

OF COUNSEL AGREEMENTS



RISK MANAGEMENT PRACTICE
GUIDE OF LAWYERS MUTUAL



**LAWYERS
MUTUAL**

LIABILITY INSURANCE
COMPANY OF
NORTH CAROLINA

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OF COUNSEL AGREEMENTS

RISK MANAGEMENT PRACTICE GUIDES OF LAWYERS MUTUAL

Lawyers often use the “of counsel” designation loosely and inappropriately.

One must observe the ethical rules and should observe practical precautions when forming “of counsel” relationships and working in such a relationship. Doing so protects the “of counsel” lawyer and the law firm to which he is associated from grievances and liability claims.

HOW TO USE THIS GUIDE

This Lawyers Mutual Practical Guide will help you navigate the pitfalls of forming and working in an “of counsel” relationship with another lawyer or law firm. We will provide rules, risk management pointers and sample agreements.

This Guide offers general information that should benefit most lawyers. It is not intended as legal advice or opinion, nor does not purport to establish a specific standard of care for you or your law firm.

For more information – or if you have additional questions – please contact Lawyers Mutual’s Client Services Team.

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DISCLAIMER: *This document is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. It is not intended to establish a standard of care for the practice of law. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and requirements. Individual cases demand individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.*



What are the ethical requirements of an “of counsel” relationship?

In North Carolina, we have two ethics opinions discussing use of the designation “Of Counsel.”

RPC 34 (1988)

RPC 34 rules that “an attorney may be designated as ‘of counsel’ to a North Carolina law firm if the attorney is licensed in North Carolina and will have a close, *in-house association with the firm which involves no conflict of interest.*” (Emphasis added.)

RPC 85 (1991)

RPC 85 eliminates the “in-house” requirement. The opinion rules that an “of counsel” relationship may exist between lawyers practicing in different towns if the relationship is close, regular and personal and the designation is not otherwise false and misleading.

The last sentence of RPC 85 reads: “Any pertinent jurisdictional limitations on the lawyer’s entitlement to practice must also be indicated.”

Even though RPC 85 does not explicitly overrule RPC 34, it is apparently no longer necessary that an “of counsel” lawyer be licensed in North Carolina. A lawyer licensed in another state can be “of counsel” to a North Carolina lawyer as long as the other requirements of RPC 34 and RPC 85 are met.

In addition to North Carolina’s ethics opinions, ABA Formal Opinion 90-357, based on the Model Rules of Professional Conduct, is a thorough treatment of the subject and is excellent guidance.

ABA Formal Opinion 90-357 (1990)

The use of the title “of counsel” or variants of that title, in identifying the relationship of a lawyer or law firm

with another lawyer or firm is permissible 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.

Combining RPC 34, 85 and ABA Formal Opinion 90-357, the ethical requirements for an “of counsel” relationship are:

- there must be a close, regular and personal relationship between the “of counsel” lawyer and the firm;
- the relationship must not involve conflicts of interest;
- the title must not be otherwise false or misleading;
- if the “of counsel” lawyer is not licensed in North Carolina, any pertinent jurisdictional limitations on the lawyer’s entitlement to practice must be indicated.

Professional relationships befitting the title “of counsel”

Based upon these ethics opinions, relationships suitable for the “of counsel” designation are:

- part-time practitioners, practicing in association with a firm, differently than the mainstream lawyers of the firm;
- a retired partner of the firm who remains associated with the firm and available for occasional consultation;
- a lawyer in effect a probationary partner to be;
- a permanent status in between those of partner and associate lacking an expectation of likely promotion to full partner status.

In addition, the “of counsel” designation can apply to a lawyer either to meet temporary staffing needs, provide special expertise not available in the firm or to the “of counsel” lawyer or because the law firm and the “of counsel” lawyer jointly represent clients on a recurring basis.

Professional relationships NOT befitting of the title “of counsel”

Relationships to which the “of counsel” designation may not be ethically applied are:

- a relationship involving only an individual case;
- a relationship of forwarder or receiver of legal business;
- a relationship involving only occasional collaborative efforts among otherwise unrelated lawyers or firms;
- the relationship of any outside consultant.

None involve a “close, regular, personal relationship” and are not ethically an “of counsel” relationship.

PRACTICE TIP



“Of counsel” relationship ethical requirements are based on a combination of RPC 34, RPC 85, and ABA Formal Opinion 90-357.

Combining RPC 34, 85 and ABA Formal Opinion 90-357, the ethical requirements for an “of counsel” relationship are:

- there must be a close, regular and personal relationship between the “of counsel” lawyer and the firm;
- the relationship must not involve conflicts of interest;
- the title must not be otherwise false or misleading;
- if the “of counsel” lawyer is not licensed in North Carolina, any pertinent jurisdictional limitations on the lawyer’s entitlement to practice must be indicated.

