



PRACTICE BRIEFING: WORKING AS A LAW FIRM CONSULTANT

INTRODUCTION

Lawyers who choose to work as consultants may have a number of reasons for doing so. Consulting can offer greater flexibility in working and the opportunity to work fewer hours with less administration. It is quite common for partners in law firms to move to the role of consultant as one of the steps towards retirement. Becoming a consultant usually involves a change in employment status and raises some professional regulatory issues. This Practice Briefing has been prepared by the Law Society to provide relevant advice and information on the requirements for lawyers who work as consultants.

NATURE OF PRACTICE

As only two modes of practice are possible for barristers and solicitors, consultants must consider whether they are:

- (a) An employee of the law firm; or
- (b) Practising on own account.

An employed barrister and solicitor may work for another lawyer or for a non-lawyer. However, sole practitioners, partners and directors of incorporated law firms practise on own account.

TYPE OF EMPLOYMENT

If you are a lawyer holding a current practising certificate as a barrister and solicitor, and you are working as a consultant, you must do so either:

- (a) Under a contract of service as an employee; or

- (b) On a contract for services as an independent contractor practising on own account (exclusive or non-exclusive to the firm to which you are providing consultancy services).

This position is reflected in sections 9(1), 10 and 30(1) of the Lawyers and Conveyancers Act 2006 and chapter 15 of the Rules of Conduct and Client Care. These permit a lawyer to be engaged either as an employee or as an independent contractor.

Working under a *contract of service* makes the lawyer an employee under the normal meaning of “employee” in the Employment Relations Act 2000 and likewise in the Lawyers and Conveyancers Act. What constitutes a contract of service is a question of fact considering the real nature of the working relationship rather than the label attached to it.

The law does not recognise a third or hybrid category for a barrister and solicitor to be employed as a consultant under a *contract for services*. A person will either be an employee or not. If not an employee, a person will be an independent contractor if engaged by another person to provide services.

Where a lawyer consultant is engaged under a contract for services, he or she is free to practice outside the oversight, supervision and direct control of an employment relationship. If you are a consultant engaged on a contract for services, you must be entitled to practise on own account and you must comply with the requirements for doing so.

Updated January 2014



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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.