

PRACTICE BRIEFING

# Guidelines for Suspended Lawyers

## INTRODUCTION

---

The purpose of these guidelines is to provide lawyers and their firms with:

- » a suggested course of action if you are aware a suspension order is being sought;
- » steps that need to be taken if a suspension order is made;
- » answers to some common questions;
- » a summary of conduct which suspended lawyers are not permitted to do;
- » a reminder of the procedure that needs to be followed if a law practice wishes to seek consent to employ a suspended lawyer;
- » guidance on compliance with CPD requirements; and
- » information about applying for a practising certificate once any period of suspension has ended.

It is not intended to replace or amend any legislative requirements.

All legislative references in this Practice Briefing are to the Lawyers and Conveyancers Act 2006.

Unless the terms of any order provide otherwise, these guidelines apply to lawyers who have been suspended pursuant to an order of the:

- » New Zealand Lawyers and Conveyancers Disciplinary Tribunal (Section 242(1)(e) and s 245(1));
- » High Court (s 267(2), 268(2));
- » Court of Appeal (s267(3)(b).

If you are aware that a suspension order is being sought, you may wish to take the following steps:

1. Ensure that your files are in order, and make file notes to assist with any handover.
2. Make adequate provisions for any future court fixtures or other appointments that may be affected by a suspension.
3. Arrange for any additional signatory authorisations that may be required if you were

unable to sign documents.

4. Consider if any additional people resource may be required to cover your work if you were absent from the firm.
5. If you are in sole practice, contact your attorney and alternate to advise them of the possibility.
6. Consider contingency planning for the prospective need to relinquish your directorship/ shareholding of an incorporated law firm.
7. Consider if there will need to be any amendments made to your firm's website, Linked In profile, Instagram, FaceBook and other social media sites.

Once a suspension has been ordered and is in place, the following steps need to be taken:

- » The suspended lawyer must return their practising certificate to the New Zealand Law Society (s 39(5)) and provide the Law Society Registry with any new contact details. Where a practising certificate has been issued electronically, all electronic copies of the practising certificate must be deleted and any hard copies destroyed.
- » Any signage that may represent or suggest that the suspended lawyer is able to practise law must be removed.
- » All stationery, written and electronic documents, internet sites and advertisements that represent that the suspended lawyer is able to practise law must be removed.
- » Arrangements must be put in place for any work email or phone calls to be forwarded to another staff member or an appropriate notification applied.
- » If the lawyer is in sole practice:
  - Disconnect the lawyer's work phone/facsimile or leave a voicemail message to inform callers that their legal practice is closed and provide contact details for the lawyer's attorney; arrange an "out of office" email notification advising that the lawyer is not practising until further notice and providing contact details for the lawyer's attorney. It may be desirable to arrange for any emails or calls to be forwarded to the attorney.
  - Make arrangements for any mail or couriers to be collected for handling by the attorney.
  - If the suspended lawyer is a barrister sole, advise the instructing solicitor.
  - If the suspended lawyer has taken direct instructions, advise the persons listed as the point of contact in the application for direct instructions made to the Law Society.
  - If the suspended lawyer has legal aid files, advise the Ministry of Justice so the files can be reassigned.

A suspended lawyer is not permitted to:

- » continue to practise law;
- » provide regulated services (as defined in section 6. Note that the provision of regulated services during a period of suspension may expose a suspended lawyer's firm, partners or

co-directors to the risk of breaching s 7(2) of the Act);

- » form new lawyer-client relationships;
- » accept or undertake new legal work for existing clients;
- » supervise or assist any staff or others in the provision of regulated services;
- » communicate with clients except to:
  - inform them of the order of suspension;
  - discuss alternative legal arrangements during the term of the suspension;
  - provide a file or documents to a client or as a client directs;
  - invoice and collect fees for legal work performed prior to the suspension;
- » give an undertaking on behalf of a client or obtain or receive an undertaking from another person in respect of any legal matter;
- » occupy their office or occupy another space with a lawyer or incorporated law firm which may be in breach of Rule 11.1 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008;
- » advertise or market himself or herself as a practising lawyer or provider of regulated services;
- » certify or witness any legal document that needs to be certified or witnessed by a lawyer with a current and operative practising certificate;
- » remain a director/shareholder of an incorporated law firm.

## CONSENT TO EMPLOY

---

Section 248 of the Lawyers and Conveyancers Act 2006 sets out the requirements for an application which must be made to the Lawyers and Conveyancers Disciplinary Tribunal if a suspended lawyer wishes to be employed and/or undertake any work in relation to the provision of regulated services by another lawyer or incorporated firm. Further information regarding the procedure, including the relevant form, can be found on the Tribunal website – <https://www.justice.govt.nz/tribunals/lawyers-and-conveyancers/lc-disciplinary-tribunal/forms-and-fee/>.

## CPD REQUIREMENTS

---

As a suspended lawyer do I still have to meet the CPD requirements?

You will need to make sure that you have met the CPD requirements as at the date of suspension. You will also need to file a declaration of compliance with the CPD requirements for any part-year that you held a practising certificate.

If you have outstanding CPD requirements at the time you are suspended you are encouraged

to complete them during your suspension. If you have not completed any outstanding requirements you will need to complete them when you return to practice. Depending on the timing, you may then need to file a late declaration.

## APPLYING FOR A PRACTISING CERTIFICATE AT END OF SUSPENSION

---

If your suspension was for less than six months and your practising certificate has not expired please notify the Law Society of your intention to resume practice at the end of your suspension period by emailing [registry@lawsociety.org.nz](mailto:registry@lawsociety.org.nz). Once your notification is processed (and provided your suspension period has ended) you will be able to download your practising certificate by logging into Registry from the Law Society website page - <http://www.lawsociety.org.nz/>.

If your practising certificate has expired during your suspension period you will need to apply for a new practising certificate using the [practising certificate application form](#).

If your suspension was for a period of six months or more, you will need to apply for a new practising certificate using the [practising certificate application form](#), and your application will be referred to the Practice Approval Committee for its consideration.

If you are required to apply for a practising certificate you may wish to include any supporting documentation with the application such as evidence of rehabilitation, good character, professional development and any comments that may be relevant to your application such as steps that have been put in place to ensure that the factors that led to your suspension will not recur.

The Law Society's regulatory department is available to discuss any queries or concerns that you may have.

---

### NEW ZEALAND LAW SOCIETY

Law Society Building  
26 Waring Taylor Street  
WELLINGTON 6011

PO Box 5041  
Lambton Quay  
WELLINGTON 6145

(04) 472 7837

Information in the Practice Briefing series is provided by the Law Society as a service to members. This briefing is intended to provide guidance and information on best practices. Some of the information and requirements may change over time and should be checked before any action is taken.

**March 2018**