What are the ethical pitfalls of an “of counsel” relationship?

Conflicts

An “of counsel” lawyer and the firm must make sure there are no conflicts of interest that prevent the formation of the “of counsel” relationship. N. C. Rules of Professional Conduct Rules 1.7 et seq. should be reviewed. Because conflicts of interest may arise during the relationship, conflicts must be continuously checked and dealt with, just as if the “of counsel” lawyer was a member of the law firm. In North Carolina, except in limited circumstances, a conflict involving one member of a firm is imputed to all members of the firm (Rule 1.10). The same rule would likely apply to the “of counsel” lawyer and the law firm.

Advertising

ABA Formal Opinion 90-357 states the “of counsel” title must not be false or misleading. NC Rule 7.1(a) states: “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.” N.C. Rule 7.5(a) states: “A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1.” If the “of counsel” lawyer is providing legal services in his or her own law practice and not in connection with the firm to which he is “of counsel,” he should use his own stationary and not that of the firm. This will help avoid misleading his client into thinking that the lawyer has the backing of the firm on this legal matter. When working on matters in common with the law firm, he should use firm letterhead that confirms his “of counsel” status with the firm.

Similarly, the “of counsel” lawyer and the firm must avoid anything that would mislead clients into thinking the “of counsel” lawyer and the law firm are more closely related than they are. Rule 7.5(e) states: “Lawyers may state or imply that they practice in a partnership or other professional organization only when that is the fact.” This issue could arise where the “of counsel” lawyer and the law firm share office space.

Fee Splitting

N.C. Rule 1.5(e) governing fee splitting between lawyers not in the same firm should refer to the “of counsel” relationship and should be permitted, subject to the requirements of Rule 1.5(e).



PRACTICE TIP

To avoid ethical pitfalls, review the N.C. Rules of Professional Conduct covering conflicts of interest, advertising, and fee splitting.

CONFLICTS. Make sure there are no conflicts of interest that prevent formation of the “of counsel” relationship.

ADVERTISING. No false or misleading advertising.

FEE SPLITTING. Review NC Rule 1.5(e) requirements.

What are the malpractice risks of an “of counsel” relationship?

Of course, conflicts of interest present a real malpractice risk, but so does the substantive law of malpractice.

The general rule is the “of counsel” lawyer is responsible for his own malpractice, but is not vicariously liable for the firm’s malpractice. The firm is liable for its malpractice and partners are vicariously liable for the malpractice of an “of counsel” lawyer acting within the actual or apparent scope of the firm’s practice and for the firm.

The “apparent scope” test is viewed from the objective perspective of a client’s reasonable expectations. A firm considering forming an “of counsel” relationship with another lawyer should carefully screen potential candidates and also monitor the relationship continuously. If the “of counsel” lawyer uses the firm’s letterhead in his or her own practice and on matters not related to the law firm, vicarious liability could be imposed on the law firm for the malpractice of the “of counsel” lawyer even if the legal matter did not involve the work of the law firm.



PRACTICE TIP

The general rule is the “of counsel” lawyer is responsible for his own malpractice, but is not vicariously liable for the firm’s malpractice.

What are some practice pointers for forming an “of counsel” relationship?

Use a written “of counsel” agreement

It would be wise to always have a written “of counsel” agreement establishing such things as status in the firm, duties, limitations on authority to act for and in the name of the firm, malpractice liability insurance, compensation, office use, benefits and termination.

Create two versions of letterhead

One version will list the “of counsel” lawyer and the other will not. Use the letterhead showing the “of counsel” lawyer’s name only when that attorney is working on a firm matter. Make sure the “of counsel” attorney abides by the same rule. Put this requirement in your written Of Counsel Agreement. This may head off vicarious liability problems.

Update your malpractice insurance

Both the law firm and the “of counsel” lawyer should contact their malpractice insurance carriers before entering into the relationship. Usually, the “of counsel” lawyer should be added to the law firm’s malpractice policy. The “of counsel” lawyer should be required to maintain his or her own malpractice policy, preferably with the same insurer. If a retiring lawyer is assuming the title “of counsel,” the lawyer should discuss with his malpractice carrier whether “tail coverage” is necessary to protect himself from claims made after his policy expired but which arose from acts or omissions committed during the policy period.

