

Practice Management: Managing Finances and Clients Accounts in A Law Firm.

Talking Points for

CLE seminar scheduled for 28th May 2010 in Dar es Salaam

1. The law firm is a business entity
 - Sole proprietorship or partnership (limitation on company option, no LLP)
 - A partnership is a business entity formed by persons who have come together to pursue a trade for gain (profit)
 - The personal dynamics which are social in nature (friendship, chemistry, tolerance, love or affection, etc) do not displace the underlying objective of associating for gain
 - 'gain' is money, so a partnership is people coming together to make money
 - A law firm can also be run as a sole proprietorship (most of our lawyers operate as sole practitioners) but the objective of a sole proprietorship is still the same, to make money (unless it is a charity or a non-profit NGO)
 - In order to make money a business entity has to be managed in a businesslike manner
 - Business management has three critical components - management of staff, management of work, and management of finances (our focus today is on finances).
 - Finances are critical to the business - there are two sides to finances 'income' and 'expenditure'
 - Income: business promotion, task execution, invoicing for services, receiving payments, banking, dealing with non-payment of invoices
 - Expenditure: expenditure projection, expenditure control, book keeping and accounting, making provisions for payments

2. Income (banking the finances of the business)
 - Account opening
 - Signing mandate (considerations: control and flexibility)
 - Denominating the accounts – advocate's account(s)/client's account(s) - compliance with the Advocates Act section 69 (a) and (c); the Advocates (Accounts) Regulations GN 207/1956; and Rule 13 of the Rules of Professional Conduct and Etiquette
 - Client's account – objective of client account, accounting for client monies, transfers from client's account to third parties, transfers from client's account to advocate's account, (the Advocates (Accounts) Regs Regulation 2, 3, 4, 5, 7 and 9 GN 207 of 1956)
 - Banking transactions mandate (accountant/officer)
 - managing the banking transactions (confirmations and reconciliations)

3. Maintaining accounts
 - Book keeping (accountant/finance officer)
 - Preparation of annual accounts
 - Auditing of annual accounts

4. Complying with statutory payments
 - tax payments (income tax payments – personal, Payroll Levy for staff, VAT, Stamp duty, etc)
 - pension payments (NSSF/PPF)
 - Non-statutory payments (insurances: rents, professional indemnity, medical insurance, fire/burglary)

5. Accounting for tax purposes
 - VAT returns, VAT payments, VAT refunds
 - Income tax returns, expenditure deductions, and income tax assessments
 - Dedicated tax accounts
 - making tax provisions

6. Sound financial management
 - Making provision for significant annual payments (rent, retirement, indemnity insurance, etc)
 - Paying creditors and suppliers (prioritization of payments)

Prepared for TLS by Kibuta, O.

THE ADVOCATES (ACCOUNTS) REGULATIONS

(Section 69)

G.N. No. 207 of 1956

1. Citation

These Regulations may be cited as the Advocates (Accounts) Regulations.

2. Advocate to keep book of accounts

Every Advocate shall keep such book or books of accounts as may be necessary to show and distinguish in connection with his practise as an advocate—

- (a) moneys received from or on account of and the moneys paid to or on account of each of his clients; and
- (b) the moneys received and the moneys paid on his own account.

3. Advocate to pay money into a deposit account

Every advocate who holds or receives money on account of a client (save money hereinafter expressly exempted from the application of this Regulation) shall, without undue delay, pay such money into a current or deposit account at a bank, to be kept in the name of the advocate in the title of which the word "Client" shall appear (hereinafter referred to as a "client account"). An advocate may keep one client account or as many such accounts as he thinks fit:

Provided that when an advocate receives a cheque or draft representing in part money belonging to the client and in part money due to the advocate he may, where practicable, split the cheque or draft and pay to the client account that part only which represents money belonging to the client. In any case he shall pay the whole of such cheque or draft into the client account.

4. No money to be paid into clients account

No money shall be paid into a client account other than—

- (a) money held or received on account of a client;
- (b) such money belonging to the advocate as may be necessary for the purpose of opening or maintaining the account;
- (c) money for replacement of any sum which may, by mistake or accident, have been drawn from the account in contravention of regulation 5 of these Regulations;
- (d) a cheque or draft received by the advocate representing in part money belonging to the client and in part money due to the advocate, when such cheque or draft has not

been split as provided by regulation 3 of these Regulations.

5. No money to be drawn from clients account

No money shall be drawn from a client account other than—

- (a) money properly required for payment to or on behalf of a client or for or towards payment of a debt due to the advocate from a client or money drawn on the client's authority, or money in respect of which there is a liability of the client to the advocate, provided that the money so drawn shall not in any case exceed the total of the money so held for the time being for such client;
- (b) such money belonging to the advocate as may have been paid into the account under regulation 4(b) or 4(d) of these Regulations;
- (c) money which may by mistake or accident have been paid into such account in contravention of regulation 4 of these Regulations.

6. Regulation not to apply

Regulations 3, 4 and 5 of these Regulations shall not apply to money which—

- (a) the client for his own convenience requests an advocate to withhold from a client account;
- (b) an advocate 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 authorised agent of that client;
- (c) in the ordinary course of business upon receipt is paid on behalf of the client to a third party;
- (d) is upon receipt paid to the client;
- (e) is paid to an advocate expressly on account of costs;
- (f) the Committee upon an application made to them in writing by an advocate specifically authorises to be withheld or withdrawn from a client account.

