

CEASING TO ACT BEFORE A CRIMINAL TRIAL

Summary: This Circular sets out the practices adopted by the District Court to manage the situation which arises when a legal practitioner wishes to cease to act for an accused whose criminal matter has been listed for trial.

1. Background

By *Criminal Procedure Rules 2005* (WA) (CPR) r 11 a legal practitioner who ceases to be instructed to act for an accused in any capacity must lodge, and serve on the DPP, a Form 3 Notice of Ceasing to Act at least 21 days before the date when the next court proceedings involving the accused is listed. If this is not possible, the practitioner must apply for leave to cease to act.

In addition, a legal practitioner has an obligation under *Legal Profession Conduct Rules 2010* (LPCR) r 27 not to terminate their retainer or otherwise cease to act for a client charged with a serious criminal offence unless, among other things, there remains sufficient time for another practitioner to be engaged by the client and to master the matter. The Court expects practitioners to structure their costs affairs with respect to a client charged with a serious criminal offence in a manner that allows them to comply with LPCR r 27.

2. Applications for leave to cease to act where a trial is listed

This part applies where:

- (a) a criminal matter has been listed for trial; and
- (b) a practitioner lodges an application for leave to cease to act pursuant to CPR r 11(2).

At the hearing of the application, and without limiting the discretion in CPR r 11(3), the practitioner should be in a position to satisfy the Court that they have satisfied their obligations under LPCR r 27, in particular that when they ceased to act there remained sufficient time for the accused to engage another practitioner and for that practitioner to master the matter.

The practitioner should also ensure that the accused is aware of the application and, if the accused is on bail, ensure, if possible, that the accused attends the hearing of the application. Where the accused is in custody, the Court will bring up the accused for the hearing of the application. If the accused does not attend the hearing of the application the practitioner should be in a position to satisfy the Court that it has not

been possible for the practitioner to secure the attendance of the accused at the hearing.

3. Lodgement of notices of ceasing to act where a trial is listed

Where:

- (a) a practitioner lodges a notice of ceasing to act after a criminal matter has been listed for trial (in circumstances in which leave is not required pursuant to CPR r 11(1)); and
- (b) a notice of acting is not filed by another practitioner at the same time,

the Court will ordinarily list the prosecution for mention before the Duty Judge. The mention will usually be at 9:15am.

The Court will summons or bring up the accused to attend the mention.

The Court will also write to the practitioner requiring their attendance at the mention before the Duty Judge. At the hearing, the practitioner should be in a position to satisfy the Court that they have satisfied their obligations under LPCR r 27, in particular that when they ceased to act there remained sufficient time for the accused to engage another practitioner and for that practitioner to master the matter.

The fact that the notice of ceasing to act was lodged not less than 21 days prior to the date of commencement of the trial (in compliance with CPR r 11) does not necessarily constitute compliance with LPCR r 27.

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