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THE LEGAL PROFESSION ACT

THE LEGAL PROFESSION (ACCOUNTS AND RECORDS) REGULATIONS, 1999

In exercise of the powers conferred on the General Legal Council by sections 12 (7) and 35 of the Legal Profession Act and of every other power hereunto enabling the following Regulations are hereby made:—

1. These Regulations may be cited as the Legal Profession (Accounts and Records) Regulations, 1999 and shall be read and construed as one with the Legal Profession Act hereinafter referred to as the principal Act.

2.—(1) In these Regulations:—

"Accounts", "books", "ledgers" and "records" shall be deemed to include loose-leaf books and such cards or other permanent documents or records as are necessary for the operation of any system of book-keeping, computerized, mechanical or otherwise and where a computerized system is operated, the information recorded on it must be capable of being reproduced in hard printed form within a reasonable time;

"attorney" has the meaning assigned to it by section 5 of the Principal Act and includes a firm of attorneys;

"bank" means any company licensed under the Banking Act to carry on banking business;

"clients" includes any person from whom or on whose behalf an attorney in connection with his practice receives money or other property;

"Clients' trust account" has the meaning assigned thereto by regulation 3;

"financial year", in relation to an attorney, means the period of twelve months used by him as his financial year, but, where an attorney recognizes no period or a different period as his financial year, then calendar year;

"General Legal Council" or "Council" means the General Legal Council established in section 3 of the principal Act;

"general retainer" means an amount paid by a client to an attorney undertaking for a specified or unspecified period to act as that client's attorney in unidentified legal matters.

"money" includes current coin, government or bank notes, cheques, drafts, post office orders or bank money orders and funds transferred by electronic or other means, but, in relation to any requirement of any regulations, does not include money held subject to any special condition as to its disposition, being a condition inconsistent with that requirement;

"special retainer" means an amount paid by a client to an attorney in consideration of the attorney undertaking to act as that client's attorney, if engaged as such in an identified legal matter but does not include any amount paid as an advance of fees for work to be done.

"trust money" means money received by an attorney that belongs in whole or in part to a client or that is held on a client's behalf or to his or another's direction or order, and includes money advanced to an attorney on account of fees for services not yet rendered or of disbursements not yet made; and "money in trust" or "funds in trust" has the same meaning.

(2) In these Regulations:—

- (a) any reference to a book, record, file, account or other document includes a reference to any device by means of which information is recorded or stored;
- (b) in relation to information recorded or stored by means of a device, any reference to production of a book, record, file, account or other document shall be construed as a reference to making the information available.

Duty to keep clients' trust account

3.—(1) Every attorney who receives trust money (except money hereinafter in these Regulations expressly exempted from the operation of this rule) shall forthwith pay the

money into an account at a bank to be designated as a clients' trust account and to be kept in the attorney's name or the joint names of the attorney and the client; and such an account is in these Regulations referred to as a clients' trust account or trust account;

(2) An attorney may keep one or more clients' trust accounts as he or she thinks fit.

Clients' Trust accounts

4.—(1) There shall be paid into a clients' trust account only:—

- (a) trust money;
- (b) money paid to an attorney representing in part money belonging to him or her and in part trust money belonging to a client, where it is not practicable to split the payment, but money belonging to the attorney shall be drawn from the clients' trust account without delay; or
- (c) such money belonging to the attorney as may be necessary for the purpose of opening or maintaining the account.

(2) There need not be paid into a clients' trust account money:—

- (a) that a client in writing requests the attorney to withhold from the trust account or to deposit elsewhere; or
- (b) that an attorney pays into a separate account opened or to be opened in the name of a client or some person named by that client or the duly authorized agent of that client; or
- (c) that in the ordinary course of business upon its receipt is paid forthwith in the form in which it is received to or on behalf of the client; or
- (d) that is paid by the client as an advance on account of fees where the total amount so paid does not exceed \$20,000; or
- (e) interest earned on a general clients' trust account which is not an account which is maintained for a designated client.

but the handling of such money shall be shown in the attorney's books and records.

(3) There shall not be paid into a clients' trust account any money:—

- (a) that belongs entirely to the attorney or to his or her firm or any other member thereof in his or her or their professional capacity, including any amount received as a special or general retainer or otherwise in respect of which there is no duty either to account or to render services; or
- (b) that—
 - (i) is received by the attorney on account of fees for which a bill has been delivered or for services already performed and for which a bill is delivered forthwith thereafter; or

- (ii) is received by way of repayment of disbursements or expenses made or incurred on behalf of a client.