Checklist for Planning the Of Counsel Agreement

A well-drafted Of Counsel Agreement will include these essential terms:

- ☐ Title and status of the “of counsel” lawyer.
- ☐ The duties of the “of counsel” lawyer.
- ☐ What the limitations on authority are for the “of counsel” lawyer.
- ☐ The compensation of the “of counsel” lawyer.
- ☐ How the firm’s overhead will be handled.
- ☐ How fringe benefits will be handled.
- ☐ Who is responsible for malpractice coverage for the “of counsel” lawyer.
- ☐ Termination of the “of counsel” relationship.

OF COUNSEL AGREEMENT - Independent Contractor and Partnership

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This agreement is entered into as of [date], by and between JOHN Q. LAWYER ("Lawyer"), an individual, and XYZ, a general partnership (the "Firm"), regarding a Contract Partner/Of Counsel relationship between Lawyer and the Firm.

1. This agreement will be for a term of ____ months commencing on [date] (the "Term"). It is the Firm's expectation that a mutual decision regarding Lawyer becoming an Equity Partner in the Firm will be made at or prior to the conclusion of the Term.
2. Lawyer's base compensation shall be ____ Dollars (\$_____) per month (\$_____ annualized), payable semimonthly, plus an automobile allowance of \$_____ per month. In addition to Lawyer's base compensation, Lawyer shall receive an amount equal to ten percent (10%) of Lawyer's Aggregate Source Collections, as defined below, in excess of \$50,000.00. Source Collections with respect to any client shall be the product obtained by multiplying (i) the total fees and nonrefundable retainers collected by the Firm during the Term and for a period of thirty (30) days following the conclusion of the Term from that client by (ii) Lawyer's percentage share (between 0 percent and 100 percent) of source credit for that client, as mutually agreed to by you, the Intake Committee, and the Firm's Managing Partner. Aggregate Source Collections shall be the sum of Source Collections for all clients. This additional compensation shall be computed semiannually and paid to Lawyer on or before [date] (as to Aggregate Source Collections in excess of \$50,000.00). For tax purposes only, Lawyer will be compensated as if he were an Equity Partner of the Firm.
3. Lawyer hereby agrees that he (like the Firm's Equity Partners) shall have no ownership interest in the work in process, accounts receivable, or goodwill of the Firm. Lawyer hereby agrees that if he leaves the Firm during or after expiration of the Term, he will use his best efforts thereafter to assist the Firm in collecting on the unpaid work in process and unpaid accounts receivable from those clients for which he was the original source or shared source attorney.
4. If Lawyer so elects, he will be covered under the Firm's medical, disability, life, and other insurance plans at his own expense, as is the case for the Firm's Equity and Contract Partners. In addition, the Firm will afford and pay for malpractice insurance coverage for Lawyer on the same basis, if at all, as such insurance protection is afforded to Equity Partners, and will pay for his parking and dues for the State Bar of Any state and other bar association dues on the same basis as for Equity Partners.
5. In light of the Firm's desire that Lawyer actively develop and promote the Firm's financial institutions and business practice, Lawyer will be reimbursed for reasonable and documented business expenses in accordance with customary Firm procedures applicable to Equity and Contract Partners. Further, the Firm will pay the membership dues for such trade associations set forth on Schedule A hereto.
6. As a Contract Partner/Of Counsel, Lawyer is not required to contribute capital to the Firm, nor will he have any formal voting rights at any Partnership meetings. Otherwise, he will be welcome to participate in discussions and meetings of the Firm and of the Partnership, except as to Partnership meetings or portions of meetings where only Equity Partners may participate.

In addition, Lawyer will be given copies of periodic Firm financial information normally distributed to Contract Partners. Lawyer will not share in or be liable for any profits or losses of the Firm, including any malpractice liability not arising from his acts. He will be designated as the billing attorney on clients for which he is the source attorney, subject to the approval of his Department Head and the Firm's Managing Partner.

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7. Section of the Firm's Partnership Agreement, a copy of which section is attached hereto and incorporated herein, shall be applicable to this Contract Partner/Of Counsel arrangement.
8. Lawyer may assign his rights and delegate his duties under this agreement to a professional corporation of which he is the sole shareholder and employee. In accordance with the foregoing, the parties hereby execute this Agreement as of the date first set forth above.

"Lawyer"

John Q. Lawyer

"Firm"

By: _____
{Partner}, Managing Partner

OF COUNSEL AGREEMENT - Independent Contractor and Partnership (Alternate Language)

Agreement made [date of agreement], between [name of partnership], a partnership engaged in the general practice of law with its principal place of business at [address of partnership] (the “Firm”), and [name Of Counsel], of [address Of Counsel] (“Of Counsel”).

SECTION ONE. TERM; RENEWAL

This agreement shall terminate on [date of termination of agreement], but shall be renewable from year to year for additional periods of one year, upon Of Counsel’s application to the executive committee of the Firm, submitted at [number of days] days before the anniversary date of this agreement. The executive committee shall act upon the application within [number of days] days after its receipt, but failing such action, this agreement shall be renewed on the same terms for the further period of one year from such anniversary date of this agreement.

