

Succeeding practice rule

Please note that the information provided in these guidelines is intended as general guidance and does not constitute a definitive statement of law.

Definition

“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 held out as being a successor to the practice or part thereof of the preceding practice by whatever means such holding out occurs, or
- (ii) it is conducted by a partnership where half or more of the principals are identical to those persons who 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 sole practitioner who was one of the principals conducting the preceding practice, or
- (v) 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
- (vi) 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), (v) or (vi) of this definition if another practice is or was held out by the owner of that other practice as the succeeding practice.

Succeeding practice rule

One of the primary motivating factors behind the introduction of the Run-off Fund was assist solicitors who wished to retire and transfer the files of their firm to another practice to ensure continuity of service.

Prior to the introduction of the Run-off Fund, solicitors who wished to retire from practice were required to pay for two years run-off cover from the end of the indemnity period in which their practice ceased. Run-off cover proved to be too expensive and was acting as an impediment to solicitors who wished to retire.

It is important to keep in mind that run-off cover does not apply to a firm in respect of which there is a succeeding practice as that term is defined in the PII regulations. If a firm satisfies

any one of the conditions set out in (i) to (vi) under the definition of “succeeding practice” for the ceased firm, then cover is provided by the succeeding practice as a continuation of the ceased firm, rather than by the Run-off Firm.

The definition of “succeeding practice” ensures that the succeeding practice rule does not apply to situations where a sole practitioner retires and passes their files on to another firm, provided that the other firm does not expressly hold itself out as a successor to all or part of the ceased firm (condition (i)) or assume the liabilities of the ceased practice (condition (vi)).

Condition (i) applies where a practice is being held out as a successor to the ceased practice, or part of the ceased practice, for example where the practice includes “incorporating [name of ceased firm]” in their letterhead, or where the practice writes out to the clients of the ceased firm stating that they have taken over the firm.

Condition (ii) applies where half or more of the partners of a practice are identical to the partners of the ceased firm.

Condition (iii) applies where a practice is conducted by a sole practitioner, who was the sole practitioner in the ceased firm.

Condition (iv) applies where the practice is conducted by a sole practitioner, who was one of the principals in the ceased firm.

Condition (v) applies where the sole practitioner who conducted the ceased practice is a partner in a practice, and no other firm has been held out as a succeeding practice to the ceased firm.

Condition (vi) applies where a practice assumes the liabilities of the ceased firm.

None of the conditions (ii) to (vi) apply if another firm has held themselves out as a succeeding practice to the ceased firm.

Holding out

Condition (i) refers to a firm holding themselves out as a successor to the ceased practice, or part thereof.

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 practice. It is clear, however, that there are a number of situations where the practice should take care to avoid or they will automatically be deemed to be a succeeding practice to the ceased firm. The following should be avoided:

1. Do not include any reference to the ceased firm on any business stationery, included headed notepaper, business cards, or invoices.
2. Do not advertise that the practice has taken on the business of the ceased firm.
3. When contacting the clients of the ceased firm, make a clear distinction between the two practices, and emphasise to clients that the practice is not a

continuation of the ceased firm, but rather than it is a separate practice which has reached an agreement to take on the files of the ceased firm in order to offer a continuity of service to the ceased firm's 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 firm for promotional purposes, this should be avoided if the practice wishes to minimise the risk of becoming a succeeding practice.