

HIGH COURT OF JUSTICIARY

PRACTICE NOTE

No. 3 of 2016

Continuity of Representation

It is part of an advocate's or solicitor advocate's duty towards his client to attend to his client's interests throughout the entirety of proceedings. This applies in all situations, including those in which an accused is represented by both senior and junior counsel or solicitor advocates. In such cases the junior is expected to be fully instructed in the case. If, for whatever reason, the senior is unavailable for any part of the trial, the junior is expected to be in a position to take over the defence at short notice.

The paramount importance of this professional duty was highlighted by the High Court in **McAvoy v Her Majesty's Advocate 1982 S.C.C.R 263**. A request to be permitted to leave the trial before the end of proceedings was described as "*an improper request*", except in the most exceptional circumstances.

It has come to the attention of the court that in some cases there has been a succession of different junior counsel or solicitor advocates appearing for the same accused over a number of days. This has taken place without any explanation being given to the trial judge. Although there may be occasions when it will be legitimate for either senior or junior to be absent for a short period during a trial, particularly a trial of unusually long duration, the court will be expected to be informed of that step, and the reasons for it, in advance. The substitute counsel or solicitor advocate will be expected to be instructed and prepared in such a manner as ensures continuity of representation. An adjournment will be allowed only in exceptional circumstances.

CJM SUTHERLAND

Lord Justice General

2 September 2016