SECTION TWO. TITLE

Of Counsel’s title will be “Of Counsel.” The Firm will be permitted to list Of Counsel’s name in that capacity, as it deems fit, on letterheads, brochures, professional listings (such as Martindale-Hubbell), and other promotional materials.

SECTION THREE. NATURE OF RELATIONSHIP

Of Counsel’s status will be that of an independent contractor, and not an employee of the Firm.

SECTION FOUR. HEALTH AND LIFE INSURANCE

The Firm shall take such steps as may be necessary to assure that Of Counsel is eligible to remain a member of the group covered by the Firm’s health and life insurance policy. Of Counsel thus will have the opportunity to purchase from the Firm’s health and life insurance carrier such coverage as the carrier offers at group rates, at Of Counsel’s own expense. If the Firm, rather than Of Counsel, is billed by the carrier, then the Firm, in turn, will bill Of Counsel for the amount that is reimbursable to the Firm.

SECTION FIVE. DUTIES OF FIRM

The Firm will provide Of Counsel with an office in the Firm’s [location of facility] facility, equivalent in size to an associate’s office, as long as Of Counsel makes minimal use of the office. Of Counsel will also have access to all of the Firm’s office services (e.g., telephone, computer on-line service, internet and e-mail access, facsimile, photocopying). The Firm will also provide secretarial assistance, limited to:

- A. handling of correspondence related to professional organizations of which Of Counsel may be a member;
- B. forwarding of mail to Of Counsel; and
- C. responding to telephone calls made to Of Counsel.

The Firm will pay or reimburse Of Counsel for the use of parking facilities in the building where Of Counsel’s office is located.

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The Firm will pay or reimburse Of Counsel for [name of state] and [name of county] bar association, [OPTIONAL: and American Bar Association] dues. In addition, if Of Counsel becomes involved in one of the substantive committee of the state bar [OPTIONAL: or the American Bar Association], the Firm will pay the expenses associated with those activities.

Of Counsel may attend meetings of the Firm's partners. Upon Of Counsel's request to the secretary of the executive committee, Of Counsel will receive copies of agenda materials for such meetings.

SECTION SIX. COMPENSATION; CLIENT DEVELOPMENT

Of Counsel will receive no compensation from the Firm for his or her service as Of Counsel. In consideration of the provision of services mentioned in SECTION FIVE above. Of Counsel agrees to assist the Firm, to a reasonable degree, with client development efforts upon request by the Firm, but not to exceed the expenditure by Of Counsel of more than [number of hours] hours per month. Should Of Counsel incur any out-of-pocket expenditures for such activity (e.g., expenses for client entertainment or meals), Of Counsel will be reimbursed by the Firm for such expenditures.

SECTION SEVEN. RETIREMENT BENEFIT; PRACTICE OF LAW

During Of Counsel's services as Of Counsel, the Firm will pay to [him/her] the retirement benefit provided for retired partners under the Firm's partnership agreement. As long as the Firm is paying such benefit to Of Counsel, [he/she] will refrain from the active practice of law within a radius of [number of miles] miles of the Firm's principal office located at [address of office]. "Active practice of law" means the provision of legal service or advice to clients, whether or not for compensation, however, it does not include serving as an arbitrator or mediator in Of Counsel's personal capacity and not as a representative of the Firm [and off its premises], nor writing articles or making addresses to professional organizations. Should the Firm request that Of Counsel perform any legal services, by way of providing advice to other lawyers of the Firm or to clients of the Firm, the Firm will first agree with Of Counsel upon an appropriate method and amount of compensation, and will undertake to provide and pay for legal malpractice insurance for Of Counsel. Except as stated in the preceding sentence, and except to the extent otherwise required by provisions of the partnership agreement, the Firm will not provide Of Counsel with any legal malpractice insurance.

SECTION EIGHT. ARBITRATION

Any dispute between the Firm and Of Counsel arising out of this agreement shall be settled by arbitration in [name of city], [name of state], according to the commercial arbitration rules of the American Arbitration Association, before a single arbitrator who shall be a partner in a law firm with at least [number of partners] partners, and who shall have been a member of the bar of [name of state] for at least [number of years] years.

Judgment upon any arbitration award may be entered and enforced in any court of competent jurisdiction. Notwithstanding the foregoing, either party to this agreement, by notice to the American Arbitration Association, may insist that the arbitration be conducted by [number of arbitrators] arbitrators and that the arbitrators be selected as prescribed in the Firm's partnership agreement.

