

Orders of the Royal Court

X

1989



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of December, 1989 before Sir Charles Frossard, Kt., Bailiff; present:— Brian Ernest Herbert Joy, Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley and Kenneth John Rowe, Esquires, Jurats.

No. 10 Order, 1989

ENTITLED

The Advocates' Trust Accounts Rules, 1989

THE ROYAL COURT, in exercise of the powers conferred upon it by section 64(1)(b) of the Reform (Guernsey) Law, 1948(a), and of all other powers enabling it in that behalf, hereby makes the following rules—

1. Subject to the provisions of Rule 7, an Advocate who holds or receives money subject to a trust of which he is an Advocate-trustee shall without delay pay the money into—

Trust money
to be paid
into trust
bank
account.

(a) Ordres en Conseil Vol. XIII, p. 288.

- (a) the trust account of that trust; or
- (b) a client account in accordance with the Advocates' Accounts Rules, 1989.

Other monies which may be paid into trust bank account.

2. There may, in addition to the money mentioned in Rule 1, be paid into a trust account—

- (a) such money belonging to the Advocate-trustee or to a co-trustee as may be necessary for the purpose of opening or maintaining the account; and
- (b) money to replace any sum for any reason drawn from the account in contravention of Rule 6.

Cheques including trust money may be split.

3. Where an Advocate holds or receives a cheque or draft which includes money subject to a trust of which he is an Advocate-trustee—

- (a) he shall, where practicable, split it and deal with each part thereof as if he had received a separate cheque or draft in respect of that part; or
- (b) if he does not split it, he may pay it into a client account in accordance with the Advocates' Accounts Rules, 1989.

Other monies not to be paid into trust bank account.

4. (1) No money, other than money which under Rule 1 or 2 is required or permitted to be paid into a trust account, shall be paid into a trust account.

(2) An Advocate into whose trust account any money is paid in contravention of paragraph (1) shall withdraw the money without delay on discovery.

5. There may be drawn from a trust account—
- (a) money properly required for a payment in the administration or execution of the particular trust;
 - (b) money to be transferred to a client account;
 - (c) money paid into the account under Rule 2(a); and
 - (d) money for any reason paid into the account in contravention of Rule 4.

Monies which may be drawn from trust bank account.

6. No money, other than money which under Rule 5 is permitted to be drawn from a trust account, shall be so drawn unless Her Majesty's Procureur, upon an application made to him by the Advocate, specifically authorises the withdrawal in writing.

Other monies not to be drawn from trust bank account.

7. An Advocate who holds or receives money subject to a trust of which he is an Advocate-trustee is not obliged to pay the money as directed by Rule 1 if the money is received by him—

Monies which need not be paid into trust bank account.

- (a) in cash and is without delay paid in cash in the administration or execution of the trust to a third party; or
- (b) in the form of a cheque or draft which is without delay endorsed over in the administration or execution of the trust to a third party and which is not passed by the Advocate through a bank account.

8. Every Advocate-trustee shall—

- (a) at all times keep properly written up such accounts as are necessary—

Accounts to be kept and preserved.

- (i) to show separately, in respect of each trust of which he is an Advocate-trustee, all his dealings with money received, held or paid by him on account of that trust; and
 - (ii) to distinguish such money from money received, held or paid by him on any other account;
- (b) preserve for at least six years from the date of the last entry therein all accounts kept by him under this Rule.

Inspection.

9. (1) In order to ascertain whether these Rules have been complied with, Her Majesty's Procureur, acting on his own motion or on a written complaint lodged with him by a third party, may require any Advocate—

- (a) to produce, at a time and place to be fixed by Her Majesty's Procureur, all books of account and documents relating to any trust of which the Advocate is an Advocate-trustee for the inspection of a person appointed in that behalf by Her Majesty's Procureur; and
- (b) to supply to that person any information and explanations relating thereto.

(2) The person appointed shall prepare, for the information of Her Majesty's Procureur, a report on the results of his inspection.

(3) The report may be used for the purposes of a hearing before a Chambre de Discipline and any proceedings resulting therefrom.

(4) Upon being required to do so the Advocate shall produce the books of account and documents at the time and place fixed.

(5) Before instituting an inspection on a written complaint lodged with him by a third party, Her Majesty's Procureur—

- (a) shall require prima facie evidence that a ground of complaint exists;
- (b) may require the payment by the third party to him of a reasonable sum fixed by him to cover the costs of the inspection and of the Advocate; and
- (c) may deal with any sum so paid in such manner as he thinks fit.

10. Every requirement to be made by Her Majesty's Procureur of an Advocate under these Rules shall be made in writing under the hand of Her Majesty's Procureur and delivered to the practising address of the Advocate. Formalities.

11. Nothing in these Rules deprives an Advocate of any recourse or right (whether by way of lien, set-off, counterclaim, charge or otherwise) against monies standing to the credit of a trust account. Set-off etc.
not
prejudiced.

12. (1) In these Rules, unless the context requires otherwise— Interpreta-
tion.

“Advocate” means an Advocate of the Royal Court;

“Advocate-trustee” means (subject to Rule 13) an Advocate who is a sole trustee or co-trustee only with one or more of his partners or employees;

“bank” has the meaning given by the Advocates’ Accounts Rules, 1989;

“books of account” includes bank pass books, loose-leaf bank statements, statements of account and vouchers;

“client account” means a current or 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 kept and operated in accordance with the provisions of the Advocates’ Accounts Rules, 1989;

“Her Majesty’s Procureur” includes Her Majesty’s Comptroller;

“trust account” means a current (interest-bearing or otherwise) or deposit account at a bank in the name of the Advocate or his firm in the title of which the word “trustee” or “Executor” appears (or which is otherwise clearly designated as a trust account) and which is kept solely for money subject to a particular trust of which the Advocate is an Advocate-trustee.

(2) The Interpretation (Guernsey) Law, 1948(b) applies to the interpretation of these Rules as it applies to the interpretation of an enactment.

**Provisions
as to trust
companies.**

13. For the purposes of these Rules—

- (a) an Advocate is deemed to hold or receive money subject to a trust if a body corporate managed or controlled by him alone or by him only with one or more of his partners or employees holds or receives money subject to a trust;

(b) Ordres en Conseil Vol. XIII, p. 355.

(b) an Advocate is deemed to be an Advocate-trustee of a trust if such a body corporate as is mentioned in paragraph (a) is a trustee of that trust.

14. These Rules may be cited as the Advocates' Citation. Trust Accounts Rules, 1989.

15. These Rules shall come into operation on the 1st day of January, 1990. **Commence-
ment.**

K. H. TOUGH,

Her Majesty's Greffier.

Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.

PRICE 25p