

# Orders of the Royal Court

# XI

# 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. 11 Order, 1989

ENTITLED

## **The Advocates' 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. (1) Subject to the provisions of Rules 7, 8 and 9, an Advocate who holds or receives client's money shall without delay pay the money into a client account.

Client's  
money to  
be paid into  
client  
account.

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

(2) An Advocate may keep as many client accounts as he thinks fit.

Other monies which may be paid into client account.

2. There may, in addition to client's money, be paid into a client's 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 sum for any reason drawn from the account in contravention of Rule 6(2); and
- (d) a cheque or draft held or received by the Advocate which, under Rule 3(b), he is required or permitted to pay into a client account.

Cheques including client or trust money may be split.

3. Where an Advocate holds or receives a cheque or draft which includes client's money or trust money—

- (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 shall, if any part thereof consists of client's money, and may, in any other case, pay it into a client account.

Other monies not to be paid into client account.

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

(2) An Advocate into whose client 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 client account—

Monies  
which may  
be drawn  
from client  
account.

(a) client's money—

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

(ii) 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) drawn on the client's authority;

(iv) properly required for or towards payment of the Advocate's costs where there has been delivered to the client a bill of costs or other written intimation of the amount of the costs incurred and it has thereby or otherwise in writing been made clear to the client that money held for him is being or will be applied towards or in satisfaction of such costs; or

(v) to be transferred to another client account;

(b) a trust money—

(i) properly required for a payment in the administration or execution of the trust; or

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

- (c) money, not being money to which paragraph (a) or (b) applies, which has been paid into the account under Rule 2(b) or 3(b) or which has accrued to the account by way of interest; and
- (d) money for any reason paid into the account in contravention of Rule 4;

provided that no money shall be drawn from a client account—

- (aa) under paragraph (a) or (b), in excess of the total money held in the account for the client or trust; or
- (bb) under paragraph (a)(ii) or (iv), (c) or (d), except by a cheque drawn in favour of the Advocate or by a transfer to a bank account in the name of the Advocate which is not a client account.

Other monies not to be drawn from client account.

6. No money, other than money which under Rule 5 is permitted to be drawn from a client 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.

Monies which need not be paid into client account.

7. An Advocate is not obliged to pay client's money into a client account—

- (a) if the money is received by him in cash and is without delay paid in cash in the ordinary course of business to the client or on his behalf to a third party;
- (b) if the money is received by him in the form of a cheque or draft which is without delay endorsed over in the ordinary course

of business to the client or on his behalf to a third party and which is not passed by the Advocate through a bank account; or

- (c) if he pays the money into a separate bank account in the name of the client or of some person designated by the client in writing or acknowledged by the Advocate to the client in writing.

8. (1) Subject to paragraph (2), an Advocate shall not pay client's money into a client account—

Monies which must not be paid into client account.

- (a) if the client for his own convenience requests the Advocate to withhold the money from such an account, the request being in writing from the client or acknowledged by the Advocate to the client in writing;
- (b) if the money is held or 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) if the money is expressly paid to him—
- (i) on account of costs in respect of which a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client; or
- (ii) as an agreed fee (or on account of an agreed fee) for business undertaken or to be undertaken.

(2) A cheque or draft which includes client's money to which paragraph (1) does not apply shall, notwithstanding that it also includes money to which paragraph (1) applies, be dealt with in accordance with Rule 3.

H.M.  
Procureur  
may  
authorise  
withholding  
of money  
from client  
account.

9. Her Majesty's Procureur upon an application made to him by an Advocate may specifically authorise the Advocate in writing to withhold any client's money from a client account.

Transfers  
between  
ledger  
accounts.

10. No sum shall be transferred from the ledger account of one client to that of another except where it would be permissible under these Rules to withdraw from client account the sum transferred from the first client and to pay into client account the sum so transferred to the second client.

Accounts to  
be kept.

