



New York State Bar Association  
Committee on Professional Ethics

Opinion 955 (1/14/13)

**Topic:** Of counsel relationship with out-of-state lawyer; reference on letterhead and website

**Digest:** A law firm may have an 'of counsel' relationship with a non-New York lawyer admitted in another jurisdiction and must disclose any jurisdictional limitations on the ability of any lawyer associated with the firm to practice law in this State. The form of such disclosure may be either "not admitted in New York", or "admitted only in XX State."

**Rules:** 5.1; 7.1; 7.5(a) (4); 7.5(d)

## FACTS

1. The inquiring law firm has its main presence in New York State and maintains a smaller office in another state. The out-of-state office is managed by a lawyer admitted in that state and not admitted in New York who has an "of counsel" relationship with the firm. The firm's existing website discloses the admitting jurisdictions of all lawyers in the firm in the positive (e.g., "Admitted in New York", or "Admitted in XX").

## QUESTION

2. May a New York law firm have an "of counsel" relationship with a lawyer who is not admitted in New York?

3. If so, how should the relationship and the jurisdictional limitations be disclosed on the letterhead and websites of the law firm?

## OPINION

4. The fundamental responsibility imposed on all lawyers when engaging in public communication about the nature of their practice is found in Rule 7.1, mandating that lawyers refrain from making, or participating in the use of, any statements that are false, deceptive or misleading. Letterheads (primarily governed by Rule 7.5) and websites used by lawyers must comply with this Rule. Information that may be set forth is enumerated in Rule 7.1(b); this list is "suggestive of the type of information that may but need not in all cases be included." N.Y. State 704 (1998).

5. A New York law firm may consist of a sole practitioner and may have more than one office. N.Y. State 814 (2007). A lawyer or law firm may also have partners based in offices outside New York. Opinion 814 reminds lawyers of the obligation contained in Rule 5.1(a); the

New York based lawyer must adequately supervise the work of all lawyers in the firm and make sure procedures are in place to insure the practice is conducted in a professional and ethical manner.

6. The range of relationships among lawyers practicing under a firm is broad and has grown in variety over the years. The Rules do not discuss each of the possibilities but do contain a limitation on the use of the “of counsel” designation. Rule 7.5(a)(4) states in part, “A lawyer or law firm may be designated “Of Counsel” on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate.” Whether the relationship meets the “continuing relationship” test is fact-specific and no additional information is provided in this inquiry. Thus, as long as the inquiring firm is satisfied that the “continuing relationship” test is met, it may have an “of counsel” relationship with a lawyer.

7. Our prior opinions have recognized that a New York law firm may include lawyers not admitted to practice in New York. In N.Y. State 704, we held that a law firm with New York and non-New York lawyers could practice in New York without violating New York ethical obligations. N.Y. State 814 also permitted a partnership with a lawyer admitted in another jurisdiction. That Opinion also stated, “[n]othing in the Code, however, states that partnership is the only permissible professional relationship between a New York lawyer and an out-of-state lawyer or firm.” Also, in N.Y. State. 864 (2011), we recognized that a New York lawyer could affiliate and share fees with a lawyer not admitted in New York. Based on these Opinions the answer to the first question is yes; a New York law firm may have an “of counsel” relationship with a lawyer not admitted in New York.

8. The second question raised by this inquiry is also addressed by Opinion 814. Beginning again with the fundamental principle--that none of the information or lack of it, be false, deceptive or misleading--the New York firm's letterhead and website does not need to disclose the precise nature of the relationship of the out-of-state lawyer to the New York firm. However Rule 7.5(d) does prohibit a relationship “among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions.” As noted in Opinion 814, this Rule “does not state expressly, however, how such limitations shall be expressed.”

9. This inquiry posits that the New York firm has its main office in New York and a much smaller one in XX State. Thus it would be sufficiently clear to use either statement of limitation, “admitted only in XX” or “not admitted in New York” N.Y. Opinion 434 (1976). To comply with Rule 7.5(d), it is important to use such limiting terminology as “not admitted” or “admitted only”. Either phrasing is sufficient to convey the jurisdictional limitations on the lawyers in, or associated with the New York firm.

## **CONCLUSION**

10. A law firm may have an “of counsel” relationship with a lawyer admitted only in a jurisdiction other than New York but does not need to disclose the precise nature of that relationship on its letterhead or websites.

11. The law firm must disclose any jurisdictional limitations on the ability of any lawyer associated with the firm to practice law in New York State. The form of such disclosure may be either “not admitted in New York”, or “admitted only in XX State.”

(11-12)