

**Otago District Law Society**

# A Guide For New Practitioners



**2<sup>nd</sup> Edition  
May 2004**

# CONTENTS

	<b>Page</b>
<b>1. INTRODUCTION</b>	<b>3</b>
<b>2 GOOD WORK PRACTICES</b>	<b>4</b>
2.1 Principles of Legal Practice	4
• Legal Practitioners	4
• Legal Resources	4
2.2 The Tools of Professionalism	5
2.3 Time Recording and Budgets	6
2.4 Delegated Files	7
2.5 Relationship with Clients	8
• Clear Instructions	8
• Fees	8
• Conflicts of Interest	8
• Confidentiality Obligations	9
• Client courtesies	9
2.6 Relationships with Support Staff	10
2.7 Communication Etiquette	11
2.8 Dress code	12
• High Court	12
• District Court	12
<b>3 POTENTIAL PROBLEM AREAS</b>	<b>13</b>
3.1 Professional	13
3.2 Personal	14
3.3 Financial	15
3.4 The Supervising Partner with Time Restraints	16
3.5 Problem Files	17
<b>4 TERMS OF EMPLOYMENT</b>	<b>18</b>
<b>5 THE OTAGO DISTRICT LAW SOCIETY</b>	<b>20</b>
5.1 The Function and Services provided by the Otago District Law Society	20
5.2 The New Practitioners Committee	21
5.3 The Panel of Friends	22
<b>6 THE OTAGO WOMEN LAWYERS SOCIETY</b>	<b>23</b>
<b>7 A FINAL WORD</b>	<b>24</b>



# 1 INTRODUCTION



Welcome to the legal profession.

While some of you may have had previous office experience, many of you will probably find the particular demands of a legal office somewhat daunting. These include confidentiality issues, time recording, delegation, dealing with problem clients, operating a trust account, professional conduct and various ethical matters specific to the practice of law.

At the same time as coming to terms with these types of demands, you will also be required to implement your newly acquired legal skills. The Professional Legal Studies course assists in preparing you to practise in the legal profession, but it is clear that learning specific skills in a structured classroom environment and implementing those skills in the atmosphere of a legal office are two very different things.

The purpose of this Guide for New Practitioners is to identify some of the common problems which you may face in your first years of practice and to offer suggestions as to how these problems may be addressed.

Most law firms will have their own policies and procedures which will cover many of the points raised here. If your firm has a policy manual, it should be your first point of reference as it relates to procedures within your own firm. If you haven't received a copy of your firm's manual, make sure you get one now.

This Guide for New Practitioners has been prepared by the Continuing Legal Education Committee and the New Practitioners Committee, both of which are subcommittees of the Otago District Law Society ("ODLS"). It is based on the Canterbury District Law Society's "Success Kit" and we are grateful to that society for permitting us to utilise their ideas.



## 2 GOOD WORK PRACTICES



### 2.1 Principles of Legal Practice

#### Legal practitioners

Once you are admitted to the bar as a Barrister and Solicitor of the High Court of New Zealand, the next step is to get a practising certificate to enable you to practice and to give legal advice. Your employer usually pays for a practising certificate but the onus is on each practitioner to ensure that they have a current practising certificate.

Upon receipt of your practising certificate you automatically become a member of the New Zealand Law Society (“NZLS”) and of the ODLs. You also become subject to the Law Practitioners’ Act 1982 or its successor (“the Act”) and the Rules of Professional Conduct for Barristers and Solicitors (“the Rules”).

The Act sets out the legal parameters in relation to the NZLS and the District Law Societies. It also, amongst other things, covers practising certificates, solicitors’ trust accounts and complaints.

The Rules provide guidance in relation to legal practice. You will receive a copy of the Rules when you are admitted to the bar.

#### Legal resources

A large part of the work of any new practitioner is to research legal issues. If your law firm has only a small library, you will need to be able to conduct your research using other resources, such as:

- the High Court library
- the Law Faculty library
- library web-sites.