Provided that:—

- (i) where an attorney holds or receives money which includes client's money or trust money of one or more trusts:—
 - (a) the attorney may where practicable split such money and, if he or she does so, he or she shall deal with each part thereof as if he or she had received a separate sum of money in respect of that part; or
 - (b) if the attorney does not split the money he or she shall, if any part thereof consists of clients' money, and may, in any other case, pay the money into a clients' trust account.
 - (ii) where an attorney receives in full or part settlement of a bill of costs, a payment all of which is money to which the attorney is alone entitled, the attorney may elect to pay it without delay into a clients' trust account but must, if the payment is by cash, withdraw that money from the clients' trust account before the expiration of a period of seven days from the receipt of the money and, if the payment is made otherwise than by cash, before the expiration of a period of ten days from the date the trust account is credited with the payment as cleared funds.
- (4) Money in a clients' trust account to which the attorney becomes entitled shall be drawn from the trust account as soon as may be thereafter in accordance with paragraph (5) (i).
- (5) (i) There shall not be drawn from a clients' trust account money other than:—
- (a) money properly required for payment to or on behalf of a client;
 - (b) money required to reimburse the attorney for money or expenses properly expended or incurred on behalf of a client;
 - (c) money properly required for or towards payment of any debt due to the attorney from a client, including fees for which an interim or final bill has been delivered;
 - (d) money that is directly transferred into another clients' trust account and held on behalf of a client;
 - (e) money that may by inadvertence have been paid into the clients' trust account in contravention of this regulation;
 - (f) money belonging to the attorney which was paid into the clients' trust account for the purpose of opening or maintaining it.
- (ii) There shall not be drawn or paid from a clients' trust account to or on behalf of a client any sum unless the trust money held on clients' trust account on behalf of that client is not less than the sum so paid.

(6) Money permitted to be drawn from a clients' trust account under paragraph (5) (i) (b) or (c) shall not be drawn except:—

- (a) by means of a cheque drawn in favour of the attorney; or
- (b) by means of a transfer to a bank account that is in the name of the attorney and is not a clients' trust account.

(7) A cheque drawn on a clients' trust account

- (a) shall not be made payable either to cash or bearer except in exchange for a signed receipt (sufficiently identifying the recipient) for the payment; and
- (b) shall not be issued unless it is signed by at least one attorney who holds a current practising certificate.

(8) Save as permitted by paragraph (5) money shall not be drawn from a clients' trust account unless the Council specifically authorizes in writing its withdrawal.

(9) At all times an attorney shall maintain sufficient balances in his or her clients' trust account or accounts to meet all his or her obligations with respect to moneys held in trust for clients.

(10) For the purposes of paragraphs (5) and (8) cash or a bank draft negotiable by the attorney being respectively cash or a bank draft in the possession and control of the attorney, shall be deemed to be money held in a clients' trust account if deposited in the clients' trust account not later than the banking day next but one following the day the cash or bank draft was received.

Certain trust account records

5. Every attorney shall, at least once every five weeks in respect of each calendar month:—

- (i) compare the total of the balances shown by the clients' trust ledger accounts of the liabilities to the clients, including those for whom trust money is held in the trust account, with the cash account balance; and
- (ii) prepare a reconciliation statement showing the cause of the difference, if any, shown by the above comparison; and
- (iii) reconcile that cash account balance with the balances shown on trust account bank pass book or statements and money held elsewhere;

and shall preserve the records of all such reconciliations.

Records generally

6. Every attorney shall keep books, records and accounts in connection with his practice to record all money and other negotiable property received and disbursed and, without prejudice to the generality of the foregoing requirements, every attorney shall maintain:—

- (a) a book of original entry showing the date of receipt and source of money received in trust for every client and identifying the client concerned;

- (b) a book of original entry showing every disbursement out of money held in trust for every client, and identifying the client and the date of every disbursement and the name of every recipient;
- (c) a clients' trust ledger showing separately for each person on whose behalf money has been received in trust all such money received and disbursed, and any unexpended balance;
- (d) a record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made;
- (e) a book of original entry showing the date of receipt and source of all money received other than trust money;
- (f) a book of original entry showing all disbursements of money other than trust money and showing the date of every disbursement, and the name of every recipient;
- (g) a fees book or chronological file of copies of bills showing all fees charged and other bills issued to clients, the dates of such bills and charges, and identifying the clients so charged;
- (h) bank statements or pass books paid cheques and detailed duplicate deposit slips for all trust and other accounts;
- (i) an index or equivalent single source for identification of all trust accounts, inclusive of a statement of the number of each such trust account and the name and location of the Bank in which it is kept;
- (j) a register of all undertakings given in his or her practice as an attorney, showing the nature or amount of the undertaking, on whose behalf it was given and to whom it was given;
- (k) a register of all certificates of title to property, wills, valuable securities and heirlooms held in his or her custody or possession on behalf of clients.