SECTION NINE. TERMINATION OF AGREEMENT

This agreement may be terminated by either party at any time on a finding of a breach of professional ethics by either party, a disclosure by either party of confidential information, or the suspension or termination of either party's license to practice law in [name of state].

SECTION TEN. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding on either party except to the extent incorporated in this agreement.

SECTION ELEVEN. MODIFICATION OF AGREEMENT

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

SECTION TWELVE. GOVERNING LAW

This agreement shall be governed by, construed, and enforced in accordance with the law of [name of state].

SECTION THIRTEEN. ASSIGNMENT OF RIGHTS

The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

SECTION FOURTEEN. SECTION HEADINGS

The titles to the sections of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

Each party to this agreement has caused it to be executed at [place of execution] on the dated indicated below.

Date: *[date of execution]*

_____ *{Name Of Counsel}*

[Name of partnership]

By: _____ *[Name of officer of partnership]*

[Title of officer of partnership]

OF COUNSEL AGREEMENT - INDEPENDENT CONTRACTOR AND PROFESSIONAL SERVICE CORPORATION

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This Agreement is made on _____, 20____, between XYZ, P.C., a professional corporation (“Corporation”) and JOHN Q. LAWYER, an individual (“Lawyer”). The parties mutually desire that Lawyer establish an “Of Counsel” relationship to the Corporation. Accordingly, the parties desire to set forth the terms and conditions by which that relationship shall be governed. Therefore, it is agreed between the parties as follows:

1. **Employment.** The Corporation shall retain and employ Lawyer as an independent contractor, not as an agent or employee, in an “Of Counsel” relationship to the Corporation.
2. **Term.** The employment of Lawyer shall commence upon the date first set forth above and shall continue until such time as either party terminates the Agreement by thirty (30) days’ advance written notice to the other.
3. **Duties.** During the term of this Agreement, Lawyer, subject to his availability and upon the request of the Corporation, shall: (a) assist the Corporation in its continuing legal education program for its members and associates; (b) review litigation files for the purpose of consulting on and recommending trial preparation, pleadings, strategy, and settlement; (c) assist attorney responsible for litigation files in pretrial discovery, motions, briefs, and trial; (d) in his discretion, and with the agreement of the Corporation, assume responsibility for conducting discovery, motions, and trials, appellate proceedings, and related matters; and (e) engage in other activities relating to firm development and client development for the Corporation.
4. **Time Requirements.** Lawyer shall not be required to perform any specified number of hours of service to the Corporation. However, he shall devote such time as may be necessary to handle and complete those matters which he undertakes for the Corporation or for which his services are engaged by clients of the Corporation, and otherwise discharge his duties as set forth in paragraph 3 of this Agreement.
5. **Compensation.** The Corporation shall pay Lawyer as fees for his services at an hourly rate equal to eighty percent (80%) of the rate that his time is charged to any particular client or matter. Lawyer’s time will be billed by the Corporation at the same rate as a senior shareholder’s time is billed to a particular client or matter for similar services. With regard to any contingent fee matter or other matter for which it has been agreed with the client that billing will be at the conclusion of the matter, Lawyer’s fees will be paid at such time as the matter is concluded. For the purposes of this Agreement, matters will be deemed “concluded” and fees determined to be due within thirty (30) days after a final bill has been submitted to the client or a binding settlement executed on behalf of the Corporation’s client. However, except as to fees related to clients or matters that Lawyer originates and for which he is principally responsible, his fees shall not be contingent on payment of the bill or receipt of fees by the Corporation. With regard to time spent by Lawyer in connection with the Corporation’s continuing legal education program, Lawyer will be paid at the rate of \$_____ per hour. As additional compensation, the Corporation shall:
 - A. Pay the dues for the Lawyer’s membership in the American Bar Association, the State of {any state}, and the {any county} Bar Association.
 - B. Cover Lawyer under the Corporation’s group health insurance plan and pay all premiums related thereto;
 - C. Pay non-reimbursed expenses arising in connection with attendance at American Bar Association Committee meetings;
 - D. Cover Lawyer under the Corporation’s professional liability (i.e., errors and omissions) insurance policy and pay all premiums related thereto; and

