NEW YORK STATE BAR ASSOCIATION
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**New York State Bar Association**
**Committee on Professional Ethics**

**Opinion 1303 (10/02/2026)**

**Topic:** Lawyer with N.Y. admission but non-U.S. domicile serving as of counsel to NY law firm

**Digest:** A lawyer admitted to practice law in New York but domiciled in France may enter into an agreement to remotely provide legal services for a New York-based law firm and may be designated as "Of Counsel" provided that (i) the lawyer and such law firm have a close, continuing and personal relationship, (ii) the lawyer's New York practice does not violate the regulation of the legal profession in France, where the lawyer will physically be practicing, and (iii) the lawyer's professional services for the New York firm comply in all other respects with the New York Rules of Professional Conduct.

**Rules:** 1.10(a) & (e), 5.1(a)-(c), 5.5, 7.5(a) & 8.5(a)

**FACTS**

1. The inquirer is a lawyer admitted to practice in New York but domiciled in Europe. The inquirer has been offered the opportunity to provide legal services to a New York-based "boutique" law firm where the inquirer's status would be designated as "of counsel." The contemplated agreement between the inquirer and the New York law firm expressly gives the law firm the power to supervise and control the inquirer's work.

2. The inquirer will perform legal services through a French sole proprietorship (*entreprise individuelle*),[1] which would invoice the New York firm for professional services rendered.

3. The inquirer will not be physically present in New York, nor is the inquirer's physical presence in New York contemplated under the proposed agreement. All legal work will be performed by the inquirer remotely from France.

4. The inquirer's legal services will be strictly limited to matters of New York law and U.S. federal law. The inquirer will not be advising any clients of the New York law firm on French law, European law, or the law of any other jurisdiction other than New York and U.S. federal law.

5. All client communications will be conducted through the inquirer's firm-assigned e-mail address or via the inquirer's phone in an "Of Counsel" capacity. The New York law firm will supervise the inquirer's client interactions, maintain full control over firm-client relationships and review the inquirer's work product.

[1] As described by the inquirer, the French *entreprise individuelle*, *viz.*, sole proprietorship, is created and operated by an individual in their own name, without forming a separate legal entity. The entrepreneur has full management authority, and professional assets within the business are automatically separated from the individual's personal assets.

6. The inquirer's "Of Counsel" designation will be identified on the New York law firm's letterhead, professional cards, website or other similar professional notices together with the firm's name and New York address.

7. The inquirer will be remotely providing legal services only for clients of the New York law firm who are located in the United States. In France, the inquirer will not be providing services or rendering advice to clients in France on questions or matters of New York law. Thus, the inquirer will not be acting as a Foreign Legal Consultant pursuant to 22 NYCRR Part 521 and advising New York clients on French law. Nor will the inquirer be advising French-domiciled clients on foreign law.

**QUESTIONS:**

8. The inquirer poses three questions:

A. May a New York admitted lawyer who is a French domiciliary contract with a New York-based law firm to provide legal services to the firm's clients relating strictly to New York law and U.S. federal practice while working remotely from France?

B. May the New York law firm and the inquirer refer to the inquirer as "Of Counsel" to the New York law firm?

C. Does the proposed "of counsel" relationship with the New York-based law firm comply with the physical office requirement of Judiciary Law § 470?

**OPINION:**

<u>May a New York lawyer domiciled in France remotely practice in New York?</u>

9. Today's technology enables a New York lawyer to remotely provide legal services to New York clients while the lawyer is physically located in a foreign country. Such conduct by a lawyer admitted in New York is subject to the New York Rules of Professional Conduct (the "Rules").

10. Rule 5.5 prohibits a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession of that jurisdiction.[2] The inquirer is licensed to practice law both in New York and in France. France is the inquirer's country of domicile. But, if providing legal services to New York clients while physically located in France constitutes the unauthorized practice of law (or violates any French rule, statute, or other "regulation of the legal profession in that jurisdiction," then Rule 5.5 would prohibit the inquirer from doing so. *See* ABA 495 (2020). Absent a local French prohibition or regulation (and we are aware of none), the inquirer may practice law in New York remotely while physically located in France without violating Rule 5.5.

11. The New York law firm and its lawyers must abide by the supervision requirements of Rule 5.1. Under Rule 5.1(a), the New York law firm as a whole must "make reasonable efforts to ensure that all lawyers in the firm" – including the inquirer – "conform to" the Rules. Under Rule 5.1(b), all of the lawyers with "managerial responsibility" in the New York law firm, as well as all of the specific "supervisory" lawyers who will review or otherwise supervise the inquirer's work, are

[2] Rule 5.5 was amended by New York's Appellate Division effective November 10, 2025. The amendments basically combined former paragraphs (a) and (b) into a single unlettered paragraph but did not alter the meaning of the rule.

responsible for making "reasonable efforts" to ensure that the inquirer conforms to the Rules. Designating the inquirer as "Of Counsel" does not relieve the law firm of ensuring adequate, appropriate supervision of the inquirer's work.

