

Summary of main points

LAW

- The relationship of a client and a solicitor being the relationship of principal and agent may, *prima facie*, be terminated at will. Merely calling an authority to act irrevocable does not make it so.
- Where the first solicitor has undertaken a personal liability on behalf of the client, for instance, if a solicitor has given an undertaking, the client cannot determine the retainer without the first solicitor's consent.
- The law recognises that negligence or incompetence on the part of the principal should be taken into account in considering whether an irrevocable authority to act should stand.
- The common law allows solicitors to exercise a lien on a client's file until the solicitor's costs and outlays have been paid.
- A lien can be set aside by a direction of the Law Society.
- A lien can be set aside by order of the court.
- Where a solicitor first instructed in a matter has delayed furnishing a bill of costs or, there being no costs or outlays outstanding, has failed to transfer the file, the solicitor secondly instructed can issue a Special Summons under the *Solicitors and Attorneys Act* requiring the production of the file and other papers.

PRACTICE

- A courteous request for files and a prompt response are the keys for a smooth handover between solicitors.
- Unless he is agreeable to do so, there is no reason why the first solicitor should continue to fund a case after the client has left that solicitor.
- If costs are due, a bill of costs should be furnished without delay.

- Costs may be agreed, arbitrated or taxed.
- "No foal, no fee" arrangements determine if the client moves to another solicitor.
- The first solicitor may opt to accept an undertaking in respect of the payment costs as alternative security to a lien.
- Even in cases where an undertaking in respect of the payment of his costs is being accepted by the first solicitor, all outlays paid should be refunded immediately to him.
- The first solicitor should be released from undertakings furnished to third parties.
- No solicitor should co-operate with a client who seeks to leave a solicitor with an outstanding undertaking, contrary to law.
- The file belongs to the client.
- When a solicitor proposes to come on record for a client, the appropriate notice of change of solicitor to the court, the opposite party and the solicitor discharged must be filed and served before the notice takes effect.
- At the conclusion of a litigation case if a second solicitor recovers costs on a party and party basis, which includes the costs of work done by the first solicitor, he is accountable to the first solicitor for the appropriate portion of those costs.
- Proceeding without the file is not recommended.
- An employee leaving a firm cannot, without formal authority, take the files of clients, even the files of clients introduced by the employee.
- If a partner leaves a firm, or the partnership is dissolved, there should be prompt notification to the clients of the firm, explaining to them that they may choose to instruct whomsoever they wish.
- Files should never be a pawn in disputes between solicitors.

Sample letter of notification

Re: The practice of Smith & Jones
Client: John Murphy

Dear Mr Murphy,

We are writing to let you know that from the first day of January, 199-, our partnership arrangements will change. After that date, there will be two separate firms.

Mary Smith will continue to practise as

Tom Jones will practise as

We were concerned to notify you of the new arrangements as soon as possible. We are both committed to ensuring that there will be minimal disruption to the conduct of your business. In order that there should be no delay, we should be obliged if you would indicate at the earliest possible date which firm you wish to handle your affairs.

If you wish to transfer to Tom Jones' practice, you should complete the letter of authority attached, which is addressed to Mary Smith, authorising her to transfer your file. Your account with Mary Smith will be forwarded to you without delay.

If you do not send a letter of authority, we will take it that you wish to continue your business with Mary Smith who will proceed on the basis of the instructions already furnished.

We both take this opportunity of thanking you for your custom in the past. We wish you every success in the future.

Mary Smith.

Tom Jones.