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SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

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No. 93

THE LEGAL PROFESSION ACT

THE LEGAL PROFESSION (ACCOUNTS AND RECORDS) (AMENDMENT)
REGULATIONS, 2021

In exercise of the powers conferred on the General Legal Council by sections 12(7) and 35 of the Legal Profession Act, and every other power hereunto enabling, the following regulations are hereby made:—

1. These Regulations may be cited as the Legal Profession (Accounts and Records) (Amendment) Regulations, 2021 and shall be read and construed as one with the Legal Profession (Accounts and Records) Regulations, 1999 (hereinafter called “the Principal Regulations”) and shall take effect and come into operation on the 1st day of January, 2022.
2. Regulation 2(1) of the Principal Regulations is amended by inserting the following:
“accountant” means a chartered accountant who is the holder of a valid practicing certificate from the Institute of Chartered Accountants of Jamaica or a public accountant entitled to practise as such under the Public Accountancy Act.

“accountant’s report” means a report made by an accountant in the form set out in the Second Schedule and signed by him and the attorney in the places respectively provided in that form for their signatures.

3. Regulation 14 is amended by inserting the words “Without prejudice to regulation 2(3) which shall prevail,” before the words “nothing in these Regulations shall:—”

4. Regulation 16 of the Principal Regulations is hereby amended as follows:

(1) Regulation 16(2) of the Principal Regulations is hereby deleted and replaced as follows:

Without limiting the other circumstances in which it may be found by the Council to be unnecessary or impractical for an attorney to deliver an accountant’s report and without prejudice to an attorney’s obligation to otherwise fully comply with these Regulations, an attorney may file a declaration in the form shown in the First Schedule in *lieu* of an accountant’s report where the attorney has not received any trust money or where the trust money from all sources held by the attorney in the financial year comprises solely advances for fees for services to be rendered and does not at any time in the financial year exceed in aggregate \$3,000,000.00.

(2) Regulation 16(5) of the Principal Regulations is hereby deleted and replaced as follows:

Every attorney shall produce or cause to be produced to the accountant whose accountant’s report the attorney proposes to deliver to the Secretary of the Council pursuant to sub-paragraph (1):

- (a) details of all accounts kept or operated by the attorney in connection with his or her practice (howsoever designated) which contain client money, and clients’ own accounts to which the attorney is a signatory and whether maintained at any bank or elsewhere at any time during the financial year to which the report relates;
- (b) all books, records and accounts required by Regulation 6 to be kept by the attorney 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) Regulation 16 (7) is hereby deleted.

(4) The following are hereby inserted after regulation 16(6):

Reporting accountant’s rights and duties

16(7) The attorney must present with the accountant’s report delivered pursuant to paragraph (1) a certified copy of the current practising certificate issued by the Public Accountancy Board or the Institute of Chartered

Accountants of Jamaica, whichever is applicable, to the accountant making such accountant's report. Such practising certificate must be valid both as at the date of the accountant's report and the date on which the accountant's report is delivered to the Council.

16(8) Where in the course of the inspection of the books, records and accounts produced by the attorney for the purpose of preparing an accountant's report, the accountant has found that—

- (a) The attorney has failed to comply with any of the requirements of Regulation 6 of the Legal Profession (Accounts and Records) Regulations, 1999;
- (b) Client account reconciliations have not been carried out at all or with adequate regularity;
- (c) There is a significant shortfall on client's trust accounts or the client trust accounts have been overdrawn, and in either case, this does not appear to have been caused by bank error or to have been rectified promptly;
- (d) Client money has been inappropriately placed in or withdrawn from a client trust account or has been inappropriately held in an office account;
- (e) There are significant weaknesses in the attorney's accounting systems which put, or may put, client money at risk; or
- (f) Documents or information have not been provided which are necessary to enable the accountant to make the declarations required in the accountant's report,

the accountant must qualify his or her accountant's report accordingly and immediately notify the Council in the form shown in the Fourth Schedule that a qualified accountant's report has been made, identifying the applicable attorney or firm and the reasons for the qualification.

