

**REPUBLIC OF NAURU**

**LEGAL PRACTITIONERS ACT 1973**

**BARRISTERS AND SOLICITORS (ACCOUNTS) RULES 1973**

*IN EXERCISE of the powers conferred on me by section 57 of the Legal Practitioners Act 1973, I hereby make the following Rules -*

**SHORT TITLE AND COMMENCEMENT**

1. These Rules may be cited as the Barristers and Solicitors (Accounts) Rules 1973 and shall come into force on the same date on which the Act comes into force.

**INTERPRETATION**

2. (1) In these Rules, unless the context otherwise requires -

"barrister and solicitor" includes a firm of barristers and solicitors;

"client" means any person on whose account a barrister and solicitor holds or receives client's moneys;

"client bank account" means a current or deposit account at a commercial and trading bank in Nauru or, where the barrister and solicitor is not admitted to practise generally, in the country, where he normally resides and carries on his professional business, such account being in the name of the barrister and solicitor and having in its title the word "Client" or "Trust";

"client's moneys" means moneys held or received by a barrister and solicitor on account of a person for whom he is acting in relation to the holding or receipt of those moneys either as a barrister and solicitor or in connection with his practice as a barrister and solicitor, as agent, bailee or stakeholder or in any other capacity and includes moneys held or received on account of a trust of which the barrister and solicitor is the sole trustee or is co-trustee only with a partner, clerk or servant of his or with more than one of such persons.

(2) In these Rules any reference to moneys received by a barrister and solicitor shall be deemed to include a reference to moneys received in the course of or in connection with his practice as a barrister and solicitor by any of his clerks or servants.

**CLIENT'S MONEYS TO BE PAID INTO A CLIENT BANK ACCOUNT WITHOUT DELAY**

3. Subject to the provisions of rule 4, every barrister and solicitor who holds or receives client's moneys shall without delay pay those moneys into a client bank account. Any barrister and solicitor may keep one client bank account or as many such accounts as he thinks fit.

**EXCEPTIONS FROM THE PROVISIONS OF RULE 3**

4. (1) Notwithstanding the provisions of rule 3, a barrister and solicitor shall not be under obligation to pay into a client bank account client's moneys held or received by him -

(a) where they are received by him in the form of cash and are without delay paid in cash to the client or a third party due to receive them;

(b) where they are received by him in the form of a Cheque or draft and the cheque or draft is endorsed in the ordinary course of business over to the client or a third party due to receive those moneys;

(c) where he pays them into a separate bank account opened or to be opened with the client's written authority, whether given generally or in any particular case, in the name of the client or of some person named by the client;

(d) where the client for his own convenience requests him in writing to withhold them from such account;

(e) where they are received by him for or towards payment of a debt due to him from the client or in reimbursement of money expended by him on behalf of the client; or

(f) where they are paid to him expressly on account of costs incurred, in respect of which a bill of costs or other written intimation of the amount of the costs has been delivered or as an agreed fee, or on account of an agreed fee, for business undertaken or to be undertaken.

(2) Notwithstanding the provisions of these Rules, a judge may upon an application made by a barrister and solicitor specifically authorise him in writing to withhold any client's moneys from a client bank account.

#### **WITHDRAWAL OF MONEYS FROM A CLIENT BANK ACCOUNT**

5. There may be drawn from a client bank account -

(a) in the case of client's moneys -

(i) moneys properly required for a payment to or on behalf of the client;

(ii) moneys drawn on the client's authority, whether given generally or in a particular case;

(iii) moneys properly required for or towards payment of a debt due to the barrister and solicitor from the client or in reimbursement of moneys expended by the barrister and solicitor on behalf of the client; and

(iv) where they are held on account of a trust of which the barrister and solicitor is a trustee, moneys required for the proper purposes of the trust or for transfer to a separate bank account kept solely for the moneys of the trust; and

(b) any moneys to which the only person entitled is the barrister and solicitor himself or, in the case of a firm of barristers and solicitors, one or more of the partners of the firm:

Provided that in any case under paragraph (a) of this rule the moneys so drawn shall not exceed the total of the moneys held for the time being in that client bank account on account of that client.