## 2.2 The Tools of Professionalism



To succeed in terms of career progression and personal satisfaction, it helps to adopt a disciplined approach to practice. This includes:

- being familiar with your firm's policy and procedure manual;
- setting daily and weekly objectives;
- completing the most important and pressing tasks at the time of the day you feel you work the best;
- concentrating exclusively on the task you are working on;
- avoiding interruptions (if possible) where the task demands special concentration and time;
- acknowledging your lack of experience in difficult matters and seeking help or guidance;
- continually analysing your work habits by managing and reviewing your files regularly;
- returning phone calls and dealing promptly with your mail;
- keeping your diary up to date and available to your support staff;
- setting aside time each day for filing and administrative tasks;
- communicating with your clients properly, taking instructions from them when appropriate and keeping thorough file notes; and
- keeping up with your professional reading and continuing legal education.



## 2.3 Time Recording and Budgets



Lawyers generally charge by the time they spend on a matter. Often time is recorded in "units" of six minutes each.

Most law firms have time recording systems, either by computer or hand-written time-sheets. You will be expected to get into the habit of recording all your time.

Time that you record may be "chargeable" or "non-chargeable". Chargeable time is time spent working for a client, which is then recorded against that client, for billing later. Non-chargeable time is time spent which cannot be charged to a client, for example, a team meeting, training or office administration. Many firms require all chargeable and non-chargeable time to be recorded, so that information regarding productivity of the staff can be collected.

You may be given a daily target for chargeable time – 40 to 50 units a day would be normal for newly qualified solicitors.

If you have any doubts about your firm's protocol for time recording, make sure you clarify this with your supervising partner.

It is usual for solicitors to have an hourly charge-out rate. This is usually significantly lower than the charge-out rates of more experienced solicitors and partners and reflects the fact that you may take you longer to complete a task.

Be aware that not all your chargeable time will necessarily be time that can be billed to the client as fees. The total time spent on a file may be more than can be legitimately charged to a client. In that case, some of your time may be "written off". This is normal when you are starting out.

You will probably be given a "budget" which is the amount of fees you are expected to generate each year. Remember it is not chargeable time but *billed* time that counts. In some cases fees that cannot be recovered (because a client will not or cannot pay) may not be credited to your budget.

Your budget is normally based on your charge-out rate and the number of chargeable hours you are expected to recover per day on average.

For many firms, your budget performance will form at least part of the basis, if not the main basis, of assessing your performance.

While most firms make allowance for a learning curve in the first year, it is important to form the habit of good time recording right from the start.



## 2.4 Delegated Files



In the first years of practice a partner, associate or senior solicitor will delegate most of the work you do. The delegator is ultimately in charge of a file, but you are still responsible for the part of the work that has been delegated to you.

Every practitioner will have an individual method of delegation, and each delegated task will have particular characteristics. When you are first delegated a task, make sure you understand:

- what you are being asked to do
- when you are required to have the task completed
- how long you should spend on the task

As soon as possible after being delegated a task:

- read the file;
- identify all the issues that you will need to consider;
- determine whether or not it is appropriate for you to have direct contact with the client; and
- ask the person delegating the file further questions if you are unsure of any matters.

When you have completed the task, report to the delegator.

You may be delegated a file but not have the time to attend to it because of other work commitments. This problem can arise if you are being delegated files by more than one partner. In these circumstances it is important that you tell the person delegating the file of your other commitments.

Talk to your supervising partner if you are having a problem with too many delegated files.

When you begin it is likely that most tasks delegated to you will be small parts of a bigger file. If time allows, find out more about the file and where your task fits into the "bigger picture". This will help you to understand more about how to handle a whole file. As you become more experienced you will be delegated more responsibility for files until eventually you are the person solely responsible for entire files.



## 2.5 Relationship with Clients



### Clear Instructions

It is important to obtain clear instructions from your clients at all times.

Always confirm the nature and extent of the instructions in writing. Some firms have the policy of sending out engagement letters to clients when new instructions are received and advising clients of their charges at the same time.

Let your client know when you expect to complete a task, even if you have to say that it may be subject to change.

