

ADVOCATES ORDINANCE

(Cap. 2)

(Section 17 (b))

ADVOCATES' ACCOUNT RULES 1988

(G.N.S 14 of 1988)

[25th August 1988.]

1. These Rules may be cited as the Advocates' Account Rules 1988. Citation.
2. In these Rules, unless the context otherwise requires— Definition.
- "advocate" means an advocate of the High Court and includes a firm of advocates;
- "advocate-trustee" means an advocate 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 such persons;
- "client" means any person on whose account an advocate holds or receives client's money;
- "client account" means a current or deposit account at a bank in the name of the advocate in the title of which the word "client" appears;
- "client's money" means money held or received by an advocate on account of a person for whom he is acting in relation to the holding or receipt of such money either as an advocate or in connection with his practice as an advocate, agent, bailee, stakeholder or in any other capacity; but the expression "client's money" does not include—
- (a) money held or received on account of the trustees of a trust of which the advocate is advocate-trustee; or
- (b) money to which the only person entitled is the advocate himself or, in the case of a firm of advocate, one or more of the partners in the firm;
- "trust money" means money held or received by an advocate which is not client's money and which is subject to a trust of which the advocate is a trustee whether or not he is advocate-trustee of such trust.
3. (1) Subject to rule 9, every advocate who holds, or receives client's money, or money which under rule 4 he is permitted and elects to pay into a client account, shall without delay pay such money into a client account. Duty to pay money into client account.
- (2) Any advocate may keep one client account or as many such accounts as he thinks fit.
4. There may be paid into a client account— Money to be paid into client account.
- (a) trust money;
- (b) such money belonging to the advocate as may be necessary for the purpose of opening or maintaining the account;
- (c) money to replace any sums which may by mistake or accident have been drawn from the account in contravention of paragraph (2) of rule 8; and

(d) a cheque or draft received by the advocate which under rule 5 he is entitled to split but which he does not split.

Client's money in the form of cheque or draft.

5. Where an advocate holds or receives a cheque or draft which includes client's money or trust money of one or more trusts—

(a) he may where practicable split such cheque or draft and, if he does so, he shall deal with each part thereof as if he has received a separate cheque or draft in respect of that part; or

(b) if he does not split the cheque or draft, he shall if any part thereof consists of client's money, and may in any other case, pay the cheque or draft into a client account.

No other money to be paid into client account.

6. No money other than money which under the foregoing rules an advocate is required or permitted to pay into a client account shall be paid into a client account.

Drawing money from client account.

7. There may be drawn from a client account—

(a) in the case of client's money—

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

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

(iii) money drawn on the client's authority; and

(iv) money properly required for or towards payment of the advocate's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him will be applied towards or in satisfaction of such costs;

(b) in the case of trust money—

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

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

(c) such money, not being money to which either paragraph (a) or paragraph (b) applies, as may have been paid into the account under paragraph (b) or paragraph (d) of rule 4; and

(d) money which may by mistake or accident have been paid into the account in contravention of rule 6:

Provided that in any case under paragraph (b) the money so drawn shall not exceed the total of the money held for the time being in such account of such client or trust.

Manner of drawing money from client account.

8. (1) No money drawn from a client account under subparagraph (ii) or (iv) of paragraph (a), or under paragraph (c) or (d) of rule 7 shall be drawn except by—

(a) a cheque drawn in favour of the advocate; or

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- (b) a transfer to a bank account in the name of the advocate not being a client account.

(2) No money other than money permitted by rule 7 to be drawn from a client account shall be so drawn unless the Chief Judge in Sabah and Sarawak upon application made to it by the advocate specially authorised in writing its withdrawal.

9. (1) Notwithstanding the provisions of these Rules, an advocate shall not be obliged to pay into a client account client's money held or received by him—

Client's money may not be paid into client's account in certain cases.

- (a) which is received by him in the form of cash, is without delay paid in cash in the ordinary course of business to the client or a third party; or
- (b) which is received by him in the form of a cheque or draft which is endorsed over in the ordinary course of business to the client or third party and is not passed by the advocate through a bank account; or
- (c) which he pays into a separate banking account opened in the name of the client or some persons named by the client.

(2) Notwithstanding the provisions of these Rules, an advocate shall not pay into a client account client's money held or received by him—

- (a) which the client for his own convenience requests the advocate to withhold from such account; or
- (b) which is received by him for or towards payment of a debt due to the advocate from the client or in reimbursement of money expended by the advocate on behalf of the client; or
- (c) which is 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.

(3) Where a cheque or draft includes other client's money as well as client's money of the nature described in paragraph (2) such cheque or draft shall be dealt with in accordance with rule 5.

(4) Notwithstanding the provisions of these Rules, the Chief Judge in Sabah and Sarawak may upon an application made to him by an advocate specially authorise him in writing to withhold any client's money from a client account.

10. (1) Subject to paragraph (4), when an advocate holds or receives for or on account of a client money which the client requires to have placed on deposit to earn interest thereon, then the advocate shall either—

Placing client's money on deposit for purpose of earning interest.

- (a) deposit such money in a separate designated account and account to the client for any interest earned thereon; or
- (b) pay to the client out of his own money a sum equivalent to the interest which would have accrued for the benefit of the client if the money had been deposited in a separate designated account under this rule.

(2) Except as herein provided, an advocate shall not be liable by virtue of the relation between advocate and client to account to any client for interest received by him or monies deposited at a bank being monies

received or held for or on account of his client generally.

(3) In this rule, the expression "a separate designated account" means a deposit account at a bank in the name of the advocate or his firm in the title of which the word "client" appears and which is designated by reference to the identity of the client or matter concerned.

