



**BERMUDA STATUTORY INSTRUMENT**

**SR&O 3/1976**

**BARRISTERS (ACCOUNTS AND RECORDS) RULES 1976**

*[made under section 9 of the Bermuda Bar Act 1974 [title 30 item 3] and  
brought into operation on 1 April 1976]*

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**Interpretation**

1 (1) In these Rules—

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"barrister" includes a firm of barristers and a professional company;

"client" includes any person from whom or on whose behalf a barrister in connection with his practice receives money or other property;

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

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

"trust account" has the meaning assigned thereto by rule 2;

"trust money" means money received by a barrister 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 a barrister 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 Rules—

(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.

(3) In their application to professional companies, these Rules shall be read with any grammatical changes that may be necessary.

*[Rule 1 amended by BR 67/2009 rule 2 effective 28 October 2009]*

### **Duty to keep trust account**

2 (1) Every barrister who receives trust money (except money hereafter in these Rules expressly exempted from the operation of this rule) shall forthwith pay the money into an account at a licensed bank to be designated as a trust account and to be kept in his name; and such an account is in these Rules referred to as a trust account.

(2) A barrister may keep one or more trust accounts as he thinks fit.

**Trust accounts**

- 3 (1) There shall be paid into a trust account only—
- (a) trust money; or
  - (b) money paid to a barrister representing in part money belonging to him and in part trust money belonging to a client, where it is not practicable to split the payment, but money belonging to the barrister shall be drawn from the trust account without delay.
- (2) There need not be paid into a trust account money—
- (a) that a client in writing requests the barrister to withhold from the trust account or to deposit elsewhere; or
  - (b) that a barrister 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,

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

- (3) There shall not be paid into a trust account money—
- (a) that belongs entirely to the barrister or to his firm or any other member thereof in his or their professional capacity, including any amount received as a general retainer in respect of which there is no duty either to account or to render services; or
  - (b) that—
    - (i) is received by the barrister 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.

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(4) Money in a trust account to which the barrister becomes entitled shall be drawn from the trust account as soon as may be thereafter in accordance with paragraph (5).

(5) There shall not be drawn from a trust account money other than—

- (a) money properly required for payment to or on behalf of a client;
- (b) money required to reimburse the barrister 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 barrister from a client, including fees for which a bill has been delivered;
- (d) money that is directly transferred into another trust account and held on behalf of a client;
- (e) money that may by inadvertence have been paid into the trust account in contravention of this rule.

(6) Money drawn from a trust account under paragraph (5)(b) or (c) shall not be drawn except—

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

(7) A cheque drawn on a trust account shall not be made payable either to cash or bearer except in exchange for a signed receipt (sufficiently identifying the recipient) for the payment.

(8) Money other than money permitted by paragraph (5) shall not be drawn from a trust account unless the Bar Council specifically authorizes in writing its withdrawal.

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

(10) For the purposes of paragraphs (5) and (9) cash or a bank draft negotiable by the barrister or a cheque drawn by the barrister on his trust account, being respectively cash or a bank draft in the possession and control of the barrister, shall be deemed to be money held in a trust account if deposited in the 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**

4 Every barrister shall prepare in every month and keep—

- (a) a comparison of—
  - (i) the total of the balances held in the trust account or trust accounts; and
  - (ii) the total of all unexpended balances of funds held in trust for clients as they appear from the barrister's books and records,together with the reasons for any differences between the totals;
- (b) a list showing the amount of trust money held for each client and identifying the client;
- (c) a reconciliation of each trust account,

but so that any such comparison, list or reconciliation shall not be made later than the fifteenth day next following the date to which the said comparison, list or reconciliation, as the case may be, is prepared.

**Records generally**

5 Every barrister 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 requirement, every barrister 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;

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- (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.

### **Posting and preservation of records**

6 Any book, record, file, account or other document required to be kept for the purpose of compliance with any of these Rules—

- (a) shall be entered and posted currently at all times;
- (b) shall be entered and posted in ink or by machine;
- (c) shall be preserved for not less than six years after the date of the last entry therein.

### **Investigations**

7 (1) The Bar 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 barrister for the purpose of ascertaining and reporting whether the relevant provisions of these Rules have been complied with by such barrister.

(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 barrister 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 reasonably require for the purposes of the investigation.

### **Accountant's report**

8 (1) Every barrister shall, not later than six months after the commencement of any financial year (unless he satisfies the Council that owing to the circumstances of his case it is unnecessary for him to do

so), deliver to the Secretary an accountant's report in respect of the financial year next preceding that year.

