

CHAPTER 267

THE ADVOCATES ACT.

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CHAPTER 267

THE ADVOCATES ACT.

Commencement: 21 August, 1970.

An Act to amend and consolidate the law relating to advocates and to make general provisions for purposes connected with the legal profession.

PART I—INTERPRETATION.

1. Interpretation.

In this Act, except where the context otherwise requires—

- (a) “advocate” means any person whose name is duly entered upon the roll and, for the purposes of section 19(2) and of Part VI of this Act, includes any person mentioned in section 6;
- (b) “client” includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ, an advocate and any person who is or may be liable to pay to an advocate any costs;
- (c) “contentious business” means any business done by an advocate in any court, civil or military, or relating to proceedings instituted or intended to be instituted in any such court, or any statutory tribunal or before any arbitrator or panel of arbitrators;
- (d) “costs” includes fees, charges, disbursements, expenses and remuneration;
- (e) “Disciplinary Committee” means the committee established under section 18;
- (f) “disciplinary proceedings” means any proceedings before the Disciplinary Committee or the High Court on appeal in which consideration is being given to the question whether an advocate should be punished for professional misconduct;
- (g) “Law Council” means the council established under section 2;
- (h) “legal assistant” means a person who belongs to a class defined by the Law Council in regulations made for that purpose;
- (i) “noncontentious business” means any business done by an advocate other than contentious business;

- (j) “practising certificate” means a certificate issued under section 11;
- (k) “professional misconduct” includes disgraceful or dishonourable conduct not befitting an advocate;
- (l) “registrar” means the chief registrar of the High Court;
- (m) “roll” means the roll of advocates kept under section 7;
- (n) “suit” has the same meaning as in the Civil Procedure Act;
- (o) “unqualified person” means a person not qualified under section 8.

PART II—THE LAW COUNCIL.

2. Establishment of the Law Council.

- (1) There is established a Law Council which shall consist of—
 - (a) a judge, appointed by the Attorney General after consultation with the Chief Justice, who shall be chairperson of the council;
 - (b) the president of the Uganda Law Society, *ex officio*;
 - (c) the director of the Law Development Centre, *ex officio*;
 - (d) the head of the department of law of Makerere University, *ex officio*;
 - (e) two practising advocates elected by the Uganda Law Society; and
 - (f) one officer with legal qualifications in the service of the Government, appointed by the Attorney General.

(2) The chairperson and the members of the Law Council, other than the *ex officio* members, shall hold office for a period of three years and shall be eligible for reappointment.

(3) If the chairperson or any of the members of the Law Council, other than the *ex officio* members—

- (a) dies;
- (b) resigns;
- (c) is absent from Uganda for a continuous period exceeding six months; or
- (d) is, in the opinion of the Attorney General, unable by reason of any infirmity of body or mind to perform his or her duties,

the vacancy shall be filled by the Attorney General or the Uganda Law Society, as the circumstances require.

3. Functions of the Law Council.

The functions of the Law Council shall be—

- (a) to exercise general supervision and control over professional legal education in Uganda;
- (b) without prejudice to the generality of paragraph (a), to approve courses of study and to provide for the conduct of qualifying examinations for any of the purposes of this Act;
- (c) to advise and make recommendations to the Government on matters relating to the profession of advocates;
- (d) to exercise, through the medium of the Disciplinary Committee, disciplinary control over advocates and their clerks;
- (e) to exercise general supervision and control over the provision of legal aid and advice to indigent persons; and
- (f) to exercise any power or perform any duty authorised or required by this or any other written law.

4. Proceedings and quorum of the Law Council.

(1) The meetings of the Law Council shall be held at such times and places as the chairperson of the council may determine.

(2) The chairperson of the Law Council shall preside at all meetings at which he or she is present; in the absence of the chairperson from any meeting, the council may appoint any of its members to be chairperson of that meeting.

(3) The quorum of the Law Council shall be four, but subject to that quorum the council may act notwithstanding any vacancy in their number.

(4) Any question before the Law Council shall be decided by a majority of votes of the members present and voting; and the chairperson of the meeting shall, in addition to his or her deliberative vote, have a casting vote in cases where the votes are equally divided.

(5) Subject to this section, the Law Council shall have power to regulate its own proceedings and for such purpose may make standing orders governing the calling of meetings and the procedure at its meetings.