In some situations, it may be necessary to have the client sign a duplicate copy of the letter as confirmation of their instructions.

Clear instructions not only provide protection for you in cases of conflict with your clients, they also can assist your clients to see their course of legal action more clearly and to understand the process involved.

It is good practice to get into the habit of keeping file notes of everything that happens on a file. When you make or receive a telephone call, take a note of the date and time and the basic details of the call. It is a good idea to take file notes even when you only leave a message. If a problem arises later on, it is important to be able to look back and show you have kept a detailed history of what has happened on the file.

### Fees

All firms have guidelines as to fees.

Ensure that your client has the correct expectations regarding fees right from the beginning. The fees you charge can turn a satisfied client into a disgruntled one very quickly, no matter how good a job you have done for them.

If there is any doubt about the level of fees or if the client disagrees with the fees expected, make sure that you discuss the matter with your supervising partner before committing yourself (and your firm) to a particular fee with the client.

Some firms may prefer that clients pay fees in advance. Find out your firm's policy about this and when seeing a new client, consider whether you should be asking for fees in advance.

### Conflicts of Interest

A firm often cannot act in a matter where the other party is or has been a client of the firm. In big firms or in firms in small towns, this can often be a problem. You should be aware of this. Do not accept instructions from a client until you have checked your firm's client list to ensure the other party is not listed. Be aware too that conflicts of interest may arise at any time during the course of a transaction.



If there is any possibility of a conflict of interest, work out who you are acting for and resolve any potential conflicts of interest as soon as possible.

Seek advice from your supervising partner or a senior practitioner about potential conflicts if necessary.

Before dealing with a third party on behalf of your client, always obtain your client's agreement. This is the case even if (and sometimes especially if) the third party is associated with your client.

### **Confidentiality Obligations**

Check with your client as to how they want to receive information from you, then there can be no doubt.

Do not assume that a husband or wife will automatically want their spouse to know the details of any matter that they have instructed you on.

Do not send confidential information through faxes or even emails if there is a possibility that someone else will read them. This is especially true if you are sending messages to your client's place of work.

### **Client Courtesies**

Be courteous with your client, especially if you are required to explain some legal aspect repeatedly. Your client is not a lawyer so ensure you use language appropriate to your individual client.

Be clear about what you are telling your client or asking them to do.

Keep your client informed. Let them know if you are unable to do the work within the timeframe they expect. A good working relationship with your client is something to strive for. An aspect of this is ensuring that both you and your client have the correct expectations about each other at all times. Communication is the key. Send your clients copies of letters you write or receive on their behalf so that they know what is going on.

Keep in mind at all times what the client's goals are (refer to their instructions) and use them to guide what you are doing.

Remember that you are your client's advocate, and your role is to advise, not to make the decision for your client.

If you disagree with your client's decision, it is important to inform him or her of your concerns (and make full file notes) and then follow their instructions. If you are unsure, check with your supervising partner before proceeding to follow such instructions.



## 2.6 Relationships with Support Staff



As soon as you start practice you will be assigned support staff which may include a secretary and a legal executive. Often you will have to share support staff with one or more members of your firm.

Relationships between new lawyers and experienced support staff can sometimes be difficult and you will have to learn to deal courteously and clearly with any issues that arise.

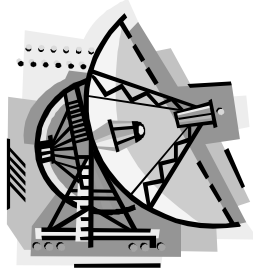
It is important to respect the experience of support staff. They will know a lot more than you do about the firm's office procedures and can be an invaluable source of help in that area.

Any concerns that you may have concerning the completing of your work in a timely manner needs to be expressed in a clear and courteous way.

If the situation becomes increasingly strained and you are having difficulty having work completed, speak to your supervising partner or to your firm's general manager or support staff co-ordinator.



## 2.7 Communication Etiquette



Communication in electronic form is becoming the fastest and easiest way to exchange information.

Many firms now have email, and will have their own practice for communicating this way.