- E. The Corporation may, in its discretion, pay to Lawyer bonuses at such times and in such amounts as it deems appropriate.
6. **Expenses.** The Corporation shall reimburse Lawyer for all reasonable out-of-pocket expenses (including automobile mileage) incurred or advanced by Lawyer in connection with any client matter or entertainment or business promotion expense.
 7. **Records.** Lawyer shall keep records of all time spent and expenses incurred in the same manner and in the same form as is prescribed for members and associates of the Corporation. Such time and expenses shall be submitted to the Corporation's office manager on at least a semi-monthly basis, that being on the fifteenth (15th) day and the last day of each month or if that day falls on a weekend or holiday, on the business day just preceding that date.
 8. **Billing.** It shall be the obligation of the Corporation to prepare and mail all bills to clients to whom Lawyer renders service or expends costs in the manner and form generally utilized by the Corporation. Lawyer shall receive a copy of all bills prepared by the Corporation for services rendered or costs advanced to clients originated by Lawyer for his review price bills being forwarded to the client.
 9. **Payment.** All fees and reimbursement of expenses due by Lawyer pursuant to Paragraphs 5 and 6 of this Agreement shall be paid by the Corporation to him on the fifteenth (15th) day of each month for all amounts determined to be due prior to the last day of the preceding month, and on the last day of each month for all amounts determined to be due prior to the fifteenth (15th) day of the same month.
 10. **Taxes.** It shall be Lawyer's sole responsibility to pay such federal, state, and local taxes (including but not limited to income taxes and FICA taxes) as may be imposed or levied upon the income earned or derived by him under this Agreement. It is expressly understood and agreed that the Corporation shall not withhold any such taxes from the compensation paid to Lawyer.
 11. **Support.** The Corporation shall provide Lawyer with necessary and suitable office space, office supplies, office furniture, and dictating equipment. In addition, the Corporation shall provide Lawyer with nonexclusive secretarial and clerical services. With regard to any client or matter originated by Lawyer, the Corporation will assign such attorneys and other personnel to assist Lawyer as may be necessary. The assignment of particular personnel to such matters shall be at the discretion of the Corporation, upon consultation with Lawyer, based upon the availability, qualifications, abilities, and experience of such attorneys or other personnel.
 12. **Legal Directories.** During the term of this agreement, the Corporation shall, at its sole expense, cause Lawyer's name to be listed as "Of Counsel" on the Corporation's stationery, in the Martindale-Hubbell Directory, any state and any county Bar directories, telephone directories, and in other listings or directories, in which the Corporation may from time to time list the name of its members and associates of the Corporation.
 13. **Announcements and Cards.** The Corporation shall, at its sole expense, cause announcements of Lawyer's association with the Corporation to be printed and sent to such persons or organizations as the Corporation may designate. Further, the Corporation, at its sole expense, shall provide Lawyer with business cards indicating his association with the Corporation in the form and style generally utilized by the Corporation.
 14. **Termination.** This Agreement may be terminated at the discretion of either party, with or without cause, upon the party wishing to terminate the Agreement and giving the other party at least thirty (30) days' advance notice of the termination. If this Agreement is terminated, Lawyer shall be entitled to receive from the Corporation payment of all sums that may thereafter become due for services performed by during the term of this Agreement.
 15. **Death or Dissolution.** In the event of death during the term of this Agreement, all sums that are then payable to Lawyer or thereafter become payable to him for services rendered prior to his death, shall be paid to Lawyer's personal representative in accordance with this Agreement as though Lawyer were still alive. In the event of dissolution of the Corporation during the term of this Agreement, the Corporation shall pay all sums due or to become due to Lawyer under this Agreement pursuant to its plan for liquidation or dissolution.

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16. **Binding Effect.** This Agreement shall be binding upon the heirs, personal representatives, administrators, executors, and assigns of each of the parties.
17. **Partial Invalidity.** It is expressly understood and agreed by the parties that should any paragraph or any provision or portion of this Agreement be held invalid, illegal, or void, then and in such event, any paragraph, provision, or portion so held to be invalid, illegal, or void shall be deleted from this Agreement, and this Agreement shall be read as though such invalid, illegal, or void paragraph, provision, or portion was never included herein, and the remainder of such Agreement excluding such invalid, illegal, or void paragraph, provision, or portion shall nevertheless subsist and continue with force and effect.
18. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of (any state).
19. **Modification of Agreement.** No modification or amendment of this Agreement shall be binding unless executed in writing by all parties. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision, nor shall any waiver constitute a continuing waiver.
20. **Effect of Headings.** The subject headings of the paragraphs and sub-paragraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of the provisions of this Agreement. Executed the date first appearing above.

“Lawyer”

JOHN Q. LAWYER
XYZ, P.C.

By: _____
{Name of Officer}, its {Title}

ATTEST:

_____, Corporate Secretary

OF COUNSEL AGREEMENT - Retiring Partner

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{Letterhead of Law Firm}

{Month, Day, Year}

John J. Doe, Esq.
1000 Broadway
Major City, ZZ 00000

Dear John:

As you will retire as a partner of our firm at the end of this fiscal year, the firm invites you to remain associated with us as Of Counsel, under the following terms.