5. Secretary of the Law Council and expenses.

(1) There shall be a secretary to the Law Council, whose office shall be a public office.

(2) Any expenses incurred by the Law Council in the performance of its functions or duties under this Act shall be defrayed out of monies provided by Parliament.

PART III—EXEMPTED PERSONS.

6. Certain persons exempted from provisions of the Act.

(1) Every person to whom this section applies shall, if duly qualified as a legal practitioner (by whatever name called) in any country at the time of his or her appointment to this office, be entitled in connection with the duties of his or her office to act as an advocate but shall not, unless the contrary is expressly provided by regulations made by the Law Council, be subject to this Act.

(2) This section applies to—

- (a) any person holding an office in the service of the Government, a district administration, or any city, municipal or town council; and
- (b) any other person or class of persons holding an office specified by the Attorney General by statutory instrument.

PART IV—ENROLLMENT AND CERTIFICATION OF ADVOCATES.

7. Roll of advocates.

The registrar shall keep, in accordance with this Act, a roll of advocates.

8. Admission and enrollment of advocates.

(1) A person to whom this section applies, and who has complied with such requirements (whether relating to instruction, examination or otherwise) as to the acquisition of professional skill and experience as may be specified in regulations made for that purpose by the Law Council, shall be eligible to have his or her name entered on the roll.

(2) Any person eligible to have his or her name entered on the roll may make application to the Law Council; and the council, if satisfied that the applicant is so eligible and is a fit and proper person to be an advocate, shall issue to him or her a certificate to that effect.

(3) Any person who has obtained a certificate under subsection (2) may apply to the Chief Justice to have his or her name entered on the roll; and the Chief Justice shall, unless cause to the contrary is shown to his or her satisfaction, direct the registrar on receipt of a fee of forty shillings to enter the applicant's name on the roll.

(4) Every application under this section shall be made and advertised in such manner as may be prescribed by regulations made by the Law Council.

(5) This section applies to a person who is a Uganda citizen or who normally resides in Uganda, and who—

- (a) is the holder—
 - (i) of a degree in law granted by a university in Uganda; or
 - (ii) a degree in law or other legal qualifications granted by or obtained from such other university or institution outside Uganda as may be recognised by the Law Council by regulations made for the purposes of this section; or
- (b) prior to his or her application, has been in practice as a legal practitioner (by whatever name called) for an aggregate period of not less than five years in any country designated by the Law Council by regulations for the purposes of this section.

(6) The fee mentioned in subsection (3) may, from time to time, be altered by the Attorney General by statutory instrument.

(7) Notwithstanding subsection (1), the Law Council may make regulations under which a person to whom this section applies (other than the holder of a degree in law granted by a university in Uganda) may be required to undergo courses of study in such subjects relevant to the law in force in Uganda as may be specified and to satisfy examiners in those subjects; and any of those requirements shall be in addition to those mentioned in that subsection.

9. Precedence.

(1) The Attorney General, the Solicitor General, the Director of Public Prosecutions and the chairperson of the Uganda Law Society, shall, in that order, take precedence over all other advocates, including advocates granted a special rank.

(2) Advocates who are granted a special rank in accordance with regulations made under section 77(1)(f) shall take precedence over all other advocates, and, inter se, according to the date on which they are granted the special rank.

(3) All other advocates shall take precedence thereafter, inter se, according to the date on which their names are entered upon the roll.

10. Removal of name from roll on application of advocate.

(1) Any advocate against whom no disciplinary or criminal proceedings are pending or taking place may apply to the registrar for his or her name to be removed from the roll, and the registrar shall thereupon remove the advocate's name from the roll.

(2) Notwithstanding subsection (1), the registrar, with the approval of the Chief Justice, may remove the name of an advocate from the roll on that advocate's application although criminal proceedings are pending or taking place against that advocate, if he or she is satisfied that the proceedings are of such a nature that if the advocate is convicted, his or her conviction will not involve professional misconduct.

11. Issue of practising certificates and right to practise.

(1) The registrar shall issue a practising certificate to every advocate whose name is on the roll and who applies for such a certificate on such form and on payment of such fee as the Law Council may, by regulations, prescribe; and different fees may be prescribed for different categories of advocates.

(2) A practising certificate shall be valid until the thirty-first day of December next after its issue, and it shall be renewable on application being made on such form and on payment of such fee as the Law Council may, by regulations, prescribe; and different fees may be prescribed for different

categories of advocates.