As a general guideline, the same consideration applies to communicating via email as to writing letters:

- Be careful about sending confidential or privileged information as there is no guarantee that only the client will receive or read the message.
- If the message is read by someone other than the intended recipient, you may be breaching your duty to keep your client's affairs confidential.
- Keep personal emails to a minimum. Emails sent through your firm's computer may be seen by your employer.
- Most firms will have a particular style for setting our communications. Ensure you make yourself familiar with your firm's style.



## 2.8 Dress Code



Most firms will have a particular dress code which is usually based on their clients' expectations. The level of formality will usually vary according to your place of work and the type of law you are involved in.

### Dress worn in Court

- **High Court:**

Dark (black, dark grey) suit or skirt

White shirt or blouse

Black shoes

Dark socks or neutral/dark coloured pantihose/stockings

High Court gown

- **District Court:**

A more individual style is acceptable but your clothes should still be reasonably formal, i.e.:

Preferably a suit

Tie (men)

Shoulders covered

If you are in any doubt as to what to wear to work, ask your supervising partner or a senior solicitor in your firm.



### 3 POTENTIAL PROBLEM AREAS



#### 3.1 Professional

You must take immediate steps if you are concerned about any of the following:

- the possibility of a professional error or omission on your part or that of another practitioner;
- any suspicion that the Rules have been broken by you or another practitioner;
- uncertainty about your obligations under the Rules; or
- any concern that a client is dissatisfied with your performance.

It is important that you act immediately so that appropriate action can be taken and your firm's insurance company can be notified if necessary. Problems are only further compounded if help is not sought and positive and direct action is not taken as soon as possible.

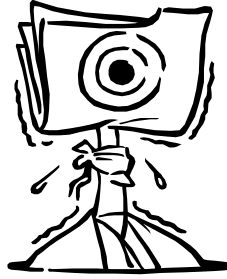
Discuss your concerns with your supervising partner or another partner in your firm.

If the problem concerns your relationship with your employer or another member of your firm, then it may help to talk to a member of the Panel of Friends (see page 22).

For some problems, you may need to talk to a practitioner from outside your firm. If you do, remember to frame your questions in relation to the law involved rather than the facts of your client's situation, thus avoiding a breach of confidence.



## 3.2 Personal



Personal problems may affect your ability to practice effectively.

Many professionals attempt to put personal problems aside. Unfortunately, these problems can often escalate to a level where they begin to affect your professional performance.

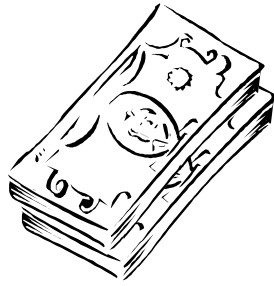
Personal problems can include health issues, lack of confidence in your work, financial problems, family problems and employment difficulties.

The solution is to discuss the way you are feeling with someone that you feel comfortable with and can trust, such as:

- a partner in your firm;
- another senior practitioner;
- a member of the Panel of Friends; or
- a professional counsellor or advisor.



### 3.3 Financial



Financial problems (real or imagined) can also affect your ability to practice effectively.

A prudent lawyer will ensure that his or her finances are well organised so that there is never any temptation to act illegally or unethically because of financial pressure.

Relationships with bankers and creditors should be conducted on a sound footing at all times. Speculative ventures by lawyers should be entered into only with care and after independent advice.

Joint undertakings with clients are subject to the Rules of Professional Conduct.

As with personal concerns, the first step is to discuss the situation with someone you trust.



### 3.4 The Supervising Partner with Time Restraints



A common problem encountered by new practitioners is a supervising partner who, due to time restraints, is unavailable for questions and assistance with delegated files.

One solution is to make an appointment with the supervising partner to discuss the matter. Explain that you require more assistance and suggest that you meet at a certain time each day to go through any issues.

Regular meetings will ensure that you are not interrupting the partner at different times throughout the day.

