



THE
JAMAICA GAZETTE
 SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

281

Vol. CI

FRIDAY, DECEMBER 29, 1978

No. 71

No. 168

THE LEGAL PROFESSION ACT

THE LEGAL PROFESSION (CANONS OF PROFESSIONAL ETHICS) RULES

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

1. These rules may be cited as the Legal Profession (Canons of Professional Ethics) Rules and shall be read and construed as one with the Legal Profession Act hereafter referred to as the Principal Act.

2. In these rules unless the context otherwise requires:—

“Attorney” includes a Firm of attorneys;

Definitions “Tribunal” includes the Disciplinary Committee as appointed by virtue of section II of the Principal Act.

CANON I

AN ATTORNEY SHALL ASSIST IN MAINTAINING THE DIGNITY AND INTEGRITY OF THE LEGAL PROFESSION AND SHALL AVOID EVEN THE APPEARANCE OF PROFESSIONAL IMPROPRIETY.

- (a) An Attorney who gives a certificate of character to any candidate for enrolment as an attorney shall satisfy himself that the candidate is of good character.
- *(b) An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.
- (c) An Attorney shall observe these Canons and shall maintain his integrity and encourage other attorneys to act similarly. He shall not counsel or assist anyone to act in any way which is detrimental to the Legal Profession.
- (d) An Attorney shall expose without fear or favour before the proper tribunals, unprofessional or dishonest conduct by any other Attorney and shall not lightly refuse a retainer against another Attorney who is alleged to have wronged his client.

CANON II

AN ATTORNEY SHALL NOT INDULGE IN OR ASSIST IN ANY UNAUTHORISED, IMPROPER OR UNPROFESSIONAL PRACTICE.

- *(a) An Attorney shall not hold out any person (not qualified to practise as a lawyer) as a partner, associate consultant or Attorney.
- *(b) An Attorney shall not in the carrying on of his practice or otherwise permit any act or thing which is likely or is intended to attract business unfairly or can reasonably be regarded as touting or advertising.
- (c) An Attorney shall not endeavour by direct or indirect means to attract the client's of his fellow Attorneys and where one Attorney refers a client to another Attorney, the client remains the client of the referring Attorney and the Attorney to whom the client is referred shall act with due deference to the relationship between the client and the referring Attorney.
- (cc) Where a referred client offers other work to the Attorney to whom he was referred and the offer is sufficiently proximate to the referral, that Attorney shall not accept that offer unless it has been brought to the attention of the referring Attorney.
- *(d) Except as permitted by clause (e) and (f) of this Canon, an Attorney shall not in any way make use of any form of public advertisement calculated to attract clients to himself or any firm with which he may be associated and he shall not permit, authorise, or encourage anyone to do so, or reward anyone for doing so, on his behalf.
- (e) Notwithstanding the provisions of Canon II (d), an Attorney may permit limited and dignified identification of himself as an Attorney as follows:—
 - (i) in political advertisements relevant to the course of a political campaign or issue;

CANON II, *contd.*

- (ii) in public notices where the announcement of his professional status is required or authorised by Law, or is reasonably necessary for a purpose other than the attraction of potential clients;
 - (iii) in reports and announcements of *bona fide* commercial, civic, professional or political organizations in which he serves as a Director or officer;
 - (iv) in and on legal textbooks, articles and other legal publications and in dignified and restrained advertisements thereof;
 - (v) in announcements of any public address, lecture, or publication by him on legal topics, provided that such announcements do not emphasize his own professional competence and are not likely to be regarded as being concerned with the giving of individual advice by him.
- (f) Notwithstanding the provisions of Canon II (d) an Attorney may speak in public or write for publication on legal topics provided that he does not thereby emphasize his own professional competence and is not likely to be regarded as being concerned thereby with the giving of individual advice.
- * (g) An Attorney shall not permit his professional standing to be used for the purpose of advertising any particular product, service or commercial organization.
- * (h) Subject to the provisions of Canon II (i) an Attorney shall not use professional cards, office signs, letter heads, or directory listings or like professional notices or devices.
- (i) Notwithstanding the provisions of Canon II (h), the following cards, office signs, letter heads or directory listings may be used but in a restrained and dignified form:—
- (i) a professional card identifying the Attorney by name and as an Attorney, giving his decorations and degrees (legal or otherwise), his addresses, telephone numbers and the name of his Law firm or professional associates, provided that such cards are not published in the news media and are only handed out on request and for the purposes of identification or address;
 - (ii) a brief professional announcement card stating new or changed associations or addresses, changes of firm name or like professional matters provided that such cards are delivered only to Attorneys, clients, former clients, personal friends, relations and government bodies;
 - (iii) a sign on or near the door of the office, and in the building directory identifying the Law office, provided that it is of a size and design compatible with the existing practice of the profession;
 - (iv) a letterhead identifying the Attorney by name and as an Attorney and giving his decorations and degrees (legal or otherwise), his addresses, telephone numbers and the name of his Law firm and of his associates;
 - (v) a listing in a telephone directory, a reputable law list, legal directory or biographical reference giving brief biographical or other relevant information; and any such professional card, office sign, letter head or listing may state that the Attorney is also a Notary Public.

