

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION**

To: [Management/Board of Directors]
From: [Legal Counsel/Human Resources]
Date: [Date]
Subject: Risk Assessment: Misclassification of "Of Counsel" Independent Contractor

Dear [Name],

This letter serves to outline the legal and financial risks associated with the current classification of [Attorney Name] as an "Of Counsel" independent contractor rather than an employee of [Law Firm Name].

1. The Nature of the Risk

State and federal regulatory bodies (including the IRS and Department of Labor) use various "control tests" to determine employment status. Merely labeling an attorney as "Of Counsel" or "Independent Contractor" in a written agreement does not prevent a finding of an employer-employee relationship if the firm exercises significant control over how, when, and where the attorney performs their work.

2. Red Flag Indicators

Our current arrangement may be susceptible to a misclassification challenge based on the following factors:

- Provision of office space, equipment, and secretarial support.
- Integration into the firm's daily operations and marketing materials.
- Exclusivity requirements or restrictions on outside practice.
- Payment based on a fixed salary or hourly rate rather than a per-project fee.
- Firm control over work assignments and professional methods.

3. Potential Liability

In the event of a reclassification by a government agency or a private lawsuit, the firm may be liable for:

- Unpaid federal, state, and local payroll taxes.
- Unpaid overtime compensation (if applicable under the FLSA).
- Unpaid premiums for Workers' Compensation and Unemployment Insurance.
- Back-contributions to employee benefit plans (401k, health insurance).
- Significant penalties and interest charges.

4. Recommendations

To mitigate these risks, we recommend a formal review of the "Of Counsel" agreement to ensure it reflects a true independent relationship, or alternatively, transitioning the individual to a W-2 employee status.

Please contact me to discuss the next steps in our compliance review.

Sincerely,

[Your Name]

[Your Title]