Posting and preservation of records

7.—(1) Any book, record, file, account or other document required to be kept for the purpose of compliance with any of these Regulations:—

- (a) shall be entered and posted currently at all times;
- (b) shall be entered and posted in ink, by machine or by electronic or other device;

(2) Every attorney shall preserve for not less than nine years after the date of the last entry therein all such accounts, books, ledgers and records, passbooks and bank statements as are required to be kept for the purpose of compliance with any of these Regulations.

(3) Every attorney shall preserve for at least two years all paid cheques drawn on his or her clients' trust accounts unless he or she has arranged in writing with the relevant bank that it will retain such paid cheques for such period.

Interest

8.—(1) Subject to Regulation 14 of these Regulations, an attorney who holds money for or on account of a client shall account to the client for interest or an equivalent sum in the following circumstances:

- (i) where such money is held in an interest bearing trust account the attorney shall account to the client for the interest earned on that money;
- (ii) where such money is not so held in an interest bearing trust account, the attorney shall, subject to Regulation 9 of these Regulations, pay to the client out of the attorney's own money a sum equivalent to the interest which would have been earned during the period it should have been so held.

(2) In paragraph (1) of this regulation, for the avoidance of doubts, the reference to an attorney who holds money for or on account of a client includes the attorney holding money in his or her capacity as attorney on account of the trustees of a trust of which the attorney is a trustee.

Provided that this Regulation shall not apply to money paid to an attorney on account for or in payment of fees for work agreed to be done for the client in the future where such work is performed by the attorney as agreed.

9. An attorney shall only be required to account in accordance with regulation 8 of these rules where he or she holds for a client a sum of \$200,000 or more for 30 days or longer; or

- (i) the attorney holds for a client a sum of money exceeding \$200,000 for less than 30 days and it is fair and reasonable to so account having regard to all the circumstances; or
- (ii) the attorney holds money continuously which varies significantly in amount over the period during which it is held and it is fair and reasonable so to account having regard to any sum payable under paragraph (i) of this regulation and to the varying amounts of money and length of time for which these are held; or
- (iii) the attorney holds sums of money intermittently during the course of acting for a client and it is fair and reasonable so to account having regard to all the circumstances including the aggregate of the sums held and the periods for which they are held notwithstanding that no individual sum would have attracted interest under paragraph (i) of this regulation; or
- (iv) regulation 10 of these Regulations applies.

Provided that an attorney shall not be required to account in accordance with regulation 8 where the client deposits or causes money to be deposited in an account maintained by the attorney until the attorney becomes aware of the deposit or ought reasonably to have been aware of it.

10. Where money is held by an attorney for or on account of a client for a continuous period and the money is held in a separate interest bearing trust account for that client for only

part of that period and regulation 9 (i) and (iii) of these Regulations does not apply, the attorney shall:

- (i) for the part of the period during which the money was so held in a separate interest bearing trust account, account for interest in accordance with regulation 8 (1) (i) of these Regulations; and
- (ii) for the rest of the period, pay interest where it is fair and reasonable to do so having regard to all the circumstances including the interest which would have been payable under regulation 9 (i) to (iii) if the money had not been kept in an interest bearing trust account for the whole of the period.

11. For the purposes of regulation 8 (1) (ii) of these regulations the sum payable to the client shall be calculated by reference to:

- (i) the interest payable on an interest bearing trust account at the bank where the money is held; or
- (ii) where the money, or part of it, is held in successive and concurrent accounts maintained at different banks, the highest rate of interest which was being offered by those banks on such accounts on the day when the sum payable under regulation 8 (1) (ii) commenced to accrue; or
- (iii) where, contrary to the provisions of these Regulations, the money is not held in a trust account, the rate of interest stated by the Bank of Jamaica as the commercial banks weighted deposit rates for 1 month and less than 3 months during the relevant period.

12. Subject to regulation 14 (c) of these Regulations, where an attorney holds money as a stakeholder (whether or not such money is paid by a client of the attorney) the attorney shall pay interest in accordance with Regulations 8-11 save that such interest shall be paid to the person to whom the stake is paid.