Try different ways to contact your supervisor – he or she may respond well to notes left on their chair, emails or messages left with their secretary. Ask whether you can go into their office when they are on the telephone and sit and wait. Take some work with you so you are not wasting time. Just listening to your supervisor on the telephone can be a good learning experience too.

If this solution does not work, you may need to speak to your practice manager or to a sympathetic senior practitioner in your firm.



### 3.5 Problem Files



Every file has its own potential for creating difficulties. The first step is to identify what the problem is.

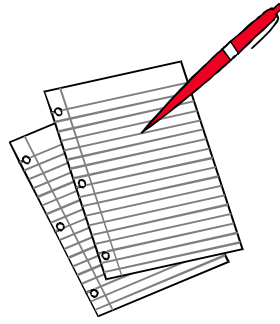
It may be a difficult client, insufficient instructions, a complex legal problem, or the conduct of another practitioner. Another potential problem is the so-called “skeleton file”. This is a file that for various reasons has been left unattended for an unreasonable length of time.

Once you have identified the problem, identify who will be able to assist by doing one or more of the following:

- Raise the matter at a staff or team meeting.
- If the problem is with a client, see your supervising partner.
- If the problem is with a delegated file and insufficient instructions, see the person who delegated the file to you, or another partner if the delegating partner/solicitor is not available.
- If the problem is a complex area of law, it is important to talk to your supervising partner first to understand which area your research should focus on. Try to get an overview by reading a general text on the subject. Discuss with your supervising partner as you proceed to make sure that you are on the right track.
- If the problem is an unhelpful practitioner, talk to your supervising partner or someone else within your firm.
- If the problem is a skeleton file, the matter may be urgent. If you are unsure, discuss what needs to happen with your supervising partner or another practitioner from your firm.



## 4 TERMS OF EMPLOYMENT



A written employment agreement ensures that both you and your employer have certainty as to what has been agreed. An individual employment agreement must be in writing and have (as a minimum) the following terms:

- A description of the work
- The place of work
- The hours of work
- Salary
- Procedures for dealing with grievances

The agreement will also usually include:

- Salary, car parks, bonus schemes, etc.
- Whether or not you are expected to work in a particular or specialised field.
- Annual leave and Statutory Holidays.
- Confidentiality clause.
- Termination clause on either side.
- Restraint of trade clause.
- Practising fees. Most firms will pay their employees' practising fees.
- Sick leave, Domestic leave, Bereavement leave, Parental leave and Marriage leave.

It will also be useful for both parties to have an understanding of what to expect in respect of the following issues which will normally be discussed at a final interview before you are employed:

- Which partner or solicitor in the firm will be responsible for your work and progress.
- The expectations of your performance, budget and work and involvements outside office hours.
- What contact (if any) you will have with clients.
- The potential for your advancement within the firm.
- The frequency and structure of Performance Reviews and how you can provide feedback to your employer.



- The basis for salary reviews.

If you are concerned about anything in terms of your employment, speak to other practitioners to find out what is considered reasonable in terms of employment contracts in your area.

Ascertain your rights and if necessary, consult an employment lawyer or the Employment Relations Service. Your prospective employer must give you time to take independent advice before signing your employment agreement.

Before discussing your concerns with your employer, define what your concerns are and what you would like to achieve from your discussion.

Consider your employer's position and what his or her response is likely to be, and how your discussion may affect the relationship between you and your employer. You will only be a good negotiator if you consider both your and your employer's positions.

A good employment agreement is beneficial to both sides and creates a good working relationship.



## 5 THE OTAGO DISTRICT LAW SOCIETY



### 5.1 The Function and Services provided by the ODLS

The NZLS and the district law societies promote the interests of the legal profession and the interest of the public in relation to legal matters.

To this end the ODLS provides the following services:

- **Library:** Reports, texts and journals, research and a good selection of databases.
- **Newsletter:** *Cur Adv Vult* is published monthly.
- **Social:** Social occasions include bar dinners, quiz nights and various other dinners and functions often for visiting or new judges. The functions are normally advertised in *Cur Adv Vult* and are a good way to meet with other practitioners, particularly senior members of the profession and judiciary.
- **Complaints:** District societies are required by law to deal with complaints against lawyers and, if necessary, to take disciplinary action.
- **Other subcommittees:** Property and Business Law, Family Law, Continuing Legal Education, New Practitioners and Common Law.



