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## TO “OF COUNSEL” OR NOT

It’s very tempting for lawyers to slap an “of counsel” label on an arrangement they have with another law firm. The of counsel designation may sound attractive, but it has some pitfalls lawyers should be aware of.

### Continuing Professional Relationship

To be of counsel to another lawyer or law firm, you need to have a continuing professional relationship with that firm other than as a partner or an associate. ORPC 7.5(e). While Oregon ethics rules and formal ethics opinions do not specify what constitutes a continuing professional relationship, the following situations do not fit the designation:

- Acting as co-counsel with another lawyer on one or two cases;
- Hiring a contract lawyer to work on a specific project (e.g., drafting pleadings, legal research, etc.);
- Sharing office space with another lawyer.

### Conflict of Interests

Once you form an “of counsel” relationship with another firm or lawyer, you are considered a member of that firm for conflicts purposes. This means that if any member of that firm has a conflict, you also have a conflict—and *vice versa*. So before you take on a new client, make sure the firm has no conflict with that potential client. You also need to get regular lists of the firm’s new clients so you can check those names against your own conflict system.

### Liability

Of counsel lawyers are individually covered under the PLF primary malpractice plan. However, if a firm has malpractice coverage in excess of the \$300,000 PLF mandatory malpractice coverage, the of counsel lawyers are often considered a part of the single practice unit of the firm. The firm can be held vicariously liable for the malpractice of the counsel lawyers acting with actual or apparent authority. More information on the liability issue is available [here \(https://www.osbplf.org/assets/forms/pdfs/The%20Of%20Counsel%20Relationship.pdf\)](https://www.osbplf.org/assets/forms/pdfs/The%20Of%20Counsel%20Relationship.pdf).

### Advertising

Of counsel lawyers and the firm need to avoid anything that would mislead clients into thinking their relationship is more than what is—that they are more closely related, such as partners, when they are not. The use of the “of counsel” designation in advertising materials or letterheads cannot be false or misleading. See ORPC 7.1 and 7.4. The designation has to accurately capture the relationship between the of counsel lawyer and the firm.

### Practice Tips

Think about whether this arrangement is the best option for you in light of the various considerations above. Here are a couple of practice pointers for forming an of counsel relationship.

First, use a written of counsel agreement to avoid misunderstandings. The agreement should specify the status of the of counsel lawyer, responsibilities, compensation, benefits, limitations on authority on behalf of the firm, professional liability coverage, and termination.

Second, use two firm letterheads. One will have the of counsel lawyer's name and status, and the other will not. The of counsel lawyer should use the letterhead with his or her name when working on firm matters. When the of counsel lawyer is working on a non-firm matter, he or she should use his or her own letterhead and not the firm's letterhead. Make sure the of counsel agreement requires this dual letterhead usage.

Categories: [Of Counsel \(/blog/topics-of-interest/of-counsel/\)](#) / [InPractice](#) / by [Hong Dao \(/blog/staff-authors/hong-dao/\)](#)

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On February 25, 2021, Oregon Governor Kate Brown issued Executive Order No. 21-05, which is the sixth extension of Executive Order No. 20-03 and the COVID-19 State of Emergency since her original order declaring an emergency on March 8, 2020. Based on this latest extension, Executive Order 20-03 and the COVID-19 State of Emergency will be extended for an additional 60 days, through May 2, 2021, unless extended or terminated earlier by the governor.

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**READY, AIM, FIRE.. THE ORDEAL OF T CLIENT**  
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It's fairly easy for client attorney. Some clients announcement like "yc might just make a poli sounds more like a rec "Would you please give find another lawyer?" ( it's not always easy for clients.

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The type of program you use to track your time and calculate your bills will vary depending on your specific practice and firm goals. In focusing on software for billing, you have your choice of options, but you should consider the variety of features available when making the decision which to use for your practice.

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