(3) Subject to any regulations made under subsection (4), or under section 77(1)(f), every advocate who has in force a practising certificate may practise as such in the High Court or in any court subordinate to the High Court.

(4) The Law Council may by regulations prescribe that for a specified period of time after enrollment an advocate shall have a right of audience only before such courts as may be designated.

(5) Any advocate who contravenes or fails to comply with any of the provisions of regulations made under subsection (4) commits an offence.

12. Refusal of practising certificate.

(1) Notwithstanding section 11, the registrar shall refuse to issue or renew a practising certificate of any advocate who, on the date of his or her application for the certificate—

- (a) is an undischarged bankrupt or in respect of whom a receiving order in bankruptcy is in force;
- (b) is a person adjudged to be of unsound mind under the Mental Treatment Act;
- (c) has not paid any fine or costs awarded against him or her under this Act;
- (d) has not satisfied any regulations made by the Law Council with regard to the annual submission of his or her accounts;
- (e) has not paid his or her subscription as a member of the Uganda Law Society for the current year;
- (f) is serving the Government under a contract, and the period of the contract has not yet expired;
- (g) is being proceeded against for professional misconduct or for an offence under this Act; but—
 - (i) the chief registrar shall only refuse to issue or renew a practising certificate, or in the case where a practising certificate has been issued or renewed (and notwithstanding section 20) the certificate may be suspended by the Disciplinary Committee, if the Disciplinary Committee is of the view that there is a prima facie case against the advocate and the alleged misconduct or offence is one involving gross moral turpitude;

- (ii) the refusal under this section and the aforesaid suspension shall stand until the matter is disposed of by the Disciplinary Committee;
- (h) has been convicted of a criminal offence involving moral turpitude and sentenced to imprisonment for a term of one year or more, without the option of a fine;
- (i) is employed by a public body as defined in the Prevention of Corruption Act, unless the advocate is permitted by his or her employer and the Law Council; except that the advocate shall not be refused a practising certificate solely on the basis that the certificate is for doing legal work for the public body; and
- (j) has no chambers which have been duly approved by the Law Council.

(2) Notwithstanding anything contained in subsection (1), in the case of an advocate falling under paragraph (h), the chief registrar may, if the advocate has been granted free pardon, issue or renew his or her practising certificate.

(3) In this section, the term “moral turpitude” includes fraud and dishonesty.

(4) Any advocate aggrieved by a refusal by the registrar to issue or renew a practising certificate under subsection (1) may appeal against the refusal to the Chief Justice in such manner as the Chief Justice may direct, and the Chief Justice shall make such order on the appeal as he or she thinks just.

13. Temporary admission to right to practise.

(1) Notwithstanding the other provisions of this Part, the Chief Justice may, subject to the person obtaining a special practising certificate, admit to practise as an advocate for the purpose of any one case or matter any legal practitioner (by whatever name called) of any country designated by regulations made under section 8(5)(b) who has come or intends to come to Uganda for the purpose of appearing or acting in that case or matter; but any such person shall only be entitled to appear or act—

- (a) in the case or matter for the purpose of which he or she is admitted; and
- (b) if he or she is instructed by, and if when appearing in any court in the conduct of the case or matter he or she appears together

with, an advocate with a valid practising certificate or a person mentioned in section 6.

(2) On payment of the prescribed fee for such a special practising certificate, the registrar shall issue a special practising certificate to any person admitted to practise under subsection (1).

(3) Any person who is admitted to practise as an advocate under this section shall be subject to the provisions of this Act as if he or she were an advocate for so long as he or she is concerned in the matter or case in respect of which he or she was admitted to practise.

14. Cancellation or suspension of practising certificate.

(1) Whenever an advocate's name is removed or struck off from the roll for any cause, his or her practising certificate shall immediately be deemed to be cancelled, and he or she shall return it to the registrar.

(2) Whenever an advocate's right to practise as such is suspended, his or her practising certificate shall likewise be suspended; and he or she shall return it to the registrar who shall retain it for so long as the advocate's suspension is in force.

(3) Whenever an advocate is adjudicated bankrupt, the official receiver shall notify the registrar, and that adjudication shall operate immediately to suspend the advocate's practising certificate, and the advocate shall return the certificate to the registrar.