16(9) The notice required under paragraph (8) shall be made, without the need for the consent of the Attorney, within thirty days after the date on which the relevant matter came to the attention of the accountant and a copy thereof shall be promptly sent to the Attorney.

16(10) The accountant shall give notice in writing directly to the Council should his or her appointment be terminated following indication of an intention to issue a qualified accountant's report, or following the raising of concerns prior to the preparation of an accountant's report, within fourteen days of becoming aware of such termination.

16(11) The Council may, by not less than fourteen days' notice in writing, require any attorney in respect of whom a qualified accountant's report is made

or notice has been received from an accountant in accordance with Regulation 16(10) to attend before the Council and give evidence or to deliver a voluntary declaration, statement or other documents or information, with respect to such accountant's report or notice, and such attorney shall promptly comply with such notice.

16(12) Attorneys must ensure that they bring these Regulations to the attention of the reporting accountant.

16(13) Council shall be entitled to file a complaint in writing or provide information in writing to the Registrar of the Public Accountancy Board and/or to the Institute of Chartered Accountants of Jamaica in the event of failure by the accountant to give any notice or make any reports required by these Regulations.

5. The Second Schedule of the principal Regulations is hereby amended by deleting the Second Schedule in its entirety and substituting the following as the Second Schedule:

SECOND SCHEDULE

Regulation 16(1)

Accountant's Report under the Legal Profession (Accounts and Records) Regulations, 1999

To: The Secretary
The General Legal Council

Dear Sir/Madam,

This report is prepared in respect of [insert name of attorney or firm] practising at [insert address of attorney or firm]

1. I am informed by the [insert name of attorney or firm] that [they are/he/she is] engaged in the private practice of law as [a firm practising under the name and style of [insert as appropriate]
2. I am informed by the [insert name of attorney or firm] ¹ that at the reporting date:

(a) the names and attorney numbers of all partners are:—

Name	Attorney Number

(b) the names and attorney numbers of all attorneys (not being partners) employed are:—

Name	Attorney Number

SECOND SCHEDULE, *contd.*

6. I have inspected the books, records and accounts produced to me for the practice of the _____ and I report that my inspection indicated that the during the financial year ended _____ day of _____³ appeared to have maintained:—

- | | Yes | No |
|--|-----|----|
| 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 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; ⁴ | | |
| e. a book of original entry showing the date of receipt and source of all money received other than trust money; | | |
| 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, paid cheques and detailed duplicate deposit slips for all trust and other accounts; | | |
| i. pursuant to regulation 5 of the Legal Profession (Accounts and Records) Regulation, 1999:— | | |
| (i). a monthly comparison of the total of the balances shown by the clients' trust ledger accounts of the liabilities to the clients, including those for whom | | |

SECOND SCHEDULE, *contd.*

- ii. trust money is held in the trust account, with the cash account balance;
- iii. a reconciliation statement showing the cause of the difference, if any, shown by the above comparison; and
- iv. a reconciliation of that cash account balance with the balances shown on trust account bank pass book or statements and money held elsewhere;
- j. An index or equivalent single source for identification of all trust accounts, inclusive of a statement of the number of each such trust account and the name and location of the bank in which it is kept;
- k. A register, book, or chronological file of copies of all undertakings given in his or her practice as an attorney, showing the nature or amount of the undertaking, on whose behalf it was given and to whom it was given and date of discharge, if applicable;
- l. A register of all certificates of title to property, wills, securities and heirlooms held in his or her custody or possession on behalf of clients;
- m. such other books, records or accounts as are required by regulation 6 of the said Regulations:-

Y	N

[but the relevant provisions of the Regulations requiring the maintenance of such books, records or accounts do not appear to be applicable to the because

Book, Record or Account	Reason the provisions of the Regulations not applicable

SECOND SCHEDULE, *contd.*

7. I am informed that the books, records and accounts produced to me for the practice are kept and maintained at the following address(es)

[

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8. I (have) or (have not) found it necessary to make this report 'qualified'
9. In the case where I have found it necessary to make this report qualified⁵, I do so because in the course of the inspection of the books, records and accounts produced by the attorney for the purpose of preparing this accountant's report, I have found that any one or more of the following exists (check whichever apply):