13. Without prejudice to any other remedy which may be available to him or her, any client who feels aggrieved that interest or a sum equivalent thereto has not been paid to him or her under these Regulations shall be entitled to apply to the Council for a certificate as to whether or not interest ought to have been earned for him or her and, if so, the amount of such interest: and the Council may, after giving the attorney an opportunity to respond to the application, issue the certificate applied for and upon the issue of such a certificate the sum certified to be due shall be payable by the attorney to the client.

14. Nothing in these Regulations shall:—

- (a) affect any arrangement in writing, whenever made, between an attorney and his client as to the application of the client's money or interest thereon;
- (b) apply to money received by an attorney:
 - (i) being money subject to a trust; or
 - (ii) in his or her capacity as trustee rather than as attorney, on account of the trustees of any other trust of which the attorney is a trustee;

- (c) affect any agreement in writing for payment of interest on stakeholder money held by an attorney.

15.—(1) The Council may at any time direct an investigation to be made by a person designated by the Council of the books, records, files, accounts and other documents relating to the trust accounts of any attorney for the purpose of ascertaining and reporting whether the relevant provisions of these Regulations have been complied with by such attorney.

(2) Before instituting any investigation otherwise than of its own motion, the Council shall be entitled to require to be satisfied by evidence that a *prima facie* ground of complaint exists.

(3) Any attorney in relation to whom the Council has directed an investigation to be made under paragraph (1) shall produce or cause to be produced to the person designated by the Council under that paragraph the said books, records, files, accounts and other documents and any evidence, vouchers or other papers relevant to the investigation that are lawfully required of him by that person, and shall furnish or cause to be furnished to that person any such explanations as that person may reasonable require for the purposes of the investigation.

(4) The person designated by the Council pursuant to this Regulation shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the attorney or of any client of the attorney that may come to his or her knowledge in the course of the investigation and shall not communicate any such matter other than to the Council or Disciplinary Committee of the Council, the attorney or the client concerned in the matter.

(5) No investigation shall be instituted upon the written complaint of a third party, unless the Council is satisfied upon *prima facie* evidence that a ground of complaint exists, and the Council may require payment to be made to it by the third party of a reasonable sum to be fixed by the Council to cover the costs of the inspection and the costs of the attorney-at-law against whom the complaint is made.

(6) The Council may deal with any sum paid under paragraph (5) in such manner as it thinks fit.

Accountant's report

16.—(1) Every attorney shall, not later than six months after the commencement of any financial year (unless he or she files a declaration in the form of the First Schedule which satisfied the Council that owing to the circumstances of his or her case it is unnecessary or impractical for him or her to do so), deliver to the Secretary of the Council an accountant's report in respect of the financial year next preceding that year.

(2) Every attorney shall produce or cause to be produced to the accountant whose accountant's report he or she proposes to deliver to the Secretary of the Council pursuant to paragraph (1) all books, records and accounts required by Regulation 6 to be kept by him or her and, in addition, any files or other documents connected with, or related to, or explaining or throwing any light on, anything in those books, records and accounts.

(3) In this regulation:—

"accountant" means a chartered accountant who is the holder of a valid practising certificate from the Institute of Chartered Accountants or a public accountant entitled to practise as such under the Public Accountancy Act.

"accountant's report" means a report made by an accountant in the form in the Second Schedule and signed by him and the attorney in the places respectively provided in that form for their signatures.

Disciplinary offences

17. Failure by an attorney to comply with any of the provisions of these Regulations shall constitute misconduct in a professional respect for the purposes of section 12 of the principal Act.

Savings

18.—(1) Nothing in these Regulations shall apply to any attorney employed by the Government or by any local or statutory authority in relation to his or her practice as an attorney in that employment or to any attorney who files a declaration in the form of the First Schedule which satisfies the Council that he or she does not receive trust money.

(2) Nothing in these Regulations affects an attorney-at-law's right to lien, set-off, counter-claim, charge or any other right against moneys standing to the credit of a client account or trust bank account.

(3) Excepting for Regulations 1, 2, 3 and 4 which shall come into operation on the publication of these Regulations, nothing in these Regulations shall apply to any trust money received by an attorney before the first day of September, 1999, or to any book, record or account relating to any such money.

FIRST SCHEDULE

Regulations 16 (1), 18 (1)

DECLARATION BY ATTORNEY

To: The Secretary
The General Legal Council

I, [A...B...], being an attorney-at-law, do solemnly and sincerely declare that [in my practice as an attorney-at-law I do not receive trust money as defined by the Legal Profession (Accounts and Records) Regulations, 1999] [by reason of.....] (state circumstances).....] [it is unnecessary] [impractical] for me to deliver to the Secretary of the General Legal Council an accountant's report in respect of the financial year ended.....20.....] and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Voluntary Declarations Act.

