



Committee on Professional Ethics

Opinion #262 - 9/15/72 (45-72) Topic: Use of the term "of counsel";
letterhead

Digest: The term "of counsel" may
only be used on letterhead
where there is a continuing
relationship.

Code*: DR 2-102(A) (4).

QUESTION

In what circumstances is it proper to use the term "of counsel" on a lawyer's letterhead?

OPINION

DR 2-102(A) (4) states that "...A lawyer may be designated of counsel on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or an associate."

"Of Counsel" is a phrase commonly applied in litigated matters to the counsel employed by a party for a cause, and particularly to one employed to assist in the preparation or management of a cause, or its presentation on appeal, but who is not the principal attorney of record for the party. Ballentine's Law Dictionary 880 (3rd ed. 1969). There is nothing ethically improper in this long standing practice.

It is generally held that the term "Of Counsel" is customarily used to indicate on a firm's letterhead or shingle that the person who is "Of Counsel" is available to the firm for consultation and advice on a regular and continuing basis either generally or in a particular field. ABA Inf. 678 (1963). If the relationship only existed for one particular case, it would be misleading to so state on a firm's letterhead even though the case might be of great importance and over an extended period of time. See, ABA Inf. 709 (1964); ABA Inf. 1132 (1969); ABA 330 (1972).

A law firm, however, may not be shown as "Of Counsel" to another lawyer or law firm. The practice of law is personal in nature and a law firm as such is never admitted to practice in any state. It would be improper to permit a law firm to be designated "Of Counsel" or "Counsel" in directories, law lists, and on shingles, letterheads or cards. ABA Inf. 1189 (1971).

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It is generally not proper for any lawyer to be designated on a letterhead "Of Counsel" to more than one lawyer or law firm especially because the "continuing relationship--other than as a partner or associate" referred to in DR 2-102(A)(4) connotes a close regular in house association free and clear of problems and conflict. If a lawyer or a law firm has particular expertise which other lawyers or law firms wish to utilize, it would be proper to designate such lawyer or law firm as "Co-Counsel" on a case-by-case basis. ABA Inf. 1189 (1971); ABA 330 (1972).

It is improper advertising for a New York law firm or lawyer to list a foreign firm or lawyer as its "correspondent" either on the New York firm's letterhead or on the entrance to its office. N.Y. County 593 (1971); N.Y. County 592 (1971); N.Y. City 847 (1960); N.Y. City 867 (1965).