CANON II, *contd.*

- * (i) Save as provided by Section 7 of the Principal Act, an Attorney shall not practise as a lawyer unless he has paid the prescribed fee in accordance with Section 5(2) of the Principal Act and has been issued with a Practising Certificate by the General Legal Council.

CANON III

AN ATTORNEY OWES A DUTY TO THE PUBLIC TO MAKE HIS COUNSEL AVAILABLE AND A DUTY TO THE STATE TO MAINTAIN ITS CONSTITUTION AND ITS LAWS AND SHALL ASSIST IN IMPROVING THE LEGAL SYSTEM.

- (a) An Attorney is under no obligation to act on behalf of every person who may wish to become his client, but in furtherance of the ethics of the profession to make legal services fully available, he shall not lightly decline a proffered retainer.
- (b) An Attorney may accept a general or special retainer from a client, and the retainer rules hitherto applicable in the case of counsel shall apply *mutatis mutandis*.
- (c) An Attorney shall not be deterred from accepting proffered employment owing to the fear or dislike of incurring disapproval of officials, fellow Attorneys or members of the public.
- * (d) When an Attorney consents to undertake legal aid and he is appointed by the Court or is requested by his professional association to undertake the representation of a person unable to afford such representation or to obtain legal aid such attorney shall not (except for compelling reasons) seek to be excused from undertaking such representation.
- * (e) An Attorney shall not (except for good reasons) refuse his services in Capital offences.
- (f) An Attorney shall not act contrary to the laws of the land, or aid, counsel or assist any man to break those laws.
- (g) An Attorney in undertaking the defence of persons accused of crime shall use all fair and reasonable means to present every defence available at law, without regard to any personal views he may hold as the guilt of the accused.
- * (h) An Attorney engaged in conducting the prosecution of an accused person has a primary duty to see that justice is done and he shall not withhold facts or secrete witnesses which tend to establish the guilt or innocence of the accused.
- (i) An Attorney shall not by his actions stir up strife or litigation, and where it is in the interest of his client he shall seek to obtain reasonable settlements of disputes.
- (j) An Attorney shall endeavour by lawful means where the needs of society require to promote and encourage the modernization, simplification and reform of laws.
- * (k) Where an Attorney commits any criminal offence which in the opinion of the Disciplinary Committee is of a nature likely to bring the profession into disrepute, such commission of the offence shall constitute misconduct in a professional respect if—

CANON III, *contd.*

- (i) he has been convicted by any court (including a foreign court of competent jurisdiction) for such offence; or
- (ii) although he has not been prosecuted the Committee is satisfied of the facts constituting such criminal offence; or
- (iii) he has been prosecuted and has been acquitted by reason of a technical defence or he has been convicted but such conviction is quashed by reason of some technical defence.

CANON IV

AN ATTORNEY SHALL ACT IN THE BEST INTERESTS OF HIS CLIENT AND REPRESENT HIM HONESTLY, COMPETENTLY AND ZEALOUSLY WITHIN THE BOUNDS OF THE LAW. HE SHALL PRESERVE THE CONFIDENCE OF HIS CLIENT AND AVOID CONFLICTS OF INTEREST.

- * (a) An Attorney may enter into partnership with one or more Attorneys but he shall not enter into partnership or fee sharing arrangements concerning the practice of law with non-qualified persons or bodies.
- (b) An Attorney may employ another Attorney for any purpose and on any terms as may be agreed upon.
- (c) An Attorney shall exercise independent judgment within the bounds of the law and the ethics of the profession for the benefit of his client.
- (d) Where an Attorney determines that the interest of his client requires it, he may with the specific or general consent of the client refer his business or part of it to another Attorney whether or not a member of his own firm.
- * (e) An Attorney shall not enter into an agreement for or charge or collect an illegal fee.
- (f) The fees that an Attorney may charge shall be fair and reasonable and in determining the fairness and reasonableness of a fee any of the following factors may be taken into account:—
 - (i) the time and labour required, the novelty and difficulty of the questions involved and the skill required to perform the legal service properly;
 - (ii) the likelihood that the acceptance of the particular employment will preclude other employment by the Attorney;
 - (iii) the fee customarily charged in the locality for similar legal services;
 - (iv) the amount, if any, involved;
 - (v) the time limitations imposed by the client or by the circumstances;
 - (vi) the nature and length of the professional relationship with the client;
 - (vii) the experience, reputation and ability of the Attorney concerned;
 - (viii) whether the fee is fixed or contingent;

