

Popular Threads on Solosez

"Co-Counsel" vs. "Contract Attorney"

I'm still not clear to basic question of the difference between "Co-Counsel" and a "Contract Attorney."

If you choose to work with another lawyer in representing a client, can't you be either? The main difference I see are only a matter of degrees. As Co-counsel, you're seen as a lawyer equally in charge of the case. As a Contract Attorney, you play more of subordinate role to the main attorney. But although many contract attorneys do not have contact with the client, I am not aware of any rules prohibiting contract attorneys from speaking with the client.

So then, really, is there any true difference between a Co-counsel and a Contract Attorney?

While there are no rules prohibiting contract lawyers from communicating with the client, there are other significant differences between co-counsel and contract lawyers. Most importantly, a contract attorney is considered to be working under the "supervision" of the hiring attorney (much like an associate in a firm would work under a partner's supervision). To the best of my knowledge, there is no "supervision" requirement in the co-counsel relationship.

Related to the first point, a contract lawyer can perform work in jurisdictions in which he or she is not admitted to practice.

Finally, contract attorneys enter into agreements with hiring attorneys: they do not enter into retainer agreements directly with clients. Stated another way, contract attorneys do not form attorney-client relationships with clients. By contrast, each lawyer in a co-counsel relationship is in an attorney-client relationship with the client. Accordingly, if you are working as co-counsel, you must be admitted in the jurisdiction in which you are practicing as co-counsel.

You can find more information on contract lawyering in general at my blog at <http://LegalResearchandWritingPro.com>. In particular, you might be interested in my analysis of the ABA's most recent ethics opinion about the use of contract lawyers, which you can find at <http://legalresearchandwritingpro.com/blog/2008/08/28/aba-formal-op-08-451-good-news-for-us-based-independent-contract-lawyers/>

Lisa Solomon, New York

IMHO, contract attorney means you're not counsel of record, whereas co-counsel means you are.

Employing attorney may limit contract attorney's scope of work, e.g., he may prohibit contract attorney from communicating with client.

Co-counsel should be permitted client communication because he's on the hook on court records.

Just my \$.02.

Susan K. Ashabraner, California

It seems to me that you're asking what the meaning of "is" is. A contract attorney works for another attorney on a contract basis, to assist that attorney in writing a brief, doing document review, whatever. A contract attorney does not appear in court on behalf of the client, generally does not have a direct a/c relationship with the ultimate client, does not generally appear on pleadings, and generally speaking is behind the scenes assisting the attorney of record. Co-counsel has a direct a/c relationship with the ultimate client, can appear in court, appears on the pleadings, and is generally an equal partner in representing the ultimate client.

But "contract attorney" and "co-counsel" are just words that generally describe those concepts. To say that there's no rule prohibiting a contract attorney from speaking directly with the client isn't to say anything meaningful. The "rules" don't talk about contract attorneys and co-counsel at all. The concepts are different, but if you're looking for a black-and-white "rule" on when one is called "contract attorney" and when one is called "co-counsel" you're going to be wasting your time.

Obviously I can't advise on CA bar rules, but if PC contacts Bob, and Bob says hey Jim, give this guy a call and I'll use you as a [fill-in-the-blank] if he signs up with us, I don't see why the non-solicitation rule should apply differently depending on how you fill in the blank. In any case, the client is being called back in response to a call he initiated.

Of course, that plus all the other commentary you'll get here will be of no use whatsoever in defending against a bar complaint in the unlikely event that there were one, so rather than spinning your wheels here, why don't you just give the CA bar ethics hotline a call and ask?

Mitchell J. Matorin, Massachusetts

I just want to make one correction to Mitch's comment. A contract attorney most certainly can appear in court on a client's behalf, as long as the contract attorney is admitted in the jurisdiction where the case is pending (either regular admission or pro hac vice). I have argued numerous times in New York appellate courts in connection with cases I have worked on as a contract lawyer. What's more, many lawyers make their living as "per diem" attorneys, covering court appearances (and other tasks, like depositions) for other lawyers.

Lisa Solomon

Can you expand on this? Once you make an appearance, aren't you on the record and on the hook for the whole case? Is this something unique to New York, or am I just missing something generally? I don't see any of the Federal courts I've practiced in allowing a pinch hitter to have one day privileges and out. Certainly, I've seen separate appellate counsel step in, make an appearance, and argue the case, but that required a notice of appearance, etc. I am not doubting you that you've done it, I just don't grok how, procedurally, it's done.

Dineen Pashoukos Wasylik

I don't think this is something unique to New York. However, different jurisdictions may have different procedural requirements in this situation. Here in New York, you would simply identify yourself (by name), and explain that you're appearing on behalf of the "X" firm (i.e., whichever firm is counsel of record/hired you to appear). No different than an associate with that firm making a court appearance (the associate doesn't have to file a separate notice of appearance on his/her individual behalf). You are not individually "on the hook" for the whole case because you are acting solely as an agent for a disclosed principal. If anyone from outside New York has appeared in court on behalf of another firm (i.e., as a contract lawyer), I'd be very interested to learn if there are any particular procedural requirements in your jurisdiction.

Lisa Solomon

In Colorado one can make a "special appearance" for a particular hearing and not be on the hook for the whole case. I specially appeared in a Colorado divorce for a California attorney whose client was in prison in California by filing a notice of special appearance.

Ellen Buckley, Colorado

Amen to what Lisa wrote. But I do not believe that the contract lawyers can practice in "any" jurisdictions. There are specific requirements in most cases that the contract lawyers must be licensed in the state where they do the contract works (even if they are hired for discovery purposes per se).

Young

With all due respect, Young, I have done extensive research in this area, and have personally read ethics opinions from around the country on this subject. To the best of my knowledge, only Washington, D.C. requires that contract lawyers be licensed in that jurisdiction.

Lisa Solomon