(4) The suspension of an advocates practising certificate under subsection (3) shall continue until the adjudication in bankruptcy is annulled; except that the Chief Justice may, on the petition of the advocate and after hearing the Law Council, in his or her absolute discretion by order terminate the suspension either unconditionally or subject to such terms and conditions as he or she may think fit; whereupon, subject to the order, the suspension shall cease, and the advocate shall be entitled to the return of his or her practising certificate.

(5) The Chief Justice may make rules as to the manner in which petitions made under subsection (4) shall be heard and may by rules limit the frequency with which the petitions may be made.

(6) Any advocate who fails without sufficient cause to return a practising certificate to the registrar in contravention of subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine not exceeding two hundred shillings for every day during which the failure continues.

15. Offences and penalties.

(1) Any advocate not in possession of a valid practising certificate or whose practising certificate has been suspended or cancelled who practices as an advocate commits an offence; but no prosecution shall be commenced under this subsection before the first day of March next following the expiry of the validity of an advocate's practising certificate if the reason the advocate is not in possession of a valid certificate is only because he or she has neglected to renew the certificate which expired on the thirty-first day of December previous to that first day of March.

(2) Any person who, for the purpose of securing the entry or removal of his or her name upon or from the roll, or of securing the issue of a practising certificate, knowingly makes any statement whether written or oral which is false in any material particular, or makes any such statement which he or she does not know to be true commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

PART V—DISCIPLINE OF ADVOCATES AND CLERKS.

16. Advocates to be officers of the court.

Every advocate and every person otherwise entitled to act as an advocate shall be an officer of the High Court and shall be subject to the jurisdiction of the High Court and, subject to this Act, to the jurisdiction of the Disciplinary Committee.

17. Saving of disciplinary powers of courts.

Nothing in this Act shall supersede, lessen or interfere with the jurisdiction of any court, inherent or otherwise, to deal with misconduct or offences by an advocate, or any person entitled to act as such, committed during, or in the course of, or relating to, proceedings before the court.

18. Establishment of the Disciplinary Committee.

(1) There is established for the purposes of this Act a committee called the Disciplinary Committee which shall consist of —

- (a) the member of the Law Council referred to in section 2(1)(f), ex officio;
- (b) four other members of the Law Council, other than the chairperson, appointed by the Law Council as follows—
 - (i) one member to be appointed from among the members of the Law Council referred to in section 2(1)(e); and
 - (ii) the other three members to be appointed from among the other members of the Law Council.

(2) The members of the Disciplinary Committee shall hold office for so long as they are members of the Law Council and shall be eligible for reappointment.

(3) The chairperson of the Disciplinary Committee shall be appointed by the Law Council from the members of the committee and shall preside at all meetings at which he or she is present.

(4) During the absence or inability to act of the chairperson or any member of the Disciplinary Committee, the Law Council may nominate any member of the council to act as the temporary chairperson of the committee or as a temporary member of the committee, as the circumstances require, during the period of such absence or inability to act.

(5) The quorum of the Disciplinary Committee shall be three, and any question before the committee shall be decided by a majority of votes.

(6) In the event of there being any complaint or matter pending before the Disciplinary Committee at the date of retirement of any member of the committee, where the committee had, prior to that date, entered upon the hearing of the complaint or matter in accordance with section 20, the member shall, if he or she is not reappointed, be deemed to remain in office for the purpose only of that complaint or matter and shall so remain until the complaint or matter has been finally disposed of.

(7) The secretary to the Law Council shall be the secretary to the Disciplinary Committee; but the committee may, in the case of the absence or inability to act of the secretary to the Law Council, appoint any fit and

proper person to act as secretary to the Disciplinary Committee during the period of that absence or inability to act.

19. Proceedings of the Disciplinary Committee.

(1) For the purposes of any application or complaint made to it under any of the provisions of this Act, the Disciplinary Committee may administer oaths or affirmations, and the complainant and the advocate to whom a complaint relates, and an applicant making any application to the committee, may take out a summons to give evidence or to produce documents, but no person shall be compellable under any such summons to produce any document which he or she could not legally be compelled to produce at the trial of a suit.

(2) Any person appearing as a party before the Disciplinary Committee may be represented by an advocate; and the committee may, at any stage of proceedings under this Part of this Act, appoint an advocate to represent a party who is not represented or otherwise to assist the committee.