CANON IV, *contd.*

- (ix) any scale of fees or recommended guide as to charges prescribed by the Incorporated Law Society of Jamaica, the Bar Association, the Northern Jamaica Law Society or any other body approved by the General Legal Council for the purpose of prescribing fees.
- (g) An Attorney shall not pay or accept any fee or reward for merely introducing a client or referring a case or client to another Attorney.
- (h) An Attorney on the record may instruct one or more Attorneys to appear as Advocates, in the same way as a Solicitor on the record has hitherto instructed Counsel.
- (i) Where more than one Attorney appear as Advocates for the same party in the same proceeding, the question of who should lead the conduct of that party's case shall (subject to the instructions of the client) be settled between the Attorneys representing that party, before they appear in Court and shall not be altered during the course of the proceedings; and the leader so appointed shall have all the authority over the conduct of the case as was hitherto possessed by the leading counsel.
- (j) Except with the specific approval of his client given after full disclosure, an Attorney shall not act in any manner in which his professional duties and his personal interests conflict or are likely to conflict.
- (k) Subject to the provisions of Canon IV (l), an Attorney shall not accept or continue his retainer or employment on behalf of two or more clients if their interests are likely to conflict or if the independent professional judgment of the Attorney is likely to be impaired.
- (l) Notwithstanding the provisions of Canon IV (k), an Attorney may represent multiple clients if he can adequately represent the interests of each and if each consent to such representation after full disclosure of the possible effects of such multiple representation.
- (m) In all situations where a possible conflict of interest arises, an Attorney shall resolve all doubts against the propriety of multiple representation.
- (n) An Attorney may at any time withdraw from employment:—
- (i) where the client fails, refuses, or neglects to carry out an agreement with, or his obligation to, the Attorney as regards the expenses or fees payable by the client; or
 - (ii) where his inability to work with co-Attorneys indicates that the best interest of the client is likely to be served by his withdrawal; or
 - (iii) where his client freely assents to the termination of his employment; or
 - (iv) where by reasons of his mental or physical condition or other good and compelling reason it is difficult for him to carry out his employment effectively, or
 - (v) where any of the provisions of Canon IV (j), (k) or (m) apply.

CANON IV, *contd.*

- **(o)* An Attorney who withdraws from employment by virtue of any of the provisions of Canon IV *(n)* shall not do so until he has taken reasonable steps to avoid foreseeable prejudice or injury to the position and rights of his client including—
- (i)* giving due notice;
 - (ii)* allowing time for employment of another Attorney;
 - (iii)* delivering to the client all documents and property to which he is entitled;
 - (iv)* complying with such laws, rules or practice as may be applicable; and
 - (v)* where appropriate obtaining the permission of the Court where the hearing of the matter has commenced.
- **(p)* An Attorney who withdraws from employment in accordance with Canon IV *(o)* shall refund promptly such part of the fees (if any) paid in advance, as may be fair and reasonable having regard to all the circumstances.
- **(q)* An Attorney shall withdraw forthwith from employment or from a matter pending before a Tribunal—
- (i)* where the client insists upon his representing a claim or defence that he cannot conscientiously advance;
 - (ii)* where the client seeks to pursue a course of conduct which is illegal or which will result in deliberately deceiving the Court;
 - (iii)* where a client has in the course of the proceedings perpetrated a fraud upon a person or tribunal and on request by the Attorney has refused or is unable to rectify the same;
 - (iv)* where his continued employment will involve him in the violation of a Rule of Law or a disciplinary rule;
 - (v)* where the client by any other conduct renders it unreasonably difficult for the Attorney to carry out his employment as such effectively, or in accordance with the judgment and advice of the Attorney, or the Canons of professional ethics;
 - (vi)* where for any good and compelling reason it is difficult for him to carry out his employment effectively.
- **(r)* An Attorney shall deal with his client's business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client's business with due expedition.
- **(s)* In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect.
- **(t)* An Attorney shall not knowingly—
- (i)* reveal a confidence or secret of his client, or
 - (ii)* use a confidence or secret of his client—
 - (1)* to the client's disadvantage; or
 - (2)* to his own advantage; or

CANON IV, *contd.*

(3) to the advantage of any other person unless in any case it is done with the consent of the client after full disclosure.

