



**THE LAW SOCIETY**  
**OF SOUTH AUSTRALIA**  
THE VOICE OF THE SOUTH AUSTRALIAN LEGAL PROFESSION

## **Guidelines**

### **Handling the Departure of a Legal Practitioner and the Dissolution of Law Practices**

The purpose of this Guideline is to provide practitioners with a starting point for seeking general information. It is not an exhaustive statement of all the relevant ethical obligations that might apply to specific circumstances.

If you need advice that addresses a specific set of facts, please contact Ethics and Practice on 82290229.

### **Relationship with Clients**

- 1 The client's interests are paramount and the client remains free to instruct a solicitor of choice.
- 2 The client's contractual relationship is with a firm, not an individual practitioner, unless there is an agreement to the contrary.
- 3 In the case where an employee practitioner or a partner is leaving a firm, the firm should in a timely fashion advise clients in writing of any proposed changes of the practitioner or practitioners dealing with the client.
- 4 In the case of a dissolution of a partnership, all clients should be notified beforehand or as soon as possible and be advised in writing of the proposals (if any) by the partners of the firm for the client's future representation. If no proposals are agreed, such notification should also include advice to the client as set out below.
- 5 It is the client's decision as to who will act for him or her if the person or persons dealing with his or her affairs leave the firm, or the firm is dissolved.

### **Obligations on Practitioners**

- 6 Practitioners are bound by the terms of their contractual arrangements with a firm. Those contractual arrangements should be in writing.
- 7 Regulation 4 of the *Legal Practitioners Regulations 2014* requires all practitioners to notify the Law Society of any change in practice details including dissolution of a partnership or entry into practice elsewhere. In addition, practitioners should also consider whether any other agencies should also receive notice, such as, depending on

the circumstances, the Supreme Court, Australian Taxation Office (Group Tax, Taxation Registration), Payroll Tax Office, Stamp Duties Office, Australian Securities and Investments Commission and the Department of Consumer Affairs (Business Name Registration), Auditors, Law Claims, Top Up Insurers and where any such changes may affect the registration of an Australian Business Number.

- 8 A departing practitioner must not remove any confidential information or intellectual property of the firm (such as precedents, data bases, client lists and client material) without the consent of the other partner or partners.
- 9 In the case of material consisting of client files or their contents, appropriate arrangements must be made with the client both as to the disposition of the current file or files and the payment of any outstanding or unbilled fees or disbursements. Notice of any change to the location at which client files are ordinarily kept should also be given to the Law Society.
- 10 In the case of wills and deed packets or other security packets, clients and the Law Society should be notified as to any change to the location at which the same are to be kept.
- 11 In the case of closed files appropriate arrangements should also be made by notification to the Law Society or, if appropriate, to any individual client to whom notice should specifically be given, of any change to the location at which such files are kept.
- 12 Notifications under this guideline should be given as soon as possible by the party effecting the change of location.
- 13 In the case of dissolution of partnership, practitioners should use their best endeavours to resolve outstanding partnership issues and act in good faith at all times and, in particular, use their best endeavours to agree any issues concerning confidential material or intellectual property of the firm and the terms of any notifications to clients.
- 14 It is not improper for a practitioner to contact clients for whom he/she has acted after the departure of the practitioner from a firm. However, this must be done with extreme caution and in compliance with the ethical restrictions relating to communicating directly with another solicitor's client (see Rule 33 of the South Australian Legal Practitioners Conduct Rules).
- 15 Neither a firm nor a departing practitioner should disparage each other in their dealings with clients of the departing practitioner.
- 16 Firms and departing practitioners should keep in mind whether any change in practice details may give rise to any issues of conflict of interest and, if so, should address any such issues in a timely fashion and having regard to these Guidelines.

- 17 Firms and departing practitioners should also act co-operatively and observe these Guidelines in respect of any unresolved professional indemnity claims at the time of the departure of the practitioner or the dissolution of the partnership.
- 18 Firms and departing practitioners should also consider whether any terms of engagement generally or in particular any contingency fee agreements need to be re-negotiated following the dissolution of a firm or the departure of a practitioner.

### **Procedures for Notifying Clients**

- 19 A firm should have specific written procedures in place in relation to notifying clients of dissolution of partnership or the departure of a practitioner.
- 20 Contractual arrangements between the firm and a practitioner should incorporate procedures for notifying clients on the departure of a practitioner.
- 21 When a practitioner leaves a firm or a partnership is dissolved, the firm should notify all relevant clients of the change and, where appropriate, include the advice referred to in these Guidelines.
- 22 If the firm does not advise the departing practitioner's clients, then the departing practitioner may advise those clients of his/her departure. However, the practitioner should have regard to these Guidelines and should not use the notification for the purpose of attempting to persuade the client to change solicitors.
- 23 Clients should be advised that:
  - 23.1 They do not have to follow the departing practitioner; it is their choice whether they do so or not.
  - 23.2 If, however, they choose to move their file to the departing practitioner, arrangements for the payment of costs must be made with the current firm.
- 24 A firm and its staff should not refuse to provide information to clients about the departure of a practitioner or his or her future practice details.

### **Further information:**

- [Best practice protocol for the conduct of legal practices and solicitors leaving legal practices.](#)
- GE Dal Pont, Lawyers Professional Responsibility at para 21.270, footnote 300 - [Legal Services Commission v Murphy \[2015\] QCAT 381](#) at [47]-[49]
- [Communicating with another solicitor's client](#)

*Adopted: September 2009*

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