(3) For the purposes of enabling the Disciplinary Committee to carry out the duties imposed upon it by this Act, the committee shall have power to interview and correspond with such persons, including the advocate to whom the complaint relates, as it thinks fit.

(4) The Disciplinary Committee may make regulations governing its procedure and the making to the committee of applications or complaints under this Act.

(5) If any person upon whom a summons issued under subsection (1) has been served refuses or omits without sufficient cause to attend at the time and place mentioned in the summons, or refuses without sufficient cause to answer fully and satisfactorily to the best of his or her knowledge and belief all questions put to him or her by or with the concurrence of the Disciplinary Committee, or refuses or omits without sufficient cause to produce any documents in his or her possession or under his or her control which are mentioned in the summons, he or she commits an offence and is liable on conviction to a fine not exceeding one thousand shillings.

(6) All proceedings before the Disciplinary Committee shall be deemed for the purposes of Chapter X of the Penal Code Act to be judicial proceedings.

(7) The Evidence Act shall not apply to proceedings before the committee; except that a witness shall be entitled to all rights and privileges to which a witness is entitled under that Act.

20. Complaints against advocates.

(1) Without prejudice to the other provisions of this Act, a complaint against an advocate of professional misconduct may be made to the Disciplinary Committee by the Law Council or by any person.

(2) Upon receipt of a complaint, the secretary to the Disciplinary Committee shall, as soon as is practicable, refer the complaint to the committee; and unless the committee dismisses the complaint under subsection (3), it shall fix a date for the hearing of the complaint.

(3) The Disciplinary Committee shall give the advocate against whom the complaint is made an opportunity to appear before it, and shall furnish him or her with a copy of the complaint, and of any affidavit made in support of the complaint, and shall give him or her an opportunity of inspecting any other relevant document not less than seven days before the date fixed for the hearing; but where in the opinion of the committee the complaint does not disclose any prima facie case of professional misconduct, the committee may, at any stage of the proceedings, dismiss the complaint without requiring the advocate to whom the complaint relates to answer any allegations made against him or her and without hearing the complainant.

(4) After hearing the complainant and the advocate to whom the complaint relates, if he or she wishes to be heard, and considering the evidence adduced, the Disciplinary Committee may order that the complaint be dismissed or, if of the opinion that a case of professional misconduct on the part of the advocate has been made out, the committee may order—

- (a) that the advocate be admonished;
 - (b) that the advocate be suspended from practice for a specified period not exceeding two years;
 - (c) that the name of the advocate be struck off the roll;
 - (d) that the advocate pay a fine not exceeding ten thousand shillings;
- or
- (e) that the advocate pay compensation not exceeding twenty thousand shillings to any person who has suffered loss as a result of his or her misconduct,

or such combination of the above orders as the committee thinks fit.

(5) The Disciplinary Committee may make any such order as to payment by any party of any costs or witness expenses and of the expenses of the committee in connection with the hearing of any complaint as it may think fit.

(6) The Disciplinary Committee may issue a warrant for the levy of the amount of any sum ordered to be paid by virtue of this section on the immovable and movable property of the advocate by distress and sale under warrant, and the warrant shall be enforced as if it were a warrant issued by the High Court.

(7) The Disciplinary Committee may order any advocate against whom a case of professional misconduct has been made out to restore any property in his or her possession or under his or her control to the person appearing to the committee to be entitled to the property.

(8) Any order made by the Disciplinary Committee under the provisions of this section relating to the payment of compensation, costs or expenses, or to the restoration of property, shall be drawn up by the committee and shall thereupon be executable as if it were a decree of the High Court.

(9) At the time of awarding any damages in any subsequent civil proceedings relating to the same matter, the court determining the civil suit shall take into account any sum recovered in pursuance of an order made under subsection (4)(e).

21. Report and action on a complaint.

(1) On the termination of the hearing of a complaint, if the Disciplinary Committee does not dismiss the complaint, the committee shall embody its findings and the order or orders made by it in the form of a report to the High Court, which shall be delivered to the registrar, together with the record of evidence taken and any documents put in evidence.

(2) The registrar shall give to the complainant and to the advocate to whom the complaint relates notice of delivery of the report, which shall be open to inspection by the complainant, the said advocate and their respective advocates, if any, but shall not be open to public inspection.