Provided however, that an Attorney may reveal confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

CANON V

AN ATTORNEY HAS A DUTY TO ASSIST IN MAINTAINING THE DIGNITY OF THE COURTS AND THE INTEGRITY OF THE ADMINISTRATION OF JUSTICE.

- (a) An Attorney shall maintain a respectful attitude towards the Court, not for the sake of the holder of any office, but for the maintenance of its supreme importance, and he shall not engage in undignified or discourteous conduct which is degrading to the Court.
- (b) An Attorney shall encourage respect for the Courts and Judges.
- (c) An Attorney shall not wilfully make false accusations against a Judicial officer and shall support such officers against unjust criticisms.
- (d) Where there is ground for complaint against a Judicial officer, an Attorney may make representation to the proper authorities and in such cases an Attorney shall be protected.
- *(e) An Attorney who holds a Public Office shall not use his public position to influence or attempt to influence a Tribunal to act in favour of himself or of his client.
- *(f) An Attorney shall not accept private employment in a matter upon the merits of which he previously acted in a Judicial capacity or for which he had substantial responsibility while he was in public employment.
- *(g) An Attorney who previously held a substantive appointment as a Judge of the Supreme Court or the Court of Appeal shall not appear as an Attorney in any of the Courts of the island, after demitting such office.
- *(h) An Attorney shall not give, lend or promise anything of value to a Judge, juror or official of a tribunal before which there is a pending matter in which he is engaged.
- *(i) In any proceeding in a Court an Attorney shall not communicate or cause any other person to communicate with a juror as to the merits of such proceedings, and shall only do so with a Judge or person exercising Judicial functions:—
 - (i) in the normal course of the proceedings, or
 - (ii) where authorised by law, or the practice of the Courts or with the consent of the parties.
- (j) An Attorney shall endeavour always to maintain his position as an Advocate and shall not either in argument to the Court or in address to the jury assert his personal belief in his client's innocence or in the justice of his cause or his personal knowledge as to any of the facts involved in the matter under investigation.

CANON V, *contd.*

- (k) An Attorney shall not for the purpose of making any person unavailable as a witness, advise or cause that person to secrete himself or leave the jurisdiction of the Court.
- (l) An Attorney shall not pay or offer to pay or acquiesce in the payment of compensation to a witness for giving evidence in any cause or matter save as reimbursement for expenses reasonably incurred and as reasonable compensation for loss of time in attending for preparation and for testifying, and in the case of an expert witness a reasonable fee for his professional services.
- *(m) An Attorney shall not knowingly use perjured testimony or false evidence or participate in the creation or use of evidence which he knows to be false.
- *(n) An Attorney shall not counsel or assist his client or a witness, in conduct that the Attorney knows to be illegal or fraudulent, and where he is satisfied that his client has in the course of the particular representation perpetrated a fraud upon a person or tribunal, he shall promptly call upon him to rectify the same.
- (o) An Attorney shall not knowingly make a false statement of law or fact.
- (p) While appearing on behalf of his client, an Attorney shall avoid testifying on behalf of that client, except as to merely formal matters, or when essential to ends of justice, and if his testimony is material to the cause he shall, wherever possible, leave the conduct of the case to another Attorney.
- (q) An Attorney shall be punctual in attendance before the Courts and concise and direct in the trial and disposition of causes.
- (r) An Attorney appearing before the Court shall at all times be attired in such manner as may be prescribed or agreed by the proper Authorities and as may befit the dignity of the Court.
- *(s) Subject to the provisions of subsection 2 of section 5 of the Principal Act, an Attorney shall not practise as a lawyer except by virtue of and in accordance with the practising certificate issued to him by the General Legal Council.

CANON VI

AN ATTORNEY HAS A DUTY TO MAINTAIN A PROPER PROFESSIONAL
ATTITUDE TOWARDS HIS FELLOW ATTORNEYS

- (a) An Attorney's conduct towards his fellow Attorneys shall be characterized by courtesy and good faith and he shall not permit ill-feeling between clients to affect his relationship with his fellow Attorneys or his demeanour towards the opposing party.
- (b) An Attorney shall endeavour as far as is reasonable to suit the convenience of the opposing Attorney when the interest of his client or the cause of justice will not be injured by so doing.
- *(c) An Attorney shall not commit a breach of an undertaking given by him to a Judge, a Court or other tribunal or an official thereof, whether such undertaking

CANON VI, *contd.*

relates to an expression of intention as to future conduct or is a representation that a particular state of facts exists.

