

12.04 Liability of solicitors for barristers' fees

In the absence of reasonable excuse a solicitor is personally liable as a matter of professional conduct for the payment of a barrister's proper fees. Failure to obtain funds on account of a barrister's fees shall not of itself constitute reasonable excuse.

Commentary

1. A barrister does not have a contractual relationship with his instructing solicitor or the client and therefore cannot sue for his fees. He is, however, entitled to demand payment of the fee on delivery of the brief except in legal aid cases.
2. This principle applies equally to a solicitor not in private practice. See also principle 2.10.
3. The liability of a sole principal and of partners for the liabilities of their co-partners is a continuing one and is not cancelled or superseded by any transfer of the practice, without the barrister's express consent. Equally, a partner or partners in a firm remain liable for the payment of barrister's fees incurred on behalf of the firm by a deceased, bankrupt or otherwise defaulting former partner of the firm. If a transfer of a practice is contemplated, consideration should be given to outstanding barrister's fees on files taken over.
4. In normal circumstances it is recommended as per principle 4.07 that agreement be sought from the client that he will make payment on account of disbursements to be incurred. What constitutes a reasonable excuse will be determined by the Solicitors Disciplinary Tribunal on a case-by-case basis. An example of what may be considered reasonable excuse is the unexpected bankruptcy of a client in circumstances where the credit worthiness of the client was considered beyond question and the necessity to obtain funds on account of barrister's fees was not obvious.
5. For guidance on agreeing fees for counsel in civil matters, see Circular 97-279.