

Rule 13 – In-house practice

Solicitors’ Code of Conduct 2007

Professional Ethics

Dated 10 March 2007 and commencing on 1 July 2007

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Rule 13 – In-house practice

Introduction

If you are a solicitor or an REL you may practise from an office in England and Wales as the employee of a business which is not the practice of a solicitor, an REL or a recognised body (rule 12 (Framework of practice)). The rule, except for 13.04, does not apply to your overseas practice, but you must comply with 15.13 (In-house practice).

Rule 13 – In-house practice

13.01 Conditions applying at all times

- (1) You must not act for a client other than your employer under 13.02 to 13.12 if to do so would compromise:
 - (a) your professional independence or integrity;
 - (b) your duty to act in the best interests of that client;
 - (c) your duty to comply with rule 3 (Conflict of interests);
 - (d) your duty to keep information about that client's affairs confidential from your employer (unless the other client consents to disclosure, or you are acting under 13.11 as the employee of a foreign law firm); or
 - (e) your ability to discharge any other duty owed to that client under these rules.
- (2)
 - (a) In order to act for a client other than your employer under 13.04, 13.07, 13.09 and 13.11, you must have professional indemnity insurance cover.
 - (b) In all other cases you must consider whether your employer has appropriate indemnity insurance or funds to meet any award made as a result of a claim in professional negligence against you, for which your employer might be vicariously liable. If not, you must inform the client in writing that you are not covered by the compulsory insurance scheme.

13.02 Fellow employees

- (1) Subject to the provisos in 13.02(2), you may act for a person who is, or was formerly:
 - (a) a fellow employee;
 - (b) a director, the company secretary, a board member or (if the employer is an LLP) a member of your employer;
 - (c) an employee, a director, the company secretary, a board member, a trustee or (if the related body is an LLP) a member of a related body of the employer within the meaning of 13.03(1) or 13.08(c); or

- (d) a contributor to a programme or periodical publication, broadcast or published by your employer (or by a related body within the meaning of 13.03(1) or 13.08(c)), but only where the contributor is a defendant or potential defendant in a defamation case.
- (2) You may act under (1) above only if:
- (a) the matter relates to or arises out of the work of the employee, director, company secretary, board member, trustee, member or contributor in that capacity;
 - (b) the matter does not relate to a claim arising as a result of a personal injury to the employee, director, company secretary, board member, trustee, member or contributor;
 - (c) you are satisfied that the employee, director, company secretary, board member, trustee, member or contributor does not wish to instruct some other lawyer or qualified conveyancer; and
 - (d) no charge is made for your work unless those costs are recoverable from another source.
- (3) Where acting in a conveyancing transaction under (1)(a) to (c) above you may also act for a joint owner/buyer and for a mortgagee.

13.03 Related bodies

- (1) You may act for:
- (a) the employer's holding, associated or subsidiary company;
 - (b) a partnership, syndicate, LLP or company by way of joint venture in which the employer and others have an interest;
 - (c) a trade association of which the employer is a member; or
 - (d) a club, association, pension fund or other scheme operated for the benefit of employees of the employer.
- (2) If you are employed in local government, (1)(a) and (b) above do not apply.
- (3) For the purpose of 13.04 to 13.07 references to your employer include related bodies of your employer as set out in (1) above, and "employment" and "employed" must be construed accordingly.

13.04 Pro bono work

- (1) You may, in the course of your employment, conduct work on a pro bono basis for a client other than your employer provided:
- (a) the work is covered by an indemnity reasonably equivalent to that required under the Solicitors' Indemnity Insurance Rules; and
 - (b) either:
 - (i) no fees are charged; or

- (ii) a conditional fee agreement is used and the only fees charged are those which you receive by way of costs from your client's opponent or other third party and pay to a charity under a fee sharing agreement.
- (2) (1) above does not permit you to conduct work on a pro bono basis in conjunction with services provided by your employer under 13.05 (Associations), 13.06 (Insurers), 13.07 (Commercial legal advice services) or 13.11 (Lawyers of other jurisdictions).