22. Appeal against order of the Disciplinary Committee.

(1) Any advocate aggrieved by any order of the Disciplinary Committee made under section 20 may, within fourteen days after the receipt by him or her of the notice to be given to him or her under section 21, appeal against the order to the High Court by giving notice of appeal to the registrar, and shall file with the registrar a memorandum setting out his or her grounds of appeal within thirty days after the giving by him or her of the notice of appeal.

(2) The High Court shall set down for hearing any appeal filed under subsection (1) and shall give to the Law Council and to the advocate not less than fourteen days' notice of the date of hearing.

(3) Pending an appeal under subsection (1), if the Disciplinary Committee has ordered the appellant advocate's name to be struck off from the roll or has suspended his or her right to practise, the advocate shall not be entitled to practise except in the case where his or her right to practise has been suspended and the period of suspension lapses before the hearing of the appeal, in which event he or she shall be entitled to practise after the period of suspension has expired.

23. Registrar to furnish copy of report and record.

When notifying the Law Council and the advocate to whom a complaint relates of the date fixed for the hearing of the appeal, the registrar shall also forward to the Law Council and the advocate a copy of the report, the record of the evidence, a list of any documents put in evidence and the memorandum of appeal.

24. Representation before the High Court.

The advocate to whom a complaint relates may be represented by an advocate before the High Court; and the Law Council shall have the right to appear, by advocate, for the purpose of presenting to the High Court the findings of the Disciplinary Committee as contained in the report of the committee.

25. Powers of the High Court.

The High Court, after considering the evidence taken by the Disciplinary Committee, the report of the committee and the memorandum of appeal, and having heard the Law Council's representative, if any, and the advocate to whom the complaint relates, or his or her advocate, and after taking any further evidence, if it thinks fit to do so, may—

- (a) refer the report back to the committee with directions for its finding on any specified point; or
- (b) confirm, set aside or vary any order made by the committee or substitute for that order such order as it may think fit.

26. Powers of High Court to be exercised by three judges.

(1) The powers conferred upon the High Court by section 25 shall be exercised by three judges of the High Court.

(2) The decision of the majority of the judges on any appeal filed under section 22 shall be taken to be the decision of the High Court.

(3) Every decision or order of the High Court made under section 25 shall be final and conclusive and shall not be subject to appeal to any other court.

27. Registrar to draw up orders.

Where an order has been made by the High Court under section 25, the registrar shall, within one week from the date of the making of the order, cause the order to be drawn up.

28. Orders to be noted on the roll.

(1) The registrar shall cause a note of the effect of a final order to be entered in the roll against the name of the advocate concerned, and where the order so directs shall strike off his or her name from the roll.

(2) The registrar shall send to the secretary of the Uganda Law Society and to the registrar of the High Court of each East African country a certified copy of every final order made under this Act striking off the name of an advocate from the roll or suspending an advocate from practice.

(3) Where an advocate is a member of an Inn of Court, Law Society or other professional body outside Uganda, or is subject to the jurisdiction for the purposes of discipline of a professional body outside Uganda, the registrar shall also send to that professional body a certified copy of every final order made suspending or striking off the name of the advocate from the roll.

(4) In this section—

(a) “East African country” has the meaning assigned to it by section 29;

(b) “final order” means—

(i) an order made by the Disciplinary Committee under section 20, if no appeal has been preferred against such order; or

(ii) an order made on appeal under section 25.

29. Reciprocal enforcement of suspensions, etc.

(1) If any advocate who is also an advocate or legal practitioner (by whatsoever name or style designated) of, or is entitled to practise as such in, any East African country, is suspended from practice or struck off the roll or list of advocates or legal practitioners, otherwise than at his or her own request, in that country by order of a competent court or other competent authority in that country, he or she shall be deemed to have been suspended from practice as an advocate in Uganda for the period for which his or her suspension from practice in that country remains effective or to have been struck off the roll, as the case may be; and the registrar shall cause a note of the suspension (specifying the period of the suspension) to be entered against the name of the advocate on the roll or shall strike off the roll the name of the advocate, as the case may require; but if in any such case the name of the advocate is restored to the aforesaid roll or list of advocates or legal practitioners in that country, or if he or she otherwise becomes entitled again to practise as provided in this subsection in that country, his or her name shall, on request, be replaced on the roll by the registrar.

(2) In this section, “East African country” means any East African country in respect of which the Attorney General declares, by statutory order, that he or she is satisfied that reciprocal effect will be given under the law of that country to orders made by the Disciplinary Committee under this Act for the suspension of advocates from practice or for striking the names of advocates off the roll.

