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LAWS OF BARBADOS

LEGAL PROFESSION ACT

CHAPTER 370A

(SUBSIDIARY LEGISLATION)

THE LAWS OF BARBADOS
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SUBSIDIARY LEGISLATION INDEX

Legal Profession

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Cap. 370A.

LEGAL PROFESSION (ACCOUNTS) RULES, 1973

S.I. 1973/107.

Made by the Judicial Advisory Council under section 13 of the Legal Profession Act. Cap. 370A.

PART I

Preliminary

1. These Rules may be cited as the Legal Profession (Accounts) Rules, 1973.

2. For the purposes of these rules —

" attorney-at-law-trustee " means an attorney-at-law who is a sole trustee or who is co-trustee only with a partner, clerk or servant of his or with more than one of these persons;

" bank " —

(*a*) means the Barbados National Bank, or

(*b*) has the meaning assigned to it by section 2 of the Banking Act; Cap. 322.

" client " means any person on whose account an attorney-at-law holds or receives client's money;

" client account " means —

(*a*) a current or deposit account at a bank licensed under the Banking Act; or

(*b*) a savings account at the Barbados National Bank,

in the name of an attorney-at-law and in the title of which account the word " client " appears;

" client's money " means money held or received by an attorney-at-law on account of a person for whom he is acting in relation to the holding or receipt of such money, either as an attorney-at-law or in connection with his practice as an attorney-at-law, as agent, bailee, stakeholder or in any other capacity, but does not include —

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(*a*) money held or received on account of the trustees of a trust of which the attorney-at-law is an attorney-at-law-trustee; or

(*b*) money to which the only person entitled is the attorney-at-law himself, or, in the case of a firm of attorneys-at-law, one or more of the partners in the firm;

" trust bank account " means a current or deposit account in the title of which the word "trustee" or "executor" appears, or a bank account which is clearly designated as a trust bank account kept at a bank and kept solely for money subject to a particular trust of which the attorney-at-law is an attorney-at-law-trustee;

" trust money " means money held or received by an attorney-at-law which is not money belonging to a client but which is subject to a trust of which the attorney-at-law is a trustee, whether or not he is attorney-at-law-trustee of that trust.

PART II

Client Accounts

3. An attorney-at-law who holds or receives client's money, or money which under these rules he is permitted and elects to pay into a client account, shall as soon as practicable thereafter pay that money into a client account.

4. An attorney-at-law may pay into a client account —

(*a*) trust money;

(*b*) money belonging to the attorney-at-law which is necessary to open and maintain the account;

(*c*) money to replace any sum drawn from the account contrary to rule 8 (2);

(*d*) a cheque or draft received by him and which he may, where practicable, split, but which he does not split.

5. (1) An attorney-at-law who holds or receives a cheque or draft which includes client's money or trust money of one or more trusts may, where practicable, split such cheque or draft.

(2) Where an attorney-at-law splits a cheque or draft under paragraph (1), he shall deal with each part as if he had received a separate cheque or draft in relation to each part.

(3) Where an attorney-at-law does not split a cheque or draft to which paragraph (1) applies but included in the cheque or draft is client's money, he shall, or may in any other case, pay such cheque or draft into a client account.

6. No money, other than money specified by this Part, may be paid into a client account, and where any such money is so paid, the attorney-at-law in whose client account the money is paid shall on discovery immediately withdraw it from the client account.

7. (1) Subject to paragraph (2), there may be drawn from a client account—

(*a*) in the case of client's money—

(i) money required for payment to or on behalf of the client;

(ii) money required for or towards payment of a debt due to the attorney-at-law from the client or in reimbursement of money expended by the attorney-at-law on behalf of the client;

(iii) such money as the client authorises in writing;

(iv) money required for or towards payment of the attorney-at-law's costs where a bill of costs or other written statement of the costs incurred is delivered to the client and it was made known in writing to the client that the money held for him would be applied towards or in satisfaction of the costs;

(v) money to be transferred from the client's account to that of another client;

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(*b*) in the case of trust money—

(i) money required for a payment in the execution of the particular trust;

(ii) money to be transferred to a separate bank account kept solely for the money of the particular trust;

(*c*) money, other than money to which sub-paragraph (*a*) or (*b*) applies, which may be paid into the account under rule 4 (*b*) or 5 (3);

(*d*) money paid into the account contrary to this Part.