11. (1) Every Advocate shall at all times keep properly written up such accounts as are necessary—

(a) to show all his dealings with—

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

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

(b) to show separately in respect of each client all money of the descriptions referred to in sub-paragraph (a) received, held, paid or dealt with by him on account of that client; and

(c) to distinguish all money of those descriptions from any other money received, held, paid or dealt with by him.

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

(i) either in a client's cash book, or a client's column of a cash book, or

- (ii) in a record of sums transferred from the ledger account of one client to that of another, and in addition
- (iii) in a client's ledger or a client's column of a ledger,

and no other dealings shall be recorded in such book, ledger or (as the case may be) column.

(3) All dealings of the Advocate relating to his practice as an Advocate other than those referred to in paragraph (1)(a) shall (subject to compliance with the Advocates' Trust Accounts Rules, 1989) be recorded in another cash book and ledger or another column of a cash book and ledger.

(4) Every Advocate shall keep a record of all bills of costs (distinguishing between profit costs and disbursements) and of all written intimations under Rules 5(a)(iv) and 8(1)(c)(i) delivered by the Advocate to his clients in a bills-delivered book or a file of copies of such bills and intimations.

(5) Every Advocate shall—

(a) within three months of the commencement of these Rules;

(b) in the case of an Advocate going into practice on his own account (either alone or in partnership) on a date after such commencement, within 3 months of that date,

and thereafter not less than once in every succeeding period of three months, cause the balance of his client's cash book (or client's column of his cash book) to be agreed with his client bank statements and shall keep in the cash book or other appropriate place a reconciliation statement showing this agreement.

(6) Every Advocate shall preserve for at least six years from the date of the last entry therein all accounts, books, ledgers, files, statements and records kept or made by him under this Rule.

(7) No money may be drawn from a bank account, being or forming part of a client account, except under the signature of at least one of the following (either alone or in conjunction with other persons)—

- (a) an Advocate; or
- (b) an employee of an Advocate who has been in the full time employment of the Advocate for not less than three years.

(8) In this Rule the expressions “accounts”, “books”, “ledgers” and “records” shall be deemed to include loose-leaf books and such cards or other permanent documents or records as are necessary for the operation of any system of book-keeping, mechanical or otherwise, which shall include any computerised or electronic system of recording of such information.

**Inspection.**

12. (1) In order to ascertain whether these Rules have been complied with, Her Majesty’s Procureur, acting on his own motion, on a written statement and request transmitted to him by or on behalf of the Royal Court, 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 client of the Advocate 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 explanation 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.

13. 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.**

Set-off etc.  
not  
prejudiced.

14. 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 client account.

Interpreta-  
tion.

15. (1) In these Rules, unless the context requires otherwise—

“Advocate” means an Advocate of the Royal Court, and includes a firm of Advocates;

“Advocate-trustee” has the meaning given by Rule 12(1) of the Advocates’ Trust Accounts Rules, 1989, and Rule 13 of those Rules shall apply accordingly;

“bank” means a person registered under section 4 of the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971, as amended<sup>(b)</sup>, or a person exempted from such registration;

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

“client” means any person for whom or on whose account an Advocate holds or receives client’s money;

“client 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 “client” appears;

“client’s money” means money held or received by an Advocate for or on account of a person for whom he is acting in relation to the hold-

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(b) Recueil d’Ordonnances Tome XVII, p. 225; Tome XVIII, pp. 24 and 55; Tome XXI, p. 524; Ordinance No. XXVII of 1985; and Ordinance No. IX of 1988.

ing or receipt of such money either as an Advocate or, in connection with his practice as an Advocate, as agent, bailee, stakeholder or in any other capacity but “client’s money” does not include—

- (a) money held or received for or on account of the trustees of a trust of which the Advocate is an Advocate-trustee; or
- (b) money to which the only person entitled is the Advocate himself or, in the case of a firm of Advocates one or more of the partners in the firm;

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

“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 an Advocate-trustee of the trust.

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

16. These Rules may be cited as the Advocates’ Citation. Accounts Rules, 1989.

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

K. H. TOUGH,  
Her Majesty’s Greffier.

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

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