30. Uganda Law Society to be informed.

(1) The registrar shall inform the secretary of the Uganda Law Society of the making of any entry in respect of any advocate on the roll and of the removal from or the striking off the roll of the name of any advocate in accordance with this Act.

(2) The registrar shall cause to be published in the Gazette a notice that a final order has been made in respect of any advocate by which he or she has been suspended from practice or by which his or her name has been struck off the roll.

(3) In this section, “final order” has the same meaning as in section 28.

31. Limitation of time for certain applications.

Subject as hereafter provided, no advocate shall be liable to have his or her name struck off the roll on account of any defect in his or her admission and enrollment, unless the application to strike his or her name off the roll is made within twelve months after the date of his or her enrollment; except that this section shall not apply to any case where fraud is proved to have been committed in connection with the admission or enrollment.

32. Restoration to the roll.

(1) The Disciplinary Committee may, in its discretion, order the registrar to replace on the roll the name of any advocate whose name has been struck off the roll for professional misconduct and may revoke any order made suspending an advocate’s right to practise; except that unless new material facts have come to the knowledge of the Disciplinary Committee since the order for striking off or suspension was made, no order shall be made under this section within two years of the order of striking off or suspension.

(2) Any advocate whose name has been struck off the roll or whose right to practise has been suspended may petition the Disciplinary Committee to make an order under subsection (1).

(3) The Law Council may make regulations as to the manner in which petitions made under subsection (2) shall be heard and any such

regulations may—

- (a) limit the frequency with which the petitions may be made; and
- (b) make provisions for the giving of security for the costs of the petition.

(4) On hearing any petition made under this section, the Disciplinary Committee may make such order as to costs as it may think fit.

(5) Any advocate whose petition under this section is refused may appeal against the refusal to the High Court, and the provisions of sections 22, 24, 25, 26, 27 and 28 shall then apply, *mutatis mutandis*, to appeals under this subsection with any necessary modifications.

33. Disciplinary powers as to clerks.

(1) An application may be made by the Law Council or by any person to the Disciplinary Committee for an order directing that, as from a date to be specified in the order, no advocate shall, in connection with his or her practice as an advocate, without the written permission of the Disciplinary Committee which may be given for such period and subject to such conditions as the committee may think fit, take into or retain in his or her employment or remunerate any person who, being or having been a clerk to an advocate—

- (a) has been convicted of any offence mentioned in Chapters X or XXV to XXXI (inclusive) of the Penal Code Act;
- (b) has been convicted of any other offence involving fraud or deceit;
- (c) has been a party to any act or default of an advocate in respect of which a complaint has been or might be made against that advocate to the Disciplinary Committee;
- (d) has so conducted himself or herself while employed as a clerk to an advocate that had he himself or she herself been an advocate, the conduct might have formed the subject of a complaint against him or her to the Disciplinary Committee; or
- (e) has acted in the manner referred to in section 75 or 76.

(2) The provisions of sections 19 and 20(3), (4) and (5) shall, with necessary modifications, apply *mutatis mutandis* to the hearing of an application under this section.

(3) Every order made by the Disciplinary Committee under this section shall be filed, on a file to be kept for that purpose, by the secretary to

the Disciplinary Committee, who shall cause a certified copy of the order to be delivered to the person to whom it relates or shall forward it by registered post to his or her last known address.

(4) The file mentioned in subsection (3) may be inspected by any advocate during office hours without payment, but it shall not be inspected by any other person.

34. Clerk's right of appeal.

(1) Any person against whom an order has been made by the Disciplinary Committee under section 33 may, within fourteen days of the date of the order, appeal against the order to the High Court, by giving notice of appeal to the registrar, and shall file with the registrar a memorandum setting out his or her grounds of appeal within thirty days after the giving by him or her of the notice of appeal.

(2) The High Court shall set down for hearing any appeal filed under subsection (1) and shall give to the Law Council and to the appellant not less than twenty-one days' notice of the date of hearing.

(3) The provisions of sections 24, 25, 26 and 27 shall, with necessary modifications, apply *mutatis mutandis* to the hearing of appeals under this section, except that such appeals shall be heard and determined by a single judge of the High Court.