7. Committee may require an advocate to produce his books of accounts

(1) In order to ascertain whether these Regulations have been complied with, the Committee acting either on their own motion or written complaint lodged with them by an aggrieved party, may require any advocate to produce at some convenient time and place, his books of account, bank passbooks, statement of accounts, vouchers and any other necessary documents for the inspection of any person appointed by the Committee and such person shall prepare for the information of the Committee a report on the result of such inspection.

(2) A report made under subregulation (1) proceedings under Part V of the Act.

(3) Before making an appointment under subregulation (1) the Committee shall consider any objection made by any such advocate to the appointment of a particular person on personal or other proper grounds or on the ground that such person practises in the same locality.

(4) Before instituting an inspection on a complaint made by a third person, the Committee shall require *prima facie* evidence that a ground of complaint exists, and may require the payment by such person to the Committee of a reasonable sum to be fixed by them to cover the costs of the inspection, and the costs of the advocate against whom the complaint is made. The Committee may deal with any sum so paid in such manner as they think fit.

8. Authorisation by the Committee

Every requirement, authorisation and notification to be made or given by the Committee to an advocate under these Regulations shall be made in writing under the hand of such person as may be appointed by the Committee for the purpose and sent by registered post to the last address of the advocate appearing in the records of the Law Society, and when so made and sent shall be deemed to have been received by the advocate within one week of the time of posting.

9. An advocate not to be deprived of recourse or right

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

67. Payment of expenses of Committee

(1) Any expenses certified to have been incurred by the Committee in carrying out any of the provisions of this Act or in supporting any report before the High Court shall, subject to the provisions of subsection (2), be paid out of the general revenue of the United Republic.

(2) The High Court may, on the application of the Committee, order that any such expenses shall be paid to the Permanent Secretary to the Treasury by the advocate concerned or by any party on whose application such expenses had been incurred.

(3) Where any such expenses have been paid in accordance with an order made under subsection (1), they shall form part of the general revenue of the United Republic.

68. Authentication of Regulations and other documents

All regulations, orders, certificates, notices and other documents made or issued by the Committee or the Remuneration Committee for any purpose whatsoever may be signed on behalf of the Committee concerned by the chairman or such member or other person as the Committee may for that purpose appoint.

68A. Fees for admission and practising certificates to be paid to Law Society

(1) The Registrar shall retain in a separate account all fees paid under the provisions of subsection (2) of section 8, subsection (1) of section 35 and subsection (2) of section 39, and shall pay the balance standing to the credit of that account on the first day of January, the first day of April, the first day of July and the first day of October in each year to the Law Society, and the Law Society may apply the same for any of the purposes for which the funds of the Society may be applied.

(2) The receipt of the Secretary of the Law Society, or of any other officer of the Law Society authorised by the Council thereof in that behalf, shall be a sufficient discharge to the Registrar for any payment made by him under this section.

69. Regulations

The Committee, with the approval of the Chief Justice, may make regulations for the better carrying out of the provisions and purposes of this Act and, in particular but without prejudice to the generality of the foregoing, may make regulations with respect to the following matters—

- (a) the keeping of accounts by advocates;
- (b) the acts or omissions which shall constitute misconduct on the part of an advocate;
- (c) practice and etiquette of advocates;
- (d) prescribing anything which under this Act is to be prescribed.

70. Saving of other laws

Nothing in this Act shall prejudice or affect—

Rules of Professional Conduct and Etiquette of TJS

13. CLIENTS ACCOUNT:

- (a) The attention of Advocates is called to the detailed provisions of the Advocates (Accounts) Regulations 1956.
- (b) If a cheque drawn on a Client Account is dishonoured professional misconduct is disclosed and disciplinary action will follow.

14. CLIENT'S FILES:

- (a) A client is entitled to copies of any documents in his file which he may require and for which he must pay, and to access to his file.
- (b) A client is entitled to all the document submitted by him to his Advocate for the purpose of instruction and an Advocate should accordingly hand them over to a client on his request, subject to the following qualifications:
 - (i) that an advocate has a lien over all papers relating to a client and that client's affairs for his costs; and
 - (ii) that, if more than one party were involved, the Advocate might be entitled to retain the files if required in connection with another client's affairs in the same matter.
- (c) Client files may be forwarded to the Public Archives only with the client's consent.
- (d) Subject to the foregoing, there is no objection to destruction or disposal of files by Advocates subject to a prior notice of one month to the client of the intention to do so.
- (e) Any Advocate who is leaving the country and/or ceasing to practice must make arrangements for the retention or disposal of records and must inform the Secretary of the Law Society of the arrangements.

15. COMMISSIONER FOR OATHS — DUTIES:

- (a) The attention of Commissioners for Oaths is drawn to the statutory requirements which are set out in the Notaries Public and Commissioners for Oaths Ordinance (Cap. 12).
- (b) A Commissioner may not act as such in any proceeding in which he has acted as Advocate to any of the parties to that proceeding or in which he is interested. The "Proceeding" referred to is not limited to a Court proceeding but also includes, for instance, all documents prepared by a partner or clerk in the Commissioner's firm. If a Commissioner is in any doubt as to whether he is "interested" or not, he should refuse to act.
- (c) Affidavits consisting of more than one page, or with exhibits annexed, should be signed by the Commissioner at the bottom of each page and exhibit.
- (d) The entire responsibility for the contents of the affidavit rests with the deponent and the Advocate who prepared it. It would be impossible for a Commissioner to determine whether the deponent understood every statement made in the affidavit unless he himself had read it to the deponent, and had himself mastered the facts of the case. Such a course would be impracticable and beyond the duties of the Commissioner.
- (e) It is the duty of the Commissioner to satisfy himself that the oath which he is administering is, in form and upon the face of it, an oath which his commission authorises him to administer.