### **JUDGE MAY AUTHORISE WITHDRAWAL**

**6.** No moneys, other than moneys permitted by rule 5 to be drawn from a client bank account shall be so drawn unless a judge or, if no judge is present in Nauru, the Registrar upon an application made by the barrister and solicitor specifically authorises in writing their withdrawal.

### **RECEIPTS TO BE ISSUED**

**7.** (1) Every barrister and solicitor shall, for each sum of client's moneys received by him, forthwith give to the person paying that sum a receipt bearing the name and business address of the barrister and solicitor or, if he practises as a member of, or under the name of, a firm, the name and address of the firm.

(2) No receipt shall be given under the preceding paragraph otherwise than on a printed form of receipt from a book of such forms kept by the barrister and solicitor or the firm, if any, of which he is a member and used only in respect of the receipt of client's moneys.

(3) The forms in every book of printed forms of receipt from which receipts are given under paragraph (1) shall be numbered consecutively; and every form of receipt shall either be attached to a butt bearing the same number or be bound or fastened into the book immediately on top of a duplicate form of receipt bearing the same number.

(4) Where a receipt is given under paragraph (1), -

(a) the details of the amount received, the names of the payer and the client and brief particulars of the subject matter or purpose in respect of which the money was received shall be entered in ink on the butt of that receipt; or

(b) a legible carbon copy of all the details entered on that receipt shall be made onto the duplicate form bearing the same number,

and thereafter the butt or duplicate form shall not be removed from the book in which it is bound or fastened.

(5) A barrister and solicitor shall not be required to comply with the requirements of paragraphs (1) and (4) when any of the following payments is received -

(a) payments made directly into a client bank account by any person other than the barrister and solicitor or his clerk or servant and not received by the barrister and solicitor in cash or by cheque or warrant;

(b) payments out of any savings bank;

(c) payments received in any case where a special form of receipt is required by the payee or is required to be endorsed or is endorsed on the cheque or warrant given for such payments.

(6) In any case where a receipt is not given to the person paying moneys by reason of the provisions of sub-paragraph (b) or sub-paragraph (c) of the last preceding paragraph a pro forma receipt for such moneys shall be made out in the barrister and solicitor's book of receipts before such moneys are deposited to the client bank account.

### **PROPER BOOKS AND ACCOUNTS TO BE KEPT**

**8.** (1) Every barrister and solicitor shall at all times keep properly written up such books and accounts as may be necessary -

(a) to show all his dealings with -

(i) client's moneys held, received or paid by him; and

(ii) any other moneys dealt with by him through a client bank account; and

(b) to distinguish such moneys held, received or paid by him on account of each separate client and to distinguish such moneys from other moneys held, received or paid by him on any other account.

(2) All dealings referred to in sub-paragraph (b) of the preceding paragraph shall be recorded in -

(i) a client's cash book which may consist of separate cash books for receipts and payments or of a book for both receipts and payments or of a clients' column on the credit side or debit side, as may be appropriate of a cash book;

(ii) a transfer journal unless the barrister and solicitor uses his clients' cash book for entries of transfers between accounts; and

(iii) a clients' ledger, or a clients' column on the credit side or debit side, as may be appropriate, of a ledger.

(3) Every barrister and solicitor shall keep a record of all agreements as to fees, all bills of costs distinguishing between profit costs and disbursements, and all written intimations of the amount of his costs delivered by him to his clients, which record shall be contained in books or files or copies of such bills and intimations.

(4) In this rule each of the expressions "book", "ledger" and "record" shall be deemed to include a looseleaf book and such cards or other permanent documents as are necessary for the operation of a mechanical system of book-keeping.

