

Local Court Act
PRACTICE DIRECTION

CEASING TO ACT

The following practice direction is issued pursuant to section 21 of the *Local Court Act*. It rescinds the practice direction dated 1 July 1996 and will apply from the date of this practice direction.

BACKGROUND

Williams on "Civil Procedure – Victoria" states:

"A solicitor shown by the court record to represent a party is responsible to that party, and responsible to the court for representing the party. The solicitor cannot assert at any stage of a proceeding that he or she does not act for a party who appears from the court record to be represented by him or her. A solicitor appearing from the court record to represent a party in a proceeding is normally bound to accept service of process and to attend, in person or by counsel, whenever the proceeding is called on for mention or hearing in the court." (pp. 3252-3)

Local Court Rule 40.03(1) provides as follows:-

Where a legal practitioner ceases to act for a party in a proceeding, unless a notice of change is filed and served under rule 40.01, the legal practitioner must without delay file a notice that he or she has ceased to act and serve a copy on all parties.

The Rule is limited by rule 40.03(3) which provides:-

Except, with the leave of the Court, a legal practitioner must not file a notice under subrule (1) later than 56 days before the hearing of a proceeding.

PROCEDURES

A legal practitioner acting for a party may apply to the Court for leave to cease to act pursuant to Rule 40.03(3) by –

1. Way of letter to the Registrar stating -
 - a) that the legal practitioner is applying pursuant to Rule 40.03(3) for leave to cease to act for the party;
 - b) the reason for applying;
 - c) how and when the party was advised of the proposed application to cease to act; and
 - d) how and when the party was advised of the date and place of the hearing.

2. Filing a signed Notice of Ceasing to Act stating that the practitioner has ceased to act and the address of the party last known to the legal practitioner.

Where leave is granted to cease to act, a copy of the sealed Notice of Ceasing to Act shall be served on all parties without delay.

HUGH BRADLEY
CHIEF MAGISTRATE

2nd December 1998