

# CHANGE OF SOLICITOR

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### 42.1 Solicitor acting for a party

Where the address for service of a party is the business address of his solicitor, the solicitor will be considered to be acting for that party until the provisions of this Part have been complied with.

(Part 6 contains provisions about the address for service)

### 42.2 Change of solicitor – duty to give notice

- (1) This rule applies where –
  - (a) a party for whom a solicitor is acting wants to change his solicitor;
  - (b) a party, after having conducted the claim in person, appoints a solicitor to act on his behalf (except where the solicitor is appointed only to act as an advocate for a hearing); or
  - (c) a party, after having conducted the claim by a solicitor, intends to act in person.
- (2) Where this rule applies, the party or his solicitor (where one is acting) must –
  - (a) file notice of the change; and
  - (b) serve notice of the change on every other party and, where paragraph (1)(a) or (c) applies, on the former solicitor.
- (3) The notice must state the party's new address for service.
- (4) The notice filed at court must state that notice has been served as required by paragraph (2)(b).
- (5) Subject to paragraph (6), where a party has changed his solicitor or intends to act in person, the former solicitor will be considered to be the party's solicitor unless and until –
  - (a) notice is filed and served in accordance with paragraph (2); or
  - (b) the court makes an order under rule 42.3 and the order is served as required by paragraph (3) of that rule.
- (6) Where the certificate of a LSC funded client or an assisted person is revoked or discharged –
  - (a) the solicitor who acted for that person will cease to be the solicitor acting in the case as soon as his retainer is determined –
    - (i) under regulation 4 of the Community Legal Service (Costs) Regulations 2000<sup>1</sup>; or

<sup>1</sup> S.I. 2000/441.

- (ii) under regulation 83 of the Civil Legal Aid (General) Regulations 1989<sup>1</sup>; and
- (b) if that person wishes to continue –
  - (i) where he appoints a solicitor to act on his behalf, paragraph (2) will apply as if he had previously conducted the claim in person; and
  - (ii) where he wants to act in person, he must give an address for service.

(Rules 6.23 and 6.24 contain provisions about a party's address for service.)

('LSC funded client' and 'assisted person' are defined in rule 43.2)

- (7) 'Certificate' in paragraph (6) means –
  - (a) in the case of a LSC funded client, a certificate issued under the Funding Code (approved under section 9 of the Access to Justice Act 1999<sup>2</sup>), or
  - (b) in the case of an assisted person, a certificate within the meaning of the Civil Legal Aid (General) Regulations 1989.

### **42.3 Order that a solicitor has ceased to act**

- (1) A solicitor may apply for an order declaring that he has ceased to be the solicitor acting for a party.
- (2) Where an application is made under this rule –
  - (a) notice of the application must be given to the party for whom the solicitor is acting, unless the court directs otherwise; and
  - (b) the application must be supported by evidence.
- (3) Where the court makes an order that a solicitor has ceased to act –
  - (a) a copy of the order must be served on every party to the proceedings; and
  - (b) if it is served by a party or the solicitor, the party or the solicitor (as the case may be) must file a certificate of service.

### **42.4 Removal of solicitor who has ceased to act on application of another party**

- (1) Where –
  - (a) a solicitor who has acted for a party –
    - (i) has died;
    - (ii) has become bankrupt;
    - (iii) has ceased to practice; or
    - (iv) cannot be found; and
  - (b) the party has not given notice of a change of solicitor or notice of intention to act in person as required by rule 42.2(2),
 any other party may apply for an order declaring that the solicitor has ceased to be the solicitor acting for the other party in the case.
- (2) Where an application is made under this rule, notice of the application must be given to the party to whose solicitor the application relates unless the court directs otherwise.
- (3) Where the court makes an order made under this rule –
  - (a) a copy of the order must be served on every other party to the proceedings; and
  - (b) where it is served by a party, that party must file a certificate of service.

<sup>1</sup> S.I. 1989/339 to which there are amendments not relevant to these Rules.

<sup>2</sup> 1999 c.22.