

DEFINITION¹

“succeeding practice” means a practice that satisfies any one (1) or more of the following conditions in relation to another practice (such other practice being a preceding practice for these purposes):—

- (i) it is expressly held out as being a successor to the practice or part thereof of the preceding practice, or
- (ii) it is conducted by a partnership that has a majority of principals that are identical to those persons that were principals of any partnership that conducted the preceding practice, or
- (iii) it is conducted by a sole practitioner who was the sole practitioner conducting the preceding practice, or
- (iv) it is conducted by a partnership in which the sole practitioner conducting the preceding practice is a partner and where no other person has been held out as a successor to the preceding practice, or
- (v) the partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the preceding practice;

but notwithstanding the foregoing a practice shall not be treated as a succeeding practice for the purposes of the minimum terms and conditions pursuant to paragraphs (ii), (iii), (iv) or (v) of this definition if another practice is or was held out by the owner of that other practice as the succeeding practice;

NEW RUN-OFF SCHEME

One of the primary motivating factors behind the introduction of the new run-off scheme is to assist a sole practitioner to retire from practice and to transfer his or her files to another practice to ensure continuity of service for his or her clients and to assist one partner in a two partner firm to retire from practice and to allow the other partner to take a partnership in another firm and to take the files of the ceased practice to that other firm.

Under the existing regime for professional indemnity insurance, solicitors who wish to retire from practice are required to pay for two years run-off cover from the end of the indemnity period in which their practice ceases. Run-off cover has been proven to be very expensive and therefore in the view of the Society the requirement to pay for run-off cover has been an impediment to solicitors who want to retire.

It is important to bear in mind that run-off cover will not apply to a firm in respect of which there is a succeeding practice as that term is defined in the 2011 Regulations. Accordingly, in order to achieve the Society's desired intention of assisting sole practitioners to retire or one solicitor in a two partner firm to retire, the definition of a succeeding practice has been amended in the 2011 Regulations. As a result of the amendment the succeeding practice rule will not apply to a situation where:

- a) a sole practitioner retires and passes his or her files to another firm; or
- b) one partner in a two partner firm retires and the other partner takes up a partnership in another firm and takes the files of the ceased practice to the other firm,

provided that, in each case, the other firm does not expressly hold itself out as a successor to all of part of the ceased practice and does not agree to assume the liabilities of the ceased practice. If the new firm was to so hold itself out it would fall under limb (i) of the definition of a succeeding practice and if it was to assume the liabilities of the ceased practice it would fall under limb (v) of the definition of a succeeding practice.

¹ Regulation 2(a), The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 (S.I. No. 409 of 2011)

It is otherwise difficult to envisage a situation in which the succeeding practice rule would apply to either of the two situations outlined above under the new definition of a succeeding practice.

Limb (ii) of the definition only applies where the majority of principals of the new practice are identical to those persons who were principals of the ceased practice and that could not be the case in either of these situations.

Limb (iii) of the definition only applies where the new practice is run by the same sole practitioner who ran the ceased practice and that could not be the case in either of these situations.

Limb (iv) of the definition only applies where a sole practitioner moves to a another practice and that will not be the case in either of these situations.

Making payment to the ceased practice for its files does not trigger application of the succeeding practice rule.

HOLDING OUT

We are left then to examine what is meant by one practice being "expressly held out" as being the successor to all or part of the ceased practice as described in limb (i) of the definition of a succeeding practice.

It is difficult to envisage every situation in which a practice might be deemed to have expressly held itself out as a successor to a ceased practise. It is clear, however, that there are a number of situations which the other firm should take care to avoid. The other firm should:

- a) not include any reference to the ceased practise on any of its business stationery including note paper, business cards or invoices;
- b) not advertise the fact that it has taken on the business of the ceased practise;
- c) when contacting clients of the ceased practice, make a clear distinction between the two practices and emphasise to clients that it is not a continuation of the ceased practise but rather that it is a separate firm which has reached an agreement to take on the files of the ceased practice in order to offer a continuity of service to its clients to ensure there is no disruption in the handling of their legal affairs.

While it may be desirable in business development terms to use the name of the ceased practice for promotional purposes, this should be avoided if it is wished to minimise the risk of becoming a succeeding practice.