(2) Every barrister shall produce or cause to be produced to the accountant whose accountant's report he proposes to deliver to the Secretary pursuant to paragraph (1) all books, records and accounts required by rule 5 to be kept by him 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 rule—

"accountant" means a member of the Institute of Chartered Accountants of Bermuda;

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

*[Rule 8 para 3 amended by BR34/1999 effective 19 April 1999; para 3 amended by BR 67/2009 rule 3 effective 28 October 2009]*

### **Savings**

9 (1) Nothing in these Rules shall apply to any barrister serving, or employed by, any public authority in relation to his practice as a barrister in that service or employment.

(2) Nothing in these Rules shall apply to any trust money received by a barrister before 1 April 1976 or to any book, record or account relating to any such money.

### **Commencement and transitional**

10 *[omitted]*

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**(Rule 8 (3))**

**SCHEDULE**

**Accountant's Report under  
The Barristers (Accounts and Records) Rules 1975**

To: The Secretary,  
The Bermuda Bar Council.

Dear Sir,

This report is prepared in respect of [blank] (name of barrister/firm of barristers/professional company <sup>1</sup> practising at [blank]

1 I am informed by the barrister/firm/professional company that he/they is/are engaged in the private practice of law as—

- (a) a barrister under the name and style of [blank]
- (b) a firm practising under the name and style of [blank]
- (c) a professional company practising under the name and style of [blank]

2 (1) In the case of 1(a) or (b), I am informed by the barrister/firm that at the reporting date <sup>2</sup> —

- (a) the names of all partners are—
- (b) the names of all barristers employed are—
- (c) the names of all barristers who became partners or employees during the reporting period are—

Name  
Date joined

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

Name  
Date left

(2) In the case of 1(c), I am informed by a director of the professional company that at the reporting date —

- (a) the names of all directors of the company are—
- (b) the names of all barristers who are members of the company are—

(c) the names of all barristers who are employees of the company—

(d) the names of all barristers who became members of the company during the reporting period are—

Name  
Date joined

(e) the names of all barristers who became employees of the company during the reporting period are—

Name  
Date joined

(f) the names of all barristers who ceased to be members or employees during the reporting period are—

Name  
Date joined

(g) the names of all barristers who ceased to be members or employees during the reporting period are—

Name  
Date left

3 I have inspected the books, records and accounts produced to me for the practice of the barrister/firm/professional company and, although I express no opinion on their accuracy or completeness, I report that my inspection indicated that the barrister/firm/ during the financial year ended [blank] day of [blank] 19 [blank] appeared to 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<sup>3</sup>;

(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<sup>3</sup>;

(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<sup>3</sup>;

(d) a record showing all transfers of money between clients, trust ledger accounts and explaining the purpose for which each transfer is made<sup>3</sup>;

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- (e) a book of original entry showing the date of receipt and source of all money received other than trust money<sup>3</sup>;
- (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<sup>3</sup>;
- (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<sup>3</sup>;
- (h) bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and other accounts<sup>3</sup>;
- (i) pursuant to rule 4 of the Barristers (Accounts and Records) Rules 1975—
  - (a) a monthly comparison of—
    - (i) the total of the balances held in the trust account or trust accounts;
    - (ii) the total of all unexpended balances of funds held in trust for clients as they appear from the barrister's/firm's/professional company's books and records,  
together with the reasons for any differences between the totals<sup>3</sup>;
  - (b) a list showing the amount of trust money held for each client and identifying the client<sup>3</sup>;
  - (c) a reconciliation of each trust account<sup>3</sup>;
- (j) the following other books, records or accounts within rule 5 of the said Rules—

4 With regard to any item of paragraph 3 (a) to (i) 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] and would comment generally as follows in respect of differences and overdrawn accounts—

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 period which were not disclosed in the said books and

data or whether otherwise the said books and data were accurate or complete.

6 I have obtained from the barrister/firm/professional company a written declaration that rules 2 - 6 of the Barristers (Accounts and Records) Rules 1975 have been complied with or not, and, if not, in what respects they were not complied with, which exceptions were—

Name of Accountant (member of

Signature

Address

Date

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

Full name of Barrister

Signature<sup>4</sup>

Date

*Notes:*

1 Inappropriate words should be struck out throughout this Report according as the practice being reported on is that of a sole proprietorship, a partnership, or a professional company.

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 Yes, No or Not Applicable.

4 Where this Report is being completed and signed on behalf of a firm or a professional company, the barrister should include beneath his signature the word "Partner" or Director, to indicate that he is a partner in the firm or a director in the professional company, as the case may be.

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Made by the Bar Council this 19<sup>th</sup> day of October, 2009

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President

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Secretary

Confirmed by the Chief Justice this 21<sup>st</sup> day of October, 2009

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*[Schedule repealed and replaced by BR 67/2009 rule 4 effective 28 October 2009]*

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*[Amended by:*

*BR34/1999*

*BR 67/2009]*