13.05 Associations

If you are employed by an association you may act for a member provided:

- (a) the membership of the association is limited to persons engaged or concerned in a particular trade, occupation or activity or otherwise having a community of interest;
- (b) the association is one formed bona fide for the benefit of its members and not formed directly or indirectly for your benefit or primarily for securing assistance in legal proceedings; and
- (c) there is no charge to the member in non-contentious matters, and in contentious matters the association indemnifies the member in relation to your costs and disbursements insofar as they are not recoverable from any other source.

13.06 Insurers

- (1) If you are employed by an insurer subrogated to the rights of an insured in respect of any matter you may act on behalf of the insurer in relation to that matter in the name of the insured, and also:
 - (a) act on behalf of the insured in relation to uninsured losses in respect of the matter;
 - (b) act in proceedings both for the insured and for a defendant covered by another insurer where the insurers have agreed an apportionment of liability; and/or
 - (c) act in the matter on behalf of the employer and another insurer in the joint prosecution of a claim.
- (2) If you are employed by a legal expenses insurer you may, provided that the insured has given specific consent, act for an insured in any proceedings which are covered by the legal expenses insurance policy, provided that the proceedings do not include:
 - (a) a personal injury claim (whether made by or for the insured); or
 - (b) a civil claim for damages which:
 - (i) exceeds the small claims limit from time to time in operation in the county court; and/or
 - (ii) is allocated or re-allocated to the fast track or the multi-track.

13.07 Commercial legal advice services

If you are employed by a commercial organisation providing a telephone legal advice service you may advise enquirers, provided:

- (a) the advice comprises telephone advice only, together with a follow up letter to the enquirer when necessary; and
- (b) you are satisfied that there is indemnity cover reasonably equivalent to that required under the Solicitors' Indemnity Insurance Rules.

13.08 Local government

If you are employed in local government you may act:

- (a) for another organisation or person to which or to whom the employer is statutorily empowered to provide legal services, subject to the conditions in (b) to (g) below;
- (b) for a member or former member of the local authority, provided that:
 - (i) the matter relates to or arises out of the work of the member in that capacity;
 - (ii) the matter does not relate to a claim arising as a result of a personal injury to the member;
 - (iii) you are satisfied that the member does not wish to instruct some other lawyer; and
 - (iv) no charge is made for your work unless those costs are recoverable from some other source;
- (c) for a company limited by shares or guarantee of which:
 - (i) the employer or nominee of the employer is a shareholder or guarantor; or
 - (ii) you are, or an officer of the employer is, appointed by the employer as an officer of the company,provided the employer is acting in pursuance of its statutory powers;
- (d) for lenders in connection with new mortgages arising from the redemption of mortgages to the local authority, provided:
 - (i) neither you nor any other employee acts on behalf of the borrowers; and
 - (ii) the borrowers are given the opportunity to be independently advised by a qualified conveyancer of their choice;
- (e) for a charity or voluntary organisation whose objects relate wholly or partly to the employer's area, provided that there is no charge to the charity or voluntary organisation in non-contentious matters, and in contentious matters the employer indemnifies the charity or voluntary organisation in relation to your costs in so far as they are not recoverable from any other source;

- (f) for a patient who is the subject of a Court of Protection Order where you are acting for a fellow employee (under 13.02 above) who is appointed as receiver for the patient; or
- (g) for a child or young person subject to a Care Order in favour of the employer on an application to the Criminal Injuries Compensation Authority.

13.09 Law centres, charities and other non-commercial advice services

- (1) If you are employed by a law centre or advice service operated by a charitable or similar non-commercial organisation you may give advice to and otherwise act for members of the public, provided:
 - (a) no funding agent has majority representation on the body responsible for the management of the service, and that body remains independent of central and local government;
 - (b) no fees are charged save:
 - (i) where the client is publicly funded; or
 - (ii) where the organisation indemnifies the client in relation to your costs in so far as they are not recoverable from any other source;
 - (c) all fees you earn and costs you recover are paid to the organisation for furthering the provision of the organisation's services;
 - (d) the organisation is not described as a law centre unless it is a member of the Law Centres Federation; and
 - (e) the organisation effects indemnity cover reasonably equivalent to that required under the Solicitors' Indemnity Insurance Rules.
- (2) (1) above does not apply to an association formed for the benefit of its members.

