

You have advised that you are a sole practitioner specializing in trademark law. In the past few years, you have established a close working relationship with a Florida law firm. You have performed a substantial amount of trademark legal work for this firm and have been compensated accordingly. Due to the on-going need for your services, and in an effort to establish a more efficient billing procedure, you wish to enter into an "of counsel" relationship with the Florida firm.

You have requested that the Committee advise you on the ethical implications associated with entering into an "of counsel" relationship with the Florida firm. Your inquiry reflects a series of questions which will be addressed in the text of the opinion.

At the onset, it should be noted that there is no definition contained in the Virginia Code of Professional Responsibility of the term "of counsel". The American Bar Association has, however, provided guidance on this matter in Formal Opinion No. 330. According to the ABA, "of counsel" contemplates that the lawyer has a continuing relationship with the firm. Such a relationship must entail the actual practice of law, as opposed to the mere continuation of a business or financial arrangement.

Disciplinary Rule 2-101(A) [DR:2-101] directs that an attorney shall not engage in any form of public communication which contains a false, fraudulent, misleading or deceptive statement. Thus, establishing an "of counsel" relationship with another firm is ethically permissible so long as the relationship satisfies the guidelines noted in the previous paragraph. Specifically, the relationship must involve the practice of law and the lawyer must be an integral part of the firm's operation in the practice of law.

With regard to the specific questions raised in your inquiry, the Committee believes that it would be permissible for you as a member of the Virginia State Bar to establish an "of counsel" relationship with the Florida firm under the facts presented. It would be permissible for you to be designated as "of counsel" on the firm's letterhead, noting your Virginia Bar membership as well as your Virginia address so long as there is nothing false or misleading contained in the information. (See DR:2-102(A)) The Committee is unable to offer guidance as to the view of the Florida Bar with regard to the permissibility of the Florida firm's inclusion of your status on their letterhead or any other matter. The Committee would encourage an inquiry to the Florida State Bar by the members of the firm for their opinion on the proposed arrangement. The Committee does believe, however, that noting your address as the "firm's District of Columbia area office" would be improper. Such a statement could easily be construed to imply that you are a member or partner of the firm, which would violate the guidelines provided in DR:2-102(A).

Finally, the Committee believes it is permissible for you to maintain your separate practice. Your designation as "of counsel" to the Florida firm does not contemplate or imply that you have given up the independent practice of law. It follows, then, that there is no ethical requirement for you to indicate on the letterhead of your private practice your status as "of counsel" to the Florida firm.

**Editor's Note.** – Overruled in part by L E Op. No. 1554. See footnote 1 of the opinion for scope.