1. **Title.** Your title will be “Of Counsel.” The firm will be permitted to list your name in that capacity, as it deems fit, on letterheads, brochures, professional listings (such as Martindale-Hubbell), and other promotional materials.
2. **Status; Health and Life Insurance Coverage.** Your status will be that of an independent contractor, but we shall nevertheless take such steps as may be necessary to assure that you are eligible to remain, and remain, a member of the group covered by the firm’s health and life insurance policy. In this connection, you will have the opportunity to purchase from the firm’s health and life insurance carrier such coverage as the carrier offers at group rates, and at your own expense. If the firm, rather than you, is billed by the carrier, then the firm, in turn, will bill you for the amount that shall be reimbursable to the firm.
3. **Duties of the Firm.** In addition to offering the insurance coverage aforementioned, the firm will provide you with an office in the firm’s {any city} facility, equivalent in size to an associate’s office, as long as you make minimal use thereof. The firm will also provide secretarial assistance, limited to (a) handling of correspondence related to professional organizations of which you may be a member, (b) forwarding of mail to you, and (c) responding to telephone calls made to you. You will also have access to all the firm’s office services (telephone, computer online service, facsimile, photocopy, and so forth). The firm will pay or reimburse you for the use of parking facilities in the building where your office is located. The firm will pay or reimburse you for the dues of the American Bar Association, the {State} Bar Association, and the {local} Bar Association. Reimbursement, if any, of your expenses for attendance at meetings of such organizations will require the firm’s approval before you incur such expenses. You are invited to attend meetings of the partnership. Upon your request to the secretary of the Executive Committee, you will receive copies of agenda materials for such meetings.
4. **Compensation.** You will receive no compensation from the firm for your service as Of Counsel. In consideration of the provision of services mentioned in paragraph 3, above, you agree to assist the firm to a reasonable degree, with client development efforts upon request by the firm, but not to exceed the expenditure by you of more than five hours per month. Should you incur any out-of-pocket expenditures for such activity (such as, for example, expenses for client entertainment or meals), you will be reimbursed by the firm therefor.
5. **Retirement Benefits.** No Competition. During your service as Of Counsel, the firm will pay to you the retirement benefit provided for Retired Partners under the firm’s partnership agreement. As long as the firm is paying such benefit to you, you will refrain from the active practice of law. “Active practice of law” means the

OF COUNSEL AGREEMENTS

provision of legal service or advice to clients, whether or not for compensation; however, it does not include serving as an arbitrator or mediator in your personal capacity and not as a representative of this firm (and off its premises), nor writing articles or making addresses to professional organizations. Should the firm request that you perform any legal services, by way of providing advice to other lawyers of the firm or to clients of the firm, the firm will first agree with you upon an appropriate method and amount of compensation, and will undertake to provide and pay for legal malpractice insurance for you. Except as stated in the preceding sentence, and except to the extent otherwise required by provisions of the partnership agreement, the firm will not provide you with any legal malpractice insurance.

6. **Arbitration.** Any dispute between us arising out of this agreement shall be settled by arbitration in the city of {any city}, State of {any state}, according to the commercial arbitration rules of the American Arbitration Association, before a single arbitrator who shall be a partner in a law firm with at least seven (7) partners, and who shall have been a member of the bar of the State of {any state}, for at least thirty (30) years. Judgment upon any arbitration award may be entered and enforced in any court of competent jurisdiction. Notwithstanding the foregoing, either party to this agreement, by notice to the American Arbitration Association, may insist that the arbitration be conducted by three arbitrators and that the arbitrators be selected as prescribed in the partnership agreement of the firm.
7. **Term.** This agreement shall extend for a period of one (1) year from the date hereof, but shall be renewable from year to year for additional periods of one (1) year, upon your application to the Executive Committee of the firm, submitted at least sixty (60) days before the anniversary date hereof. The Executive Committee shall act upon the application within thirty (30) days after its receipt; but failing such action, this action shall be renewed on the same terms for the further period of one (1) year from the date hereof.

If the foregoing is satisfactory, please sign and return one counterpart of this letter to me to evidence our agreement. We look forward to your acceptance and to a continuation of our long and pleasant relationship.

Sincerely,

JONES & SMITH

By: _____

A Partner

Acknowledged and Agreed:

John J. Doe

OF COUNSEL AGREEMENT - Potential Partner

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{Letterhead of Law Firm}

{Month, Day, Year}

John J. Doe, Esq.
1000 Broadway
Major City, ZZ 00000

Dear John:

We are delighted that we have reached an understanding with you with regard to your affiliation with Law Firm XY&Z (the “Firm”). This letter will confirm in writing our understanding regarding your relationship with the Firm, and supersedes any other arrangement, whether or not reduced to writing, you may have had with this Firm. This letter also sets forth the terms of our offer.