- * (cc) An Attorney shall not knowingly represent falsely to a Judge, a Court or other tribunal or an official of a Court, or other tribunal, that a particular state of facts exists.
- * (d) An Attorney shall not give a professional undertaking which he cannot fulfil and shall fulfil every such undertaking which he gives.
- * (e) Where an Attorney has been sent money, documents or other things by another Attorney which (at the time of sending) are expressed to be sent only on the basis that the Attorney to whom they are sent will receive them on his undertaking to do or refrain from doing some act, the receiving Attorney shall forthwith return such things if he is unable to accept them on such undertaking, but otherwise must comply with such undertaking.
- (f) An Attorney shall not in any way communicate upon a subject in controversy or attempt to negotiate or compromise a matter directly with any party represented by another Attorney except through such other Attorney or with his prior consent.
- (g) An Attorney shall not ignore the customs or practices of the Profession even when the law expressly permits it, without giving timely notice to the opposing Attorney.
- * (h) An Attorney shall not accept instructions to act in Court proceedings in which to his knowledge the client has previously been represented by another Attorney, unless he first notifies the other Attorney of the change. Provided that an Attorney shall be deemed to have notified the other Attorney if he has made reasonable efforts to notify him.
- (i) An Attorney shall not accept instructions to act in proceedings (other than Court proceedings) in which to his knowledge, another Attorney has previously represented the client unless he makes reasonable efforts to ascertain that the retainer of that Attorney has been determined by the client, or that the client wishes both Attorneys to represent him.
- * (j) An Attorney who instructs or employs another Attorney to act on behalf of his client, unless otherwise agreed, shall pay the proper fee of such Attorney whether or not he has received payment from his client.

CANON VII

AN ATTORNEY SHALL MAINTAIN PROPER ACCOUNTS AND OBSERVE PROPER ACCOUNTING PRINCIPLES IN THE CONDUCT OF HIS ACCOUNTS ESPECIALLY AS REGARDS ACCOUNTING FOR THE FUNDS OF HIS CLIENTS.

- * (a) An Attorney shall comply with rules as may from time to time be prescribed by the General Legal Council relating to the keeping in separate accounts—
 - (i) the funds of himself or any firm with which he is associated; and
 - (ii) those of his clients.
- * (b) An Attorney shall—

CANON VII, *contd.*

- (i) keep such accounts as shall clearly and accurately distinguish the financial position between himself and his client as and when required; and
 - (ii) account to his client for all monies in the hands of the Attorney for the account or credit of the client, whenever reasonably required to do so
- and he shall for these purposes keep the said accounts in conformity with the regulations which may from time to time be prescribed by the General Legal Council.
- (c) Nothing in these Canons shall deprive an Attorney of any recourse or right whether by way of lien, set-off, counter-claim, charge or otherwise against monies standing to the credit of a client's account maintained by that Attorney.

CANON VIII

GENERAL

- (a) Nothing herein contained shall be construed as derogating from any existing rules of professional conduct and duties of an Attorney which are in keeping with the traditions of the legal profession, although not specifically mentioned herein.
- (b) Where in any particular matter explicit ethical guidance does not exist, an Attorney shall determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.
- * (c) Where no provision is made herein in respect of any matter, the rules and practice of the legal profession which formerly governed the particular matter shall apply in so far as is practicable, and a breach of such rules and practice (depending on the gravity of such breach) may constitute misconduct in a professional respect.
- (d) Breach by an Attorney of any of the provisions of Canons I(b), II(a), (b), (d), (g), (h), (j), III(d), (e), (h), (k), IV(a), (e), (g), (j), (o), (p), (r), (s), (t), V(c), (f), (g), (h), (i), (m), (n), (s), VI(c), (cc), (d), (e), (h), (i), (j), VII(a), (b), VIII(b) shall constitute misconduct in a professional respect and an Attorney who commits such a breach shall be subject to any of the orders contained in section 12(4) of the Principal Act.
- (e) The Canons of Professional Etiquette for Attorneys-at-Law published in the Jamaica Gazette Extraordinary of the 6th January, 1972 are hereby repealed but nothing contained herein shall be construed as derogating from the right of the Disciplinary Committee of the General Legal Council to hear and determine complaints relating to acts of misconduct alleged to have been committed before the coming into effect of these rules.

Dated this 12th day of December' 1978.

DAVID M. MUIRHEAD,
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