13.10 The Crown, non-departmental public bodies, and the Legal Services Commission

If you are employed by the Crown, a non-departmental public body, or the Legal Services Commission (or any body established or maintained by the Legal Services Commission), you may give legal advice to, and act for, other persons if in doing so you are carrying out the lawful functions of the employer.

13.11 Lawyers of other jurisdictions

- (1) You may provide legal services to your employer's clients, subject to the conditions set out in (2) below, if you are a solicitor or an REL employed by:
 - (a) a practising lawyer of another jurisdiction who:

- (i) is not struck off or suspended from the register of foreign lawyers or the register of European lawyers; and
 - (ii) is not practising in that context as a solicitor or as an REL; or
 - (b) a business (including a body corporate) whose principals (or owners and directors) are all practising through that business as lawyers of jurisdictions other than England and Wales, but do not include any principal, owner or director who:
 - (i) is struck off or suspended from the register of foreign lawyers or the register of European lawyers; or
 - (ii) is practising through or in the context of that business as a solicitor or as an REL.
- (2) You must meet the following conditions if acting for anyone other than your employer.
- (a) Even if you are qualified to do such work for your employer, you must not do, or supervise or assume responsibility for doing any of the following:
 - (i) drawing or preparing any instrument or papers, or making any application or lodging any document relating to litigation reserved to qualified persons by the Solicitors Act 1974;
 - (ii) exercising any right of audience, or right to conduct litigation, for which a solicitor would have to rely on his or her qualification as a solicitor; or
 - (iii) providing any immigration advice or immigration services, unless the employer, or a senior fellow employee, is registered with the Immigration Services Commissioner.
 - (b) You must ensure that the work is covered by professional indemnity insurance reasonably equivalent to that required under the Solicitors' Indemnity Insurance Rules.
 - (c) You must inform your client that your employer is not regulated by the Solicitors Regulation Authority and that the Authority's compulsory insurance scheme does not apply; and either give or confirm this information in writing, if you are a solicitor, and you are held out to a client as a solicitor (or as an English or Welsh lawyer) in connection with work you are doing for that client.
 - (d) You must ensure that if you are identified on the notepaper as a solicitor (or as an English or Welsh lawyer) the notepaper also states that your employer is not regulated by the Solicitors Regulation Authority.
- (3) (2)(c) and (d) above should also be read as referring to an REL being held out or identified as a lawyer, or under the REL's home title.

13.12 Regulatory bodies

If you are employed by a regulatory body you may in carrying out the function of the employer give legal advice to other persons and in the case of statutory functions may act generally for such persons.

Guidance to rule 13 – In-house practice

1. If you are a solicitor working in-house (whether in or outside England and Wales) you must comply with 20.01 (Practising certificates), and therefore will need a practising certificate. Examples of situations where you will be practising as a solicitor, and will therefore need a practising certificate, include:
 - (a) you are employed as a solicitor;
 - (b) you are held out, on stationery or otherwise, as a solicitor for your employer;
 - (c) you administer oaths;
 - (d) you appear before a court or tribunal in reliance upon your qualification as a solicitor;
 - (e) you instruct counsel;
 - (f) you undertake work which is prohibited to unqualified persons by the Solicitors Act 1974, unless you are supervised by, and acting in the name of, a solicitor with a practising certificate or another qualified person; or
 - (g) your only qualification as a lawyer is that you are a solicitor, and:
 - (i) you are employed or held out as a lawyer;
 - (ii) you undertake work in another jurisdiction which is reserved to lawyers;
 - (iii) you are registered in a state other than the UK under the Establishment Directive; or
 - (iv) you are a registered foreign legal consultant in another jurisdiction.
2. In England and Wales a number of statutory exceptions apply to qualify this. Certain in-house government solicitors are allowed to practise as solicitors without practising certificates. Some reserved work can be undertaken by non-solicitors working for local government, and therefore by non-practising solicitors working for local government. See also rule 20 (Requirements of practice) and the guidance to it.
3. A solicitor acting only as a justices' clerk in England and Wales is not practising as a solicitor and can instruct counsel without a practising certificate.
4. Although the guidance to this rule will generally apply to practice in and outside England and Wales unless otherwise stated, the only provision of rule 13 which applies to practice outside England and Wales is 13.04 (Pro bono work). However, you must also comply with the provisions of 15.13 (which relates to in-house practice overseas) in relation to your in-house practice, if you are employed at an office outside England and Wales (or if you are an REL, employed at an office in Scotland or Northern Ireland).