Taken and Acknowledged

this day of 20.....

before me

.....
A.....B.....

.....
C... D...

Justice of the Peace for the

parish of

SECOND SCHEDULE

Regulation 16 (3)

Accountant's Report under the Legal Profession (Accounts and Records) Regulations, 1999

To: The Secretary
The General Legal Council

Dear Sir/Madam,

This report is prepared in respect of [name of attorney or firm] practising at [address of attorney or firm].

1. I am informed by the attorney/firm that he/she/they is/are engaged in the private practice of law as [a firm practising under the name and style of [blank]

2. I am informed by the attorney/firm¹ that at the reporting date

(a) the names of all partners are:—

(b) the names of all attorneys employed are:—

(c) the names of all attorneys who become partners or employees during the reporting period² are:—

Name

Date joined

(d) the names of all attorneys who ceased to be partners or employees during the reporting period are:—

Name

Date joined

3. I have inspected the books, records and accounts produced to me for the practice of the attorney/firm and, although I express no opinion on their accuracy or completeness, I report that my inspection indicated that the attorney/firm during the financial year ended [] day of [] appear [do not appear]³ to have maintained:—

(a) a book of original entry showing the date of receipt and source of money received in trust for every client and identifying the client concerned;

(b) a book of original entry showing every disbursement out of money held in trust for every client, and the date of every disbursement and the name of every recipient;

(c) a clients' trust ledger showing separately for each person on whose behalf money has been received in trust all such money received and disbursed, and any unexpected balance;

(d) a record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made;⁴

SECOND SCHEDULE, *contd.*

- (e) a book of original entry showing the date of receipt and source of all money received other than trust money;
- (f) a book of original entry showing all disbursements of money other than trust money and showing the date of every disbursement, and the name of every recipient;
- (g) a fees book or chronological file of copies of bills showing all fees charged and other bills issued to clients, the dates of such bills and charges, and identifying the clients so charged;
- (h) bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and other accounts;
- (i) pursuant to regulation 5 of the Legal Profession (Accounts and Records) Regulations, 1999:—
 - (1) a comparison of each calendar month's accounts showing:—
 - the total of the balances shown by the clients' trust ledger accounts of the liabilities to the clients, including those for whom trust money is held in the trust account, with the cash account balance;
 - (2) a reconciliation statement showing the cause of the difference, if any, shown by the above comparison; and
 - (3) a reconciliation of that cash account balance with the balances shown on trust account bank pass book or statements and money held elsewhere;
- (j) such other books, records or accounts as are required by regulation 6 of the said Regulations:—

[but the relevant provisions of the Regulations requiring the maintenance of such books, records or accounts do not appear to be applicable to the attorney/firm because []]

4. With regard to any item of paragraph 3(a) to (j) above not answered affirmatively, we report particulars as follows—

5. In connection with item (i) of paragraph 3 above, I have reviewed the books and other data produced to me [in a case where these have been produced] in accordance with the guidelines specified by the General Legal Council and comment generally as follows in respect of differences and overdrawn accounts:—

[set out comments]

but, since the above review does not constitute an audit, I can express no opinion as to whether or not there were any overdrawn trust accounts or shortages in trust funds during the reporting period² which are not disclosed in the said books and data or whether otherwise the said books and data were accurate or complete.

SECOND SCHEDULE, *contd.*

6. I have obtained from the attorney/firm a written declaration that Regulations 3-7 of the Legal Profession (Accounts and Records) Regulations, 1999 have been complied with [or

[if not] state in what respects they were not complied with].

Name of Accountant

Signature

Address

Date

I am the attorney filing this report and to the best of my knowledge and belief the facts as reported herein are accurate.

Full name of Attorney

Signature⁴

Date

NOTES

1. Where the practice is carried on by more than one attorney, indicate whether this report covers all members of the firm or whether individual reports are being submitted.

2. The reporting period is the financial year covered by the Accountant's inspection, and the reporting date is the last day of that financial year.

3. State if inapplicable and why.

4. Where this Report is being completed on behalf of a firm, the attorney should include beneath his signature the word "Partner" to indicate that he is a partner in the firm.

Dated this 31st day of March, 1999.

LLOYD BARNETT,
Chairman.

ALTHEA RICHARDS,
Secretary.