(4) Without prejudice to any other remedy which may be available to him, any client who feels aggrieved that interest or a sum equivalent thereto has not been paid to him under these Rules is entitled to require the advocate to obtain a certificate from the Chief Judge in Sabah and Sarawak as to whether or not interest ought to have been earned for him and, if so, the amount of such interest and upon the issue of such a certificate the sum certified to be due shall be payable by the advocate to the client.

(5) Nothing in these Rules shall—

(a) affect any arrangement in writing, whenever made, between an advocate and his client as to the application of the client's money or interest thereon; or

(b) apply to money received by an advocate being money subject to a trust of which the advocate is a trustee.

Account books to be kept.

11. (1) Every advocate shall at all times keep properly written up in the National or English Language such books and accounts as may be necessary—

(a) to show all his dealings with—

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

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

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

Chief Judge in Sabah and Sarawak may require production of books of account, etc.

12. (1) In order to ascertain whether these Rules have been complied with, the Chief Judge in Sabah and Sarawak acting either—

(a) on his own motion; or

(b) on a written complaint lodged with it by a third party,

may require any advocate to produce at a time and place to be fixed by the Chief Judge in Sabah and Sarawak, his books of account, bank pass books, loose leaf bank statements, statements of account, vouchers and any other necessary documents for the inspection of any accountant qualified to practise in Malaysia appointed by the Chief Judge in Sabah and Sarawak and such person shall be directed to prepare for the information of the Chief Judge in Sabah and Sarawak a report on the result of such inspection. The said report may be used as a basis for proceedings under section 13 of the Advocates Ordinance (Cap. 2).

(2) Upon being required so to do, an advocate shall produce such books of account, bank pass books, loose-leaf bank statements, statements of account, vouchers and documents at the time and place fixed.

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(3) Before making any appointment under paragraph (1), the Chief Judge in Sabah and Sarawak shall consider any objection made by any such advocate to the appointment of a particular person on personal or other proper grounds.

(4) Before instituting an inspection on a written complaint lodged with them by a third party, the Chief Judge in Sabah and Sarawak shall require *prima facie* evidence that a ground of complaint exists, and may require the payment by such party to the Chief Judge in Sabah and Sarawak of a reasonable sum to be fixed by him to cover the costs of the inspection, and the costs of the advocate against whom the complaint is made. The Chief Judge in Sabah and Sarawak may deal with any sum so paid in such manner as it thinks fit.

13. A written intimation of the amount of an advocate's costs incurred and a notification to a client that money held for him will be applied as mentioned in subparagraph (iv) of paragraph (a) of rule 7 may be delivered to a client in the same manner as a bill of costs is required to be delivered.

Manner of delivery of intimation of the amount of an advocate's costs and notification relating to application of moneys.

14. Every requirement to be made by the Chief Judge in Sabah and Sarawak of an advocate under these Rules shall be made in writing under the hand of the Chief Judge in Sabah and Sarawak and sent by Acknowledgment of Receipt registered post to the last known address of the advocate and when so made and sent shall be deemed to have been received by the advocate within fourteen days of the time of posting.

Requirements under the rules to be made in writing.

15. Nothing in these Rules shall deprive an advocate of any recourse or right, whether by way of lien, set-off, counter-claim, charge or otherwise, against money standing to the credit of a client account.

Right or recourse of an advocate against money.

16. (1) Every advocate shall, unless exempted by the Chief Judge deliver to the Deputy Registrar, High Court in Sabah and Sarawak at Kota Kinabalu a report signed by an accountant, hereinafter referred to as an "accountant's report" in respect of the firm in which he is practising either as an assistant or a partner when he applies for his Certificate to Practise except when he applies for his first Certificate. The accountant's report shall be for the last accounting period of the advocate's firm immediately prior to his application.

Submission of accountant's report.

(2) The accountant's report shall substantially comply with that shown in the Schedule hereto and the accountant, who shall be an approved company auditor as defined in the Companies Act 1965, in preparing his report shall have regard to the relevant provisions of the Accountant's Report Rules 1978 made under section 79(5) of the Legal Profession Act 1976.

Act 166.

SCHEDULE

(Rule 16 (2))

FORM OF ACCOUNTANT'S REPORT

1. Advocate's full name:

Note: All addresses at which the advocate(s) practise(s) must be covered by an Accountant's Report or Reports.

2. Firm's Name and Address:

3. State whether practising alone or in partnership. If a partnership, state the names of all the partners and legal assistant(s) if any:

4. Accounting period(s):

ACCOUNTANT'S REPORT

In compliance with the Advocates' Account Rules 1988, I

..... have examined the books, accounts and documents of the above named advocate's firm relating to the above practice(s) produced to me and I report that from my examination and from the explanation and information given to me, I am satisfied that—

(1) during the above mentioned period the firm has complied with the provisions of the Advocates Account Rules 1988 except so far as concerns—

(a) certain trivial breaches due to clerical errors or mistakes in bookkeeping, all of which were rectified on discovery, I am satisfied that none of such breaches resulted in any loss to any client;

(b) the matters set out on an annexure hereto which I have signed for the purposes of identification with this certificate.

(2) having retired from active practice as an advocate the said

..... ceased to hold client's money on

the

.....

* Delete clause if not applicable

ADVOCATES' ACCOUNT
PARTICULARS OF THE ACCOUNTANT

Signature:

Full name:

Qualification:

Firm's Name:

Address:

To:

The Deputy Registrar
High Court
Kota Kinabalu

Dated this

day of

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