COTE, Jennifer J. Rose), at [http://questionoflaw.net/Outsourcing\\_Legal\\_Research\\_and\\_Writing\\_Projects.pdf](http://questionoflaw.net/Outsourcing_Legal_Research_and_Writing_Projects.pdf). You can find additional discussion about issues relating to contract lawyers at my blog at <http://legalresearchandwritingpro.com/blog/>.

Finally, the ABA has published a book called *The Of Counsel Agreement: A Guide for Law Firm and Practitioner*, which you can find at <http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5460039>.

Lisa Solomon, New York

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A "preview" of the book cited by Lisa can be found in Google Books: [http://books.google.com/books?id=bvJnLvoHrxUC&printsec=frontcover&source=gbs\\_v2\\_summary\\_r&cad=0#v=onepage&q=&f=false](http://books.google.com/books?id=bvJnLvoHrxUC&printsec=frontcover&source=gbs_v2_summary_r&cad=0#v=onepage&q=&f=false).

Ignacio Pinto-Leon, Texas

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I recently entered into an of counsel arrangement and these two opinions provide useful information.

<http://www.abanet.org/cpr/ethicsearch/partner.html> : scroll down below the links to see the opinion.

[http://www.abcny.org/Publications/reports/show\\_html.php?rid=160](http://www.abcny.org/Publications/reports/show_html.php?rid=160) : the most commonly cited NY opinion.

Julia Yong-hee Park, New York

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My senior partner is of counsel to this firm, and another

one in Lawrence, KS, about 150 miles away. Nothing wrong with that so long as there are no client conflicts.

Ron Smith, Kansas