



# **GUIDANCE FOR SOLICITORS WHEN A SOLICITOR LEAVES A LEGAL PRACTICE**

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## Preamble

The Law Society is aware of disputes arising when solicitors leave legal practices. These can arise particularly in relation to communications with clients and also “poaching” of clients. Such conduct may bring the profession into disrepute.

There are a number of important issues to recognise and carefully consider:

- **Ethical considerations:** these must take precedence over commercial considerations. Commercial considerations cannot override ethical implications.
- **Solicitor/Client Retainer:** Unless otherwise specified, the solicitor/client retainer is between the legal practice and the client and not between any individual solicitor and the client.
- **Authority to Act:** Only a principal of a legal practice can act as the solicitor for a client although obviously a principal can delegate daily carriage of a client’s matter to another solicitor.
- **The Client’s Decision:** It is the decision of the client as to who will act for the client, including when a solicitor leaves a legal practice. A solicitor acts purely as the client’s professional agent.
- **Client Files:** A solicitor leaving a legal practice cannot simply take a client’s file from the legal practice. The solicitor must obtain the authority of both the client and the legal practice.
- **Employment Contract:** As between employed solicitors and employer there may be express contractual terms and there are implied duties (including the duty of confidentiality owed to clients and to the legal practice).
- **Restraint of Trade:** The validity of individual restraint of trade clauses is a matter of law and parties should obtain their own advice.

With these points in mind, the Ethics Committee of the Law Society provides this protocol. It is designed to reflect appropriate ethical principles and procedures to guide the parties’ future conduct.

## Protocol

- *Interests of the Client:* The client is free to instruct any solicitor of the client’s choice subject to the terms of any current retainer.
- *Contractual obligations:* Solicitors are bound by any legal obligation arising out of their former contract of employment, partnership agreement or corporate engagement. **It is strongly recommended that written agreements be entered into.**
- *Procedures:* Partnership, corporate and employment agreements should contain express provision as to the procedure to be adopted when an employee leaves a legal practice, in relation to the manner in which the respective parties may inform clients of the change. Such procedures should address the required manner for written and oral communications with clients and third parties, as well as social media commentary.
- *Protocols:* The legal practice should have in place appropriate protocols for the legal practice including the email address, direct telephone number and social media links of the departing solicitor. It should incorporate whether they will be closed or redirected, and whether it is appropriate to have a message indicating the departure of the solicitor.
- *Conduct Rules:* The following rules are of particular relevance:
  - Solicitors’ Conduct Rule 5 (Dishonest and disreputable conduct)
  - Solicitors’ Conduct Rule 9 (Confidentiality)
  - Solicitors’ Conduct Rule 10 (Conflicts concerning former clients)
  - Solicitors’ Conduct Rule 13 (Completion or termination engagement)
  - Solicitors’ Conduct Rule 14 (Client Documents),
  - Solicitors’ Conduct Rule 15 (Lien over essential documents)
  - Solicitors’ Conduct Rule 33 (Communicating with another solicitor’s client)





- *After departure - client contact:*

- After leaving the legal practice, unless otherwise authorised to do so, the solicitor should not initiate contact with clients of the practice. However, this will be affected by issues such as the time which has elapsed since the solicitor's departure, whether the law practice is still acting for the client, and whether the contact relates to the same area of law. The solicitor must always be mindful of any applicable contractual, statutory or fiduciary obligations.
- The parties must not give a client misleading information about the future practice details of the departing solicitor or the reason for or circumstances surrounding the solicitor's departure.
- *Departing Solicitor details:* On request by a client the legal practice should provide contact details of a departing solicitor if the departing solicitor has provided the contact details and consented to those details being given out on request.
- *Client Files:* The departing solicitor cannot take or copy the contents of clients' files or documents, including photocopies and digital copies, nor any material such as client lists etc, without the agreement of the legal practice and the authority of the client. Solicitors should note any obligations to external bodies such as LegalAid.<sup>2</sup>

- **Solicitor conduct:**

- Departing solicitors should not mislead clients into believing they have an obligation to instruct them nor should they improperly undermine any existing solicitor/client relationship. All solicitors should be mindful of the provisions of Conduct Rule 33 (Communicating with another solicitor's client) which provides:
  - 33.1 A In representing a client a solicitor shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another practitioner unless:
    - 33.1.1 the other practitioner has previously consented;
    - 33.1.2 the solicitor believes on reasonable grounds that:
      - (i) the circumstances are so urgent as to require the solicitor to do so; and
      - (ii) the substance of the communication would not be unfair to the opponent's client;
    - 33.1.3 the substance of the communication is solely to enquire whether the other party or parties to a matter are represented and, if so, by whom;
  - or
  - 33.1.4 there is notice of the solicitor's intention to communicate with the other party or parties, but the other practitioner has failed, after a reasonable time, to reply and there is a reasonable basis for proceeding with the communication.
- In keeping with the aim of maintaining professional comity, neither the legal practice nor the solicitor should make critical comments of the other to any client.

<sup>2</sup> Solicitors should ensure that they also recognise the distinction between solicitor documents and client documents. See *Wentworth v De Montfort* (1988) 15 NSWLR 348. See also: [Alexiou v Alexandra White and ors t/as HWL Ebsworth Lawyers \[2021\] NSWSC 485](#) re the issue of ownership of file notes made by a solicitor in the course of representation.

## Additional obligations:

- **Law Society:** Solicitors must notify the Law Society in writing within 7 days of changing any of their practising details. This is the [form](https://www.lawsociety.com.au/resources/publications/forms-directory/change-in-employment-details) for notifying a change in employment details: <https://www.lawsociety.com.au/resources/publications/forms-directory/change-in-employment-details>
- **Professional Standards Scheme:** Solicitors must notify the Law Society in writing of changing any of their practice details.
- **Lawcover:** Solicitors must notify Lawcover of changes in practice details.
- **ASIC:** For ILPs, if the solicitor is a director of a legal practice, they must notify ASIC of any changes.

## Other links

- **Leaving:** <https://www.lawsociety.com.au/practising-law-in-NSW/ethics-and-compliance/regulatory-compliance/leaving>
- **Ceasing Practice:** <https://www.lawsociety.com.au/practising-law-in-NSW/working-as-a-solicitor-in-NSW/your-practising-certificate/ceasing-practise>
- **Transfer Checklist:** <https://www.lawsociety.com.au/sites/default/files/2025-02/Transfer%20checklist.pdf>
- **OLSC:** File ownership and handling: [https://olsc.nsw.gov.au/documents/OLSC\\_Factsheet\\_14\\_File\\_ownership\\_and\\_handling\\_July\\_2015.pdf](https://olsc.nsw.gov.au/documents/OLSC_Factsheet_14_File_ownership_and_handling_July_2015.pdf)
- **File Ownership:** LSJ: 26 November 2024: <https://lsj.com.au/articles/an-overview-of-file-ownership/>
- **File Handling:** LSJ: 24 February 2025: <https://lsj.com.au/articles/file-handling-and-safe-custody/>

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