## 5.2 The New Practitioners Committee



The New Practitioners Committee (“the committee”) was established in October 1998. It is a subcommittee of the ODLS and the convenor attends and has voting rights at the monthly meetings of the ODLS council.

All practitioners who have held a practising certificate for 7 years or less are automatically members. The convenor of the committee is a new practitioner.

The committee aims to promote the interests of new practitioners within the ODLS and to provide a support group for practitioners with up to 7 years experience.

It also aims to have representatives on all the ODLS subcommittees so as to be able to keep new practitioners informed about relevant issues.

The committee is responsible for organising social functions for new practitioners throughout the year including lunches, dinners and after work drinks. These occasions provide a good opportunity to meet socially with other new practitioners.

Lunchtime seminars and workshops on topics of specific interest to new practitioners are held throughout the year.

The committee also contributes a regular column to the ODLS monthly newsletter, *Cur Adv Vult*.

The committee meets on a monthly basis and welcomes input from all new practitioners.

Any new practitioner is welcome to attend committee meetings. Contact the secretary of the ODLS or check the latest edition of *Cur Adv Vult* for meeting times.



### 5.3 The Panel of Friends



Many newly-qualified lawyers are employed in offices where they are subject to structured training and support by their peers and employers. For those who find themselves without such training and support, it is important to be able to discuss any problems with an appropriate person.

The Panel of Friends is a group of experienced lawyers specifically approved by the ODLS who are available to provide confidential advice and practical assistance to other lawyers.

There is no limit on the type of problem which can be referred to a member of the Panel of Friends. Past examples include difficulties between partners, difficulties between employers and employees, concern about ethical issues, concern about negligence and a wide range of purely personal problems including financial, emotional and health issues.

The Panel of Friends is designed to offer a sympathetic ear as well as advice. All discussions are confidential, but as with all confidential information, there may be situations in which the discussion may not be protected by legal professional privilege.

A list of the current Friends can always be obtained from the Secretary of the ODLS. A copy of the current panel of Friends is enclosed with this guide.



## 6 THE OTAGO WOMEN LAWYERS SOCIETY (“OWLS”)



O.W.L.S.

*Otago Women Lawyers Society Inc.*

The Otago Women Lawyers Society (“OWLS”) is not a subcommittee, but the convenor is a member of the ODLS Council. OWLS was one of the first womens lawyers groups set up in New Zealand and is well respected by both women and mens groups. As well as holding regular social events and seminars OWLS is involved in a national network of women’s lawyers groups and the women’s consulting group. OWLS is the host of the prestigious Ethel Benjamin address.

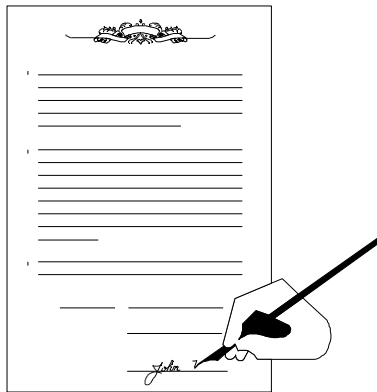
All women practitioners are welcome to join OWLS. This is a great way to meet other women practitioners at all levels of experience.

Remember that the Law Society is your society. You are encouraged to join at least one subcommittee.

The application for your practising certificate each year will include the list of subcommittees from which you can choose.



## 7 A FINAL WORD



No academic course or book will ever tell you enough about legal practice. University taught you the language of law and the approach to logical analysis. How you speak the language and apply the skills will depend on you.

The legal profession is your profession. You are responsible for shaping its future as much as any other lawyer.

Get involved, understand the issues and join in the debate. The legal profession needs you for its future.

*We would like to thank the BNZ  
for its generous sponsorship in printing  
the Otago District Law Society's  
Guide for New Practitioners*