(a) The attorney has failed to comply with any of the requirements of Regulation 6 of the Legal Profession (Accounts and Records) Regulations, 1999	
Client account reconciliations have not been carried out at all or with adequate regularity; or	
There is a significant shortfall on client's trust accounts or the client trust accounts have been overdrawn, and in either case, this does not appear to have been caused by bank error or to have been rectified promptly; or	
Client money has been inappropriately placed in or withdrawn from a client trust account or has been inappropriately held in an office account; or	
There are significant weaknesses in the attorney's accounting systems which put, or may put, client money at risk; or	
Documents or information have not been provided	

SECOND SCHEDULE, *contd.*

which are necessary to enable the accountant to make the declarations required in the accountant's report;

- 10. I further expound on the findings above as follows: (You may continue on additional sheets or attach any documents you believe is necessary)

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This review does not constitute an audit and therefore I can express no opinion as to whether or not there were any matters which are not disclosed in the said books, records or accounts or whether otherwise the said books, records or accounts were accurate or complete.

I _____, Accountant, hereby declare that I am a Public Accountant or Chartered Accountant and I have attached to my report a certified copy of my current practising certificate issued under the Public Accountancy Act.

Signature of Accountant _____

Address _____

Date _____

I am the attorney filing this report [on behalf of

[_____]

and to the best of my knowledge and belief the facts as reported herein are accurate.

Full name of Attorney _____

Attorney's e-mail address _____ Fax No.: _____

Signature, _____

Date _____

SECOND SCHEDULE, *contd.*

NOTES

1. Where the practice is carried on by more than one attorney, indicate whether this report covers all members of the firm or whether individual reports are being submitted.
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. State if inapplicable and why.
4. Any partner may sign this Report on behalf of the firm. The partner should include beneath his or her signature the word 'Partner' to indicate that he is a partner in the firm.
5. Reporting accountants should exercise their professional judgement when assessing an attorney's compliance with these Legal Profession (Accounts and Records) Regulations, 1999 and deciding whether their report needs to be qualified. Council only expect reports to be qualified where there has been a significant breach of the Legal Profession (Accounts and Records) Regulations, 1999, such that money belonging to clients or third parties is, has been or may be placed at risk. Breaches arising from administrative errors are not likely to be significant, but still could be if they are persistent, derive from a lack of controls or breakdown of existing controls, and have put client money at risk. Council recognises that minor breaches of the Legal Profession (Accounts and Records) Regulations, 1999 do occur in many law practices and is not expecting all identified breaches to be notified in the form of a qualified report. In all cases, the reporting accountants need only undertake checks which they feel are proportionate and targeted to the size of practice and nature of the work the practice undertakes.

FOURTH SCHEDULE

Regulation 16(8)

Notice by Accountant

To: The Secretary
The General Legal Council

I, _____ [Accountant's name], of
_____ [insert current address] being, an
accountant, give notice that a qualified accountant's report has been made by me with
respect to _____ (attorney's
name and number or firm) for the following reason (s) (strike out whichever does not
apply):

- (a) The attorney has failed to comply with any of the requirements of Regulation 6 of the Legal Profession (Accounts and Records) Regulations, 1999; or
- (b) Client account reconciliations have not been carried out at all or with adequate regularity; or
- (c) There is a significant shortfall on client's trust accounts or the client trust accounts have been overdrawn, and in either case, this does not appear to have been caused by bank error or to have been rectified promptly, or
- (d) Client money has been inappropriately withdrawn from a client trust account or has been inappropriately held in an office account; or
- (e) There are significant weaknesses in the attorney's accounting systems which put, or may put, client money at risk; or
- (f) Documents or information have not been provided which are necessary to enable the accountant to make the declarations required in the accountant's report:

FOURTH SCHEDULE, *contd.*

My findings in relation to the above are as follows:

[

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Date: _____

Signature of Accountant: _____

Dated this 26th day of May, 2021.

ALLAN S. WOOD, Q.C.
Chairman,
General Legal Council.

ALTHEA RICHARDS
Secretary,
General Legal Council.