(2) Money drawn under paragraph (1) (*a*) or (*b*) of this rule shall not exceed the total of the money held at the time on account of the client or trust.

8. (1) For the purposes of rule 7 (1) (*a*) (ii), 7 (1) (*a*) (iv), 7 (1) (*c*) or 7 (1) (*d*), money shall be drawn only by—

(*a*) a cheque drawn in favour of the attorney-at-law; or

(*b*) a transfer to a bank account in the name of the attorney-at-law not being a client account.

(2) Money to which rule 7 does not apply shall not be drawn from a client account unless the Bar Association on the application of an attorney-at-law in writing authorises its withdrawal.

9. (1) Notwithstanding the rules under this Part, an attorney-at-law who holds or receives client's money—

(*a*) in the form of cash and in the ordinary course of business cash is paid immediately to the client or to a third party on the client's behalf;

(*b*) in the form of a cheque or draft and in the ordinary course of business the cheque or draft is endorsed over to the client or to a third party on the client's behalf without being passed by the attorney-at-law through a bank account;

(*c*) which he pays into a separate bank account in the name of the client or of some person whom the client in writing designates or the attorney-at-law in writing acknowledges to the client,

is not required to pay that money into a client account.

(2) Rules 3 and 4 shall not apply to an attorney-at-law who holds or receives client's money—

(*a*) which the client in writing requests the attorney-at-law to withhold from the account or the attorney-at-law acknowledges in writing to the client that it is so withheld;

(*b*) which is received for or towards payment of a debt due to the attorney-at-law from the client or in reimbursement of money expended by the attorney-at-law on behalf of the client;

(*c*) which is expressly paid to him—

(i) on account of costs incurred in respect of which a bill of costs or other written statement of the costs is delivered to the client;

(ii) as an agreed fee or on account of an agreed fee for business undertaken or to be undertaken.

(3) Where a cheque or draft includes other client's money in addition to money specified under paragraph (2), rule 5 applies.

(4) Nothing in this Part prevents the Bar Association on the application of an attorney-at-law from specifically authorising in writing that any client's money be withheld from a client account.

PART III

Books of Account

10. (1) For the purposes of these rules, an attorney-at-law shall at all times keep properly written up such accounts as are necessary—

(*a*) to show his dealing with—

(i) client's money which is received, held or paid by him; and

(ii) any other money which is dealt with by him through a client account;

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(*b*) to show separately in relation to each client all money of the categories specified under paragraph (*a*) and to distinguish all such money from any other money received, held or paid by him.

(2) All dealings under paragraph 1 (*a*) shall be recorded as may be appropriate in—

(i) (*a*) a clients' cash book or in a clients' column of a cash book; or

(*b*) a record of sums transferred from the ledger account of one client to that of another; and

(ii) a clients' ledger, or a clients' column of a ledger.

(3) Any dealing other than those specified under this rule shall not be recorded in a clients' cash book or clients' column of a cash book or ledger, as the case may be.

(4) Any dealings of an attorney-at-law in relation to his practice as such, other than those specified under paragraph 1 (*a*), shall, subject to Part V, be entered in such (if any) other cash book and ledger or such (if any) other columns of a cash book and ledger as the attorney-at-law maintains.

(5) (*a*) An attorney-at-law shall in addition to the books, ledger and records specified under paragraph (2) keep a record of all bills of costs (distinguishing between profits costs and disbursements) and of all written statements of costs delivered or made to his clients.

(*b*) The record kept under sub-paragraph (*a*) shall either be—

(i) contained in a bills delivered book; or

(ii) in a file containing copies of bills of costs or statements of costs delivered to a client.

(6) A reference in this rule to any book or record of account shall be deemed to include a reference to a loose-leaf book, card or any other permanent record necessary for the operation of any system of book-keeping.

11. No sum shall be transferred from the ledger account of one client to that of another except in accordance with these rules.

PART IV

Interest on Client's Money

12. Where an attorney-at-law holds or receives for or on account of a client money in circumstances (other than those specified under rule 13) under which it is reasonable to expect that interest ought to be earned on that money, the attorney-at-law shall—

(*a*) deposit the money in an account at a bank in his name or in the name of his firm including a reference to the identity of the client or to any other matter relating to the sum deposited; or

(*b*) pay to the client out of his own money a sum equivalent to the interest that would have accrued on the money if it had been deposited as specified in paragraph (*a*).