Commencing on {date}, you will have an Of Counsel position in the Firm. As Of Counsel, you will be expected to perform legal services on business generated by you and by other members of the Firm and to meet a commitment of a minimum of 1800 billable hours and 100 non-billable business development hours per fiscal year. You will be assigned to the Labor and Employment Practice Group. Your practice and activities will be under the direct supervision of Mr. John J. Smith, Esq.

Election to the Partnership is accomplished by vote of the Partners, once each year, based upon recommendations of the Firm’s Executive Committee. Based on existing Firm policy, you will be considered for election to Partnership for the Firm’s fiscal year beginning {date}, or at such time as the Executive Committee considers it appropriate. Since at least at the outset, virtually all your practice will be devoted to {special client}, the work you perform to increase the amount of {special client} business received by the Firm and to maintain the existing {special client} business will be taken into account and given great value in the process of your evaluation for Partner.

Following one year of employment, you may enter the Firm’s Profit Sharing Plan on the next entry date of April 1 or October 1, provided you work over 1,000 hours. If you become a Partner, you would then be required to contribute 10% of Partner compensation to the Firm’s Profit Sharing Plan. Those mandatory contributions would be withheld from your Partner compensation as paid.

You will also be eligible to make salary deferral contributions to the Firm’s 401{k} Plan, at the first plan entry date following your first year anniversary (subject to the Plan’s provision).

OF COUNSEL AGREEMENTS

The Firm will expect you to devote all of your professional time and effort to the practice of law with XY&Z, and all legal fees or other forms of compensation related to your professional services, from whatever source, shall be the income of the Firm.

Our Firm has a commitment to civic and pro bone activities, and reasonable amounts of time devoted to bar association, civic affairs, and so forth are consistent with your practice with the Firm.

You will be compensated an annualized rate of \${salary figure} payable semimonthly. You will receive the following benefits:

1. Aggregate annual reimbursement of up to \$1,000.00 for dues for country clubs, downtown luncheon clubs, athletic clubs, and other civic and social organizations you may be interested in pursuing;
2. Comprehensive hospitalization and major medical insurance {Firm pays single premium only, effective on the 91st day of employment, but family coverage is available; Cafeteria Plan with “premium conversion” available for health insurance family premiums};
3. \$150,000 group term life insurance, effective one month from date of hire;
4. Long-term disability insurance, effective date of hire;
5. \$150,000 group term accidental death and dismemberment insurance, effective one month from date of hire;
6. Two weeks paid vacation annually;
7. Dues for American, {any state}, and {any county} Bar Associations and similar preapproved professional associations;
8. Bar exam and bar review classes as necessary to take the {any state} bar exam;
9. Continuing legal education, including tuition, travel, and other costs of attending preapproved specialized seminars;
10. Professional liability insurance;
11. Up to 90 days paid disability leave.

The Firm does not offer employment on a fixed term basis, and any representations in this letter or during our meetings with you should not be construed as a proposed contract for any fixed term. Either you or the Firm has the right to terminate our association for any reason.

The Firm will review your performance from time to time in the Firm’s discretion, with the expectation that a formal review will be made approximately annually. Your rate of compensation may be adjusted, either up or down, in connection with such review. The Firm reserves the right to adjust the formal review schedule based upon its fiscal year, interim evaluations, and scheduling of other professional personnel reviews.

You have disclosed to us any potential claims against you for any act or omission in the conduct of any business conducted by you in your professional capacity as a lawyer. You agree to and do hereby indemnify and hold this Firm and its present and future partners harmless from any responsibility or liability to contribute any money to any judgment based on or settlement of any such claim (whether so disclosed or not). You understand that this Firm will not apply to our professional liability carrier for prior acts coverage for you, and therefore, any professional liability coverage for any claim arising from any act or omission in the conduct of any business conducted by you in your professional capacity as a lawyer

prior to your joining this Firm as Of Counsel must be purchased by you individually. You will, of course, be covered by the Firm's professional liability insurance policy for any act or omission in your professional capacity occurring after the date you become Of Counsel.

We trust that this letter sets forth our mutual understandings with respect to your affiliation with our Firm as Of Counsel. If there are any questions regarding our arrangement, please contact me. Assuming this letter is satisfactory, please indicate your acceptance by signing and returning to me the enclosed copy of this letter. We certainly look forward to your joining us in the practice of law and to our mutual development of your practice.

Sincerely,

XY&Z Law Firm

By: Z, Managing Partner

Acknowledged and Agreed:

John J. Doe