12. Under Rule 5.1(c), "the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter." The inquirer informs us that the contemplated agreement with the New York law firm expressly gives the law firm the power to supervise and control the inquirer's work. We do not have enough facts to determine whether the degree of supervision rises to that level.

May the New York law firm and the inquirer refer to the inquirer as "Of Counsel"

13. The next question is whether the inquirer may be designated as "Of Counsel" to the New York law firm. "Of Counsel," and variations of the term, are most commonly – though not always accurately – used in representing the professional relationship of lawyers who are neither partner nor associate. N.Y. State 936 (2012). "Of counsel" is not defined in the Rules, and there is no single, determinative attribute for a proper "of counsel" designation, *id. See also* N.Y. City 2013-3 (2013) ("A New York law firm may designate as 'of counsel' a lawyer who is licensed to practice law in New York but resides and practices law mainly in a foreign country, provided that: (a) the of counsel lawyer has a 'continuing relationship' with the law firm; (b) the use of the of counsel title is not false or misleading in other respects; and (c) the of counsel lawyer's practice does not constitute the unauthorized practice of law in the foreign country").

14. Historically, DR 2-102(A)(4) in the former Code of Professional Responsibility allowed a lawyer to be designated "of counsel" if the lawyer had a "continuing relationship" with a lawyer or law firm. In N.Y. State 263 (1972), we said "continuing relationship –other than as a partner or associate" – connotes a close, regular association. *See also* N.Y. State 1137 (2017) (citing ABA Op. 90-357 (1990) (use of the title "of counsel," or a variant of that title, is permissible in identifying the relationship of a lawyer with another lawyer or firm as long as the relationship between the two is a close, regular, personal relationship and the use of the title is not otherwise false or misleading).

15. Comment [7] to New York Rule 7.5 is fully consistent with our prior opinions. Comment [7] says:

> To avoid misleading clients, courts, and the public, lawyers should be scrupulous in representing their professional status. For example: (i) A lawyer or law firm may be designated "Counsel," "Special Counsel," "Of Counsel," and the like on a letterhead or professional card if there is a continuing relationship with another lawyer or law firm other than as a partner or associate . . . .

16. As we stated in Opinion 1137, whether the inquirer has a close, regular, personal relationship required to merit the title "of counsel" is a question of fact to be determined by the inquirer. We will assume for purposes of this opinion that designating or describing the inquirer's relationship to the New York law firm as "Of Counsel" is appropriate.

17. Under Rule 8.5(a), a lawyer admitted to practice in New York is subject to New York's disciplinary authority, regardless of where the conduct occurs. Also under Rule 8.5(a), a French attorney admitted in New York may be subject to the disciplinary authority of both New York and France for the same conduct.

Is New York Judiciary Law Section 470 satisfied?

18. The inquirer also asks whether the inquirer's contemplated of counsel arrangement with a New York-based firm would satisfy the physical office requirement of New York Judiciary Law § 470. Section 470 provides that a lawyer admitted in New York who does not reside in New York must maintain an office for the transaction of law business within the state of New York. This Committee does not opine on questions of law, so we do not answer the inquirer's question about § 470. However, the inquirer may wish to consider *Matter of Tatko v. McCarthy,* 267 AD2d 583, 584 (3d Dept.1999), which held that "the establishment of an of counsel relationship with a New York attorney who has an office in this this State [is] sufficient to meet the requirements of Judiciary Law § 470." *See also In re Banco Popular N. Am.*, 2017 N.Y. Misc. LEXIS 30467; 2017 LX 20819 (2017) (Sup. Ct. of N.Y., Westchester Cty., Sept. 19, 2017) ("The establishment by plaintiff's counsel of an 'of counsel' relationship with a New York attorney who has a New York office meets the requirement of Judiciary Law §470", citing *Tatko*).

**CONCLUSION**

19. A New York lawyer admitted to practice law in New York but domiciled in France may enter into an agreement to remotely render legal services for a New York-based law firm and may be designated as "Of Counsel" provided that (i) the inquirer and such law firm have a close, continuing and personal relationship; (ii) the lawyer's New York practice does not violate the regulation of the legal profession in France, where the lawyer will physically be practicing, and (iii) the lawyer's professional services for the New York firm comply in all other respects with the New York Rules of Professional Conduct.

(04-26)