13. Without prejudice to rule 12, it shall be deemed that interest ought to be earned on a client's money where—

(*a*) the sum of money held or received by an attorney-at-law for or on account of the client exceeds $2,500; and

(*b*) the sum of money at the time of its receipt is not likely within 3 months to be wholly disbursed or reduced by payments to a sum less than $2,500.

14. (1) A client who is aggrieved by a failure of an attorney-at-law to pay him interest in accordance with rules 12 and 13 is entitled, in addition to any other remedy available to him, to require the attorney-at-law to obtain from the Bar Association a certificate stating whether or not the money held or received for or on account of the client ought to have earned interest.

(2) Where the Bar Association under paragraph (1) certifies that a client's money ought to have earned interest, it shall in addition specify the amount of interest due to the client, and the attorney-at-law shall pay that amount within 30 days from the date of certification.

15. Rules 12 and 13 do not apply where—

(*a*) there is a written arrangement between the attorney-at-

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law and his client as to the application of the client's money or interest on such money;

(*b*) the money held or received by the attorney-at-law is money subject to a trust of which the attorney-at-law is a trustee.

PART V

Trust Accounts

16. An attorney-at-law-trustee who holds or receives money subject to a trust of which he is an attorney-at-law-trustee and which is not paid into a client account under rule 4 shall as soon as practicable thereafter pay that money into a trust bank account.

17. An attorney-at-law-trustee may pay into a trust bank account—

(*a*) money belonging to the attorney-at-law-trustee or a co-trustee which is necessary to open and maintain the account; or

(*b*) money to replace any sum drawn from the account contrary to this Part.

18. (1) An attorney-at-law who holds or receives a cheque or draft which includes trust money shall, where practicable, split such cheque or draft and deal with each part as if he had received a separate cheque or draft in relation to each part.

(2) Where an attorney-at-law does not split a cheque or draft to which paragraph (1) applies, he may pay it into a client account in accordance with rule 5 (3).

19. No money, other than money specified by this Part, may be paid into a trust account, and where any such money is so paid, the attorney-at-law-trustee in whose client account the money is paid shall on discovery immediately withdraw it from the trust account.

20. There may be drawn from a trust bank account—

(*a*) money required for a payment in the execution of the particular trust;

(*b*) money to be transferred to a client account;

(*c*) money paid into the account under rule 17 (*a*);

(*d*) money paid into the account contrary to rule 19.

21. Money other than that to which rule 20 applies shall not be drawn from a trust bank account unless the Bar Association on the application of an attorney-at-law in writing expressly authorises its withdrawal.

22. Rules 9 (1) (*a*) and (*b*) shall apply *mutatis mutandis* to trust money as they apply to money belonging to a client.

23. An attorney-at-law-trustee shall at all times keep properly written up, in relation to trust money, such books of account as are necessary to show separately in respect of each trust of which he is an attorney-at-law-trustee his dealings with money received, held or paid by him on account of that trust, and to distinguish such money from any other money received, held or paid by him on any other account.

PART VI

Miscellaneous

24. An attorney-at-law shall preserve all records of accounts kept by him under these rules for at least 10 years from the date of the last entry in those records.

25. (1) For the purpose of ascertaining whether or not these rules are being complied with, the Council of the Bar Association acting on either—

(*a*) its own motion; or

(*b*) a written complaint filed with it by a third party,

may by notice under the hand of the secretary of the Association and served on an attorney-at-law require the attorney-at-law

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to produce at a time and place to be fixed by the Council all books of accounts, records of accounts, including bank pass books and any other necessary documents, for inspection by such person as that body designates, and to supply to that person any necessary information and explanations.

(2) Upon being required to do so, an attorney-at-law shall produce such books or documents and supply such information or explanations as are necessary under this rule.

(3) The person designated by the Council of the Bar Association shall within 21 days of the conclusion of the inspection forward to the Council a signed report of his findings.

(4) No inspection shall be instituted upon the written complaint of a third party, unless the Council of the Bar Association 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.

(5) The Council may deal with any sum paid under paragraph (4) in such manner as it thinks fit.

26. Rules 24 and 25 shall apply to an attorney-at-law who is an attorney-at-law-trustee as they apply to an attorney-at-law.

27. An attorney-at-law or an attorney-at-law-trustee who fails without a reasonable excuse to comply with these rules is subject to disciplinary proceedings.

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