5. If you are an in-house solicitor or in-house REL you are personally bound by undertakings given in the course of your professional duties – see 10.05 (Undertakings) (or, if you practise overseas, 15.10(2)).
6. When you act in your capacity as an in-house solicitor or in-house REL you should not communicate with third parties who you know are represented by another lawyer, except with that lawyer's consent. Any communication should be made through the lawyer acting for the third party.
7. You may use the stationery of, or stationery including the name of, your employer for professional work, provided:
 - (a) the letterhead or the signature makes it clear that the stationery is being used by an in-house solicitor or in-house REL on legal professional business and that person is responsible for the contents of the letter; and
 - (b) the stationery is being used for the business of the non-lawyer employer or for third parties in circumstances permitted by rule 13 or 15.13 (which relates to in-house practice overseas).
8. You may, as an in-house solicitor or in-house REL, use a style of stationery or description which appears to hold you out as a principal in a firm. However, if you are held out as a principal on notepaper and you hold or receive clients' money, you will be required to pay the full contribution to the Compensation Fund.
9. If you are an in-house solicitor the address of your employer's legal department is the place (or one of the places) where you practise and must therefore be notified to the Solicitors Regulation Authority.

Accounts rules and accountants' reports

10. If you are an in-house solicitor or in-house REL employed in England and Wales, and you receive or hold clients' money, you must comply with the Solicitors' Accounts Rules 1998. If you pay in or endorse over a cheque made out in your favour, you receive clients' money and must deal with it in accordance with the relevant rules (see note (viii) to rule 35 of the Solicitors' Accounts Rules 1998). For the name of a client account, see rule 14(3) of the Solicitors' Accounts Rules 1998. Even if a cheque is simply endorsed over to your employer, you will need to keep a record (see rule 32 of the Solicitors' Accounts Rules 1998), submit an accountant's report, and pay the full contribution to the Compensation Fund. If you receive only your employer's money you can try to ensure that all cheques are made payable to the employer. If you are an in-house solicitor or in-house REL employed overseas, the Solicitors' Accounts Rules 1998 do not apply but you must comply with similar requirements which are set out in 15.27.
11. An in-house accountant (working for the same employer) may not prepare an accountant's report for an in-house solicitor or in-house REL (see rule 37(2)(a) of the Solicitors' Accounts Rules 1998).
12. If you only undertake a small number of transactions or handle a small volume of clients' money in a year, you can apply to the Registration

department of the Solicitors Regulation Authority for a dispensation from the obligation to deliver an accountant's report. However, dispensations are not given as a matter of course.

13. If you are:

- (a) a solicitor or REL practising as an employee of:
 - (i) a local authority;
 - (ii) statutory undertakers;
 - (iii) a body whose accounts are audited by the Comptroller and Auditor General;
 - (iv) the Duchy of Lancaster;
 - (v) the Duchy of Cornwall; or
 - (vi) the Church Commissioners;
- (b) a solicitor practising as the Solicitor of the City of London; or
- (c) a solicitor or REL carrying out the functions of:
 - (i) a coroner or other judicial office; or
 - (ii) a sheriff or under-sheriff,

you need not comply with the Solicitors' Accounts Rules 1998 (see rule 5 of those rules) or submit an accountant's report. However, if you hold or receive clients' money, you must pay the full Compensation Fund contribution, but this will not apply if you come within note 13(c) above and are not practising as a solicitor.

Separate practice through a firm

- 14. If you are an in-house solicitor or in-house REL you can also be a principal in a firm. However, you must effect indemnity insurance for the firm in accordance with the Solicitors' Indemnity Insurance Rules, and notify the Solicitors Regulation Authority of the address of the firm.
- 15. The firm must not act for a private client where there is any conflict between the interests of that client and the interests of your employer.
- 16. For details regarding arrangements for the referral of clients, see rule 9 (Referrals of business).
- 17. If you hold or receive clients' money as a principal in a firm in England and Wales you must comply with the Solicitors' Accounts Rules 1998.
- 18. You may agree to reimburse your employer for that proportion of your salary and of the employer's other overhead expenses which is attributable to any work carried out in the employer's time for your firm, on the employer's premises and/or with the assistance of staff and materials provided by the employer. You must make sure that this allowance for overheads is properly calculated, otherwise there could be a breach of rule 8 (Fee sharing).

