

Advice for Of Counsel Relationship

Listmates,

A fellow solo-practitioner in my area will be closing his office in 2019.

He does a variety of areas of law and is already preparing to transfer his plaintiff's work. However, he also does a decent amount of municipal court and criminal defense. He does not have anyone to take over these files or handle future clients for these areas should they call.

I am thinking about offering him an Of Counsel position with my firm. The goal that I have in mind is that when these prospective clients call him, they can ultimately retain my firm, and under the ethics rules, I will be able to share fees.

I want to do everything the right way and put together a written Of Counsel agreement should he be willing to enter into this arrangement. Does anyone have any advice or even a sample agreement for this type of situation?

I am already planning on putting in the agreement that he be required to maintain his license, stay current on CLEs, participate in intake, etc.

Any advice is appreciated!

The term can mean several different things;

<https://www.lawyersmutualnc.com/blog/tips-and-traps-in-of-counsel-relationships>

<https://www.lawyersmutualnc.com/risk-management-resources/articles/of-counsel-relationships-properly-understood>

Ronald Jones, Florida

Why don't you just enter into a referral relationship with them to send you those cases? You can do without the overhead of an of counsel relationship.

Dan X. Nguyen, California

I've had successful of counsel relationships with a couple of attorneys in the past, who wanted to only have a part-time practice (including one who would take months-long vacations) and practiced in an area I don't practice in. The terms of the relationship are of course negotiable. I'll send you a sample agreement I've used off-list.

Bear in mind that this could affect your malpractice premiums in a big way, so I'd talk with your agent about it first to get an idea as to what those costs would be.

Cynthia V. Hall, Florida

Hi everyone, thank you for the responses so far.

To answers some of your questions/concerns, he is closing his office due to medical reasons. I don't expect he will be practicing law day to day. My goal is for him to maintain his phone number and originate clients who I will retain and handle. Therefore, there would not be much increase in overhead for me other than possible increases in my malpractice premium.

Under NJ rules, I cannot just pay him a referral fee unless I am a Certified Trial Attorney which regrettably, I am not. My understanding of NJ rules is that I can still share fees with another attorney if they are Of Counsel or they do a share of the work. So, in other words, I believe my proposed arrangement is permitted but I just want to dot every "I" and cross every "T."

Jason Komninos, New3 Jersey

Not all states -- including NJ, where Jason's signature indicates he practices — allow referral fees. (NJ allows them under special circumstances, but not

generally.) It is interesting to me how many lawyers don't know these rules. (I mean, not you; you're not a NJ lawyer so there's no reason you should.) I get lawyers sending me cases and then asking for referral fees, and when I tell them those aren't allowed, they tell me, "Well, other lawyers pay them to me."

David Nieporent, New York

Good to know.

Dan X. Nguyen

The ABA publishes a book which has "of counsel" agreements. Perhaps it would be of assistance.

Darrell G. Stewart, Texas