### **RECONCILIATION OF ACCOUNTS; TRIAL BALANCES**

**9.** Every barrister and solicitor shall -

(a) immediately after the end of every month cause the balance of every client bank account kept by him to be reconciled with the balance of his cash book relating thereto and shall keep in the cash book or other appropriate book statements of such reconciliation; and

(b) immediately after the end of each of the months of March, June, September and December in each year cause to be prepared a trial balance statement listing the balances in the various accounts (which shall be referred to by the names of the clients concerned) contained in the ledger relating to any client bank account kept by him and cause the result of the trial balance to be compared and reconciled with the balance in the cash book relating to the client bank account; all such trial balance statements shall be kept in books or files of such statements or be recorded in trial balance books kept for the purpose and shall be retained by the barrister and solicitor.

### **BOOKS, ETC., TO BE PRESERVED FOR SIX YEARS**

**10.** Every barrister and solicitor shall preserve for not less than six years from the date of the last entry therein all books, accounts and records kept by him under rules 7, 8 and 9 of these Rules.

### **THE CHIEF JUSTICE MAY ORDER AUDIT**

**11.** (1) In order to ascertain whether these Rules have been complied with, the Chief Justice acting either -

(a) on an application of the Secretary for Justice; or

(b) on an application made by a client,

may direct any barrister and solicitor to produce at a time and place to be fixed by the Chief Justice, his books of account, bank pass books, looseleaf bank statements, statements of account, vouchers and any other necessary documents relating to clients' moneys held, received or paid by him for audit by a person approved by the Chief Justice, and that person shall be directed to prepare for the information of the Chief Justice a report on the result of his audit.

(2) Upon being directed under the preceding paragraph so to do a barrister and solicitor shall produce his books of account, bank pass books, looseleaf bank statements, statements of accounts, vouchers and other necessary documents at the time and place fixed.

(3) In any case in which the Secretary for Justice is of the opinion that a direction should be given under this rule for the audit of the books and accounts of a barrister and solicitor, it shall be his duty to transmit to the Chief Justice a statement containing all relevant information in his possession and a request that such an audit be made.

(4) Before directing that an audit be made on an application by a client, the Chief Justice may require prima facie evidence that a ground of complaint exists and may require the payment by the client to the Registrar of a reasonable sum to be fixed by the Chief Justice to cover the

costs of the application and of the audit. The Chief Justice may direct that any sum so paid be dealt with in such manner as he thinks fit.

(5) After receiving the report of the audit, the Chief Justice may make such order for the payment of the costs of the application and of the audit as he thinks fit.

(6) Every person approved by the Chief Justice to carry out an audit under this rule shall before commencing the audit, give in writing under his hand an undertaking to the Chief Justice that save -

(a) in any report to the Chief Justice;

(b) in or for the purpose of any proceedings which may arise out of such report or otherwise in relation to client's moneys held, received or paid by the barrister and solicitor concerned; or

(c) with the previous consent of the Chief Justice,

he will not disclose to any person any information which he obtains in the course of his audit.

#### **DELIVERY OF BILL OF COSTS, ETC.**

**12.** For the purposes of rule 4 of these Rules a bill of costs or written intimation of the amount of costs incurred may be delivered to a client personally or by sending it by post in an envelope addressed to the client at his last address known to the barrister and solicitor.

#### **DIRECTIONS AND REQUIREMENTS BY THE CHIEF JUSTICE TO BE IN WRITING**

**13.** Every direction or requirement given or made by the Chief Justice under these Rules shall be notified in writing under the hand of the Registrar to every person required to comply with it and the notice shall be served on every such person -

(a) if he normally resides in Nauru

(i) by personal service; or

(ii) if personal service is not possible, by such substituted service as the Chief Justice may authorise; and

(b) if he normally resides outside Nauru, by airmail post,

and, when served by airmail post, it shall be deemed to have been received by that person within fourteen days of the day of posting.

#### **RIGHTS OF BARRISTER AND SOLICITOR BY WAY OF COUNTERCLAIM, ETC., NOT DEBARRED**

**14.** Nothing in these Rules shall deprive a barrister and solicitor of any recourse or right, whether by way of lien, setoff, counterclaim, charge or otherwise, against moneys standing to

the credit of a client bank account.

MADE the 18<sup>th</sup> day of December, 1973.

I. R. Thompson  
Chief Justice

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