Industrial action by in-house solicitors or in-house RELs

19. It is not professional misconduct for you to strike or take other industrial action, but you must have regard to your duties to the court and third parties. Before deciding to take such action you must:
 - (a) ensure that no client for whom you act is prejudiced by the action in any crucial way, e.g. by missing a time limit;
 - (b) ensure that steps are taken to cover all court engagements;
 - (c) ensure compliance with your professional undertakings; and
 - (d) promptly arrange to notify persons who may be affected by the proposed action.

Costs recovered from third parties

20. When you put forward a claim for costs against a third party, you must, as an in-house solicitor or in-house REL, have regard to the proper indemnity basis for costs.
21. Where you act for your employer, there is no presumption that it is any cheaper to employ an in-house lawyer than to retain a firm. The court will, therefore, normally regard it as proper for your bill to be drawn on the usual principles applicable to firms. There may, however, be special cases where it is clear that a bill drawn on this basis would improperly remunerate the employer and should therefore be disallowed (see *Henderson v Merthyr Tydfil UDC* [1900] 1 QB 434 and *Re Eastwood* (deceased) [1975] Ch 112). There seems no reason in principle why such an approach should not also be applicable to non-contentious business, or to matters where you act for someone other than the employer.
22. Under certain circumstances rule 13 allows you to act for someone other than your employer, as part of your employment. In such cases there will be no breach of rule 8 (Fee sharing) when you account to your employer for costs paid either by the client, the client's opponent or another third party (see rule 8). Similarly, there will be no breach of rule 8 if you conduct work on a pro bono basis in accordance with 13.04(1)(b)(ii) and fees received by way of costs from your client's opponent or other third party are paid to a charity under a fee sharing agreement.

Direct access to client

23. If you are the senior legal adviser of a company or a local authority you should have direct access to the board or to the council and its committees, and should try to ensure that your terms of employment provide for such access. "Direct access" does not mean that all instructions and advice must pass directly to and from the council, committee or board, but you must have direct access where necessary.

Insurers and commercial legal advice services

24. If you are employed as a solicitor or REL by an insurer which runs a commercial legal telephone advice service, the restrictions in 13.07 will not apply to prevent you acting for an insured under a legal expenses insurance policy in accordance with 13.06.

Law centres, charities and other non-commercial advice services

25. If you are employed as a solicitor or REL by a law centre or advice service operated by a charitable or similar non-commercial organisation, you can advise and act for members of the public provided you comply with 13.09. This contains important provisions relating to (for example) professional indemnity, the charging of fees, and the independence of the body responsible for the management of the service. A solicitor or REL who works as a volunteer for such an advice service must comply with the Solicitors' Indemnity Insurance Rules unless exempted by a waiver.

Lawyers of other jurisdictions

26. In-house practice in England and Wales includes any employment by a business with no principal, owner or director who is a solicitor or REL practising as such in the context of that business (see rule 24 (Interpretation)). As the in-house employee of a lawyer of another jurisdiction, you are not as free to act for your employer's clients as you would be if you were employed in England and Wales by a solicitor, an REL or a recognised body. Under 13.11 you may not do reserved work for clients, or (unless your employer is separately authorised) immigration work. You must also comply with special requirements as to insurance and "health warnings". Note also, that if you are employed by a foreign law firm and a principal, owner or director of the firm is a solicitor, 13.11 will not apply unless the solicitor is dually qualified and is practising only as a lawyer of another jurisdiction in the context of that business.
27. By contrast, employment overseas by a foreign law firm will not usually fall within the definition of in-house practice in rule 24 (Interpretation) if your employer is a lawyer or a law firm, provided that none of the lawyer principals or owners of the firm have been struck off or suspended from the Solicitors Regulation Authority's register of foreign lawyers.