



NICHOLAS WOOLF & CO

S O L I C I T O R S

87 CHANCERY LANE, LONDON WC2A 1ET

T. 020 7242 6018 F. 020 3602 5538 E. info@nicholaswoolf.com
www.nicholaswoolf.com

SEE NO EVIL, HEAR NO EVIL, SPEAK NO EVIL – CONTACT WITH WITNESSES GIVING THEIR EVIDENCE

By Nicholas Woolf, Director and Principal, Nicholas Woolf & Co and Sam Cheesbrough, Barrister, Nicholas Woolf & Co

Solicitors can often be placed in a dilemma when their client is giving evidence in the witness box, as the hearing day draws to a close or amid giving evidence. Notwithstanding the Judge's inevitable warning to the client, telling them that they cannot discuss their evidence with anybody overnight, the client is often has a burning desire to discuss the case with you.

This is not necessarily borne out of a desire to improve their evidence. Sometimes the client may want to speak with their solicitor on other, unrelated matters. Alternatively the client, brimming with adrenaline, may just want to regale you of their battle with opposing counsel (not appreciating, perhaps, that you watched it all).

It should, however, be borne in mind that the consequences for the client in failing to heed the Judge's warning can be catastrophic. If a Judge considers that your client has discussed their evidence, and is in contempt of court, this can result in the some or all of their evidence being struck out or even a spell in the cells. Even if the Judge fails to apply the law correctly and goes too far, as the case of *Hughes Jarvis Limited and Another v David Searle [2019] EWCA Civ 1*, the client is nevertheless put through an experience that is unlikely to leave the solicitor high on their Christmas card list.

Even if a solicitor speaks to their client about other matters, there is a risk of the other party (or their legal representatives) making the Judge aware of such discussions. This may place the solicitor in an uncomfortable position of having to give evidence on the matter under oath.

It is therefore important for solicitors to protect themselves and their clients, so far as is possible, from potentially disastrous consequences, whether financial or otherwise. In that regard solicitors should consider taking the following simple steps:

1. Before the hearing, encourage your client to postpone or delegate matters to others that may arise during the course of the hearing. The ideal scenario is to avoid any contact with your client until they are released from giving their evidence.
2. Before your client goes in to give evidence, ensure that you have explained to them that they will be unable to discuss their evidence with you, or any other person, until they have been released by the Judge. An adrenaline-fuelled client may not heed what the Judge says, but may nevertheless recall what you have previously told them.
3. If your client needs to speak with you on an urgent matter unrelated to their evidence, ensure that the Judge is made aware of this before they rise and seek their permission to speak with your client on that discrete matter. The Judge can then be reminded that they gave such permission if your discussions are challenged at the next sitting.
4. Before speaking with your client (with the permission of the Judge), explain the limits of what you can discuss with them. Make an attendance note of this explanation, together with what was actually discussed, as soon as such a discussion has been completed and obtain copies of it for the hearing the next day. If the other side take issue with you

speaking to your client, be prepared to produce that attendance note when you are explaining what was discussed.

5. If your client sends you an unwarranted email attempting to discuss their evidence, reply by repeating the Judge's warning and nothing more. Similarly, if a client attempts to speak with you, do not answer the phone; send an email repeating the Judge's warning.

All of this may prove in vain – your client may discuss his evidence with somebody else, or the Judge may get the wrong end of the stick. However, the risk of this taking place, even inadvertently, may be drastically reduced if the five steps above are followed.

© Nicholas Woolf, Director and Principal, Nicholas Woolf & Co and Sam Cheesbrough, Barrister, Nicholas Woolf & Co.

18th January 2019

DISCLAIMER

This note comprises the view of the author as at 18th January 2019. This note is not a substitute for legal advice. Information may be incorrect or out of date, and may not constitute a definitive or complete statement of the law or the legal market in any area. This note is not intended to constitute advice in any specific situation. You should take legal advice in specific situations. All implied warranties and conditions are excluded, to the maximum extent permitted by law.