35. Offences and penalties with respect to employment of clerks against whom an order is in force.

(1) Any person against whom an order made under section 33 is in force who seeks or accepts employment by, or remuneration from, an advocate in connection with his or her practice as an advocate commits an offence.

(2) Any advocate who knowingly acts in contravention of an order made under section 33, or in contravention of any condition subject to which the permission of the Disciplinary Committee may have been given under subsection (1) of that section, commits an offence.

36. Order of the Disciplinary Committee to be received in evidence.

Every report and every order made by the Disciplinary Committee under this Act shall be signed by the chairperson of the committee, and any document purporting to be a report or an order so signed shall be received in evidence in any judicial proceedings or in any proceedings under this Act, and shall be deemed to be such a report or an order without further proof of its contents unless the contrary is shown.

37. Proceedings under this Part to be in addition to other remedies.

(1) No proceedings, whether civil or criminal, and whether pending or terminated, shall be a bar to disciplinary proceedings under this Part of this Act based on the same or substantially the same facts as those to which the civil or criminal proceedings relate.

(2) No disciplinary proceedings under this Part of this Act, whether pending or terminated, shall be a bar to any civil or criminal proceedings or other remedy based on the same or substantially the same facts as those to which the proceedings under this Part of this Act relate.

38. Penalties for failure to comply with orders of the Disciplinary Committee.

Any person who, without lawful excuse, contravenes or fails to comply with any order, notice or direction of the Disciplinary Committee commits an offence and, in the case of an advocate, is, alternatively or in addition, liable to proceedings under section 20.

39. Immunity for members of the Disciplinary Committee.

No member of the Disciplinary Committee, nor any person who is or was at any material time a member, or the secretary of the committee, shall be liable to be sued in any civil court for or in respect of any act or thing done or omitted to be done, or ordered by him or her to be done or omitted, in good faith, in the exercise, discharge, or performance, or intended or purported exercise, discharge or performance, of any of the powers, jurisdiction, duties or functions conferred upon him or her under or by virtue of this Act.

PART VI—ACCOUNTING BY ADVOCATES.

40. Advocates to keep accounts in compliance with Rules.

Every advocate shall, in connection with his or her practice as an advocate, keep accounts in compliance with the rules entitled “the Advocates Accounts Rules” and “the Advocates Trust Accounts Rules” contained respectively in the First and Second Schedule to this Act, and shall deal with all monies to which the rules apply in accordance with those rules.

41. Amendment of Rules.

The Law Council, after consultation with the Uganda Law Society, may by statutory instrument amend the Advocates Accounts Rules and the Advocates Trust Accounts Rules.

42. Interpretation of Part VI.

In this Part of this Act, unless the context otherwise requires, expressions defined in the Advocates Accounts Rules and the Advocates Trust Accounts Rules shall have the meanings assigned to them in those rules.

43. Failure to comply with provisions of this Part.

(1) If any advocate contravenes or fails to comply with any of the Advocates Accounts Rules or the Advocates Trust Accounts Rules, he or she shall be guilty of professional misconduct and of an offence against the provisions of this Part of this Act.

(2) On any proceedings against an advocate under Part V of this Act when the proceedings are in respect of an offence under subsection (1), the Disciplinary Committee may require the advocate to produce at some convenient time and place, his or her books of account, bank passbooks, statements of account, vouchers and any other necessary documents for the inspection of any person appointed by the committee for that purpose, and any such person shall, after the examination of such documents as aforesaid and taking of such other evidence as he or she may think fit, prepare for the information of the committee a report on the result of the inspection.

(3) Before making any such appointment, the committee shall consider any objection made by the advocate to the appointment of a

particular person on personal or other proper grounds.

(4) Any report made under subsection (2) shall be admissible in evidence during the proceedings before the Disciplinary Committee and shall be so admissible even if made as a result of an appointment by the committee without the presence of the person making it, but the committee shall cause the attendance of such person for cross-examination if any party so desires.

(5) A person appointed under this section shall have all the powers of a civil court as to the taking of evidence and the summoning and compelling the attendance of witnesses and for this purpose shall be deemed to be a court.

44. Deposit of costs before instituting inspection of accounts.

Before instituting an inspection under section 43, the Disciplinary Committee may require the payment by any person initiating the proceedings against the advocate, other than the Law Council, of a reasonable sum to be fixed by it to cover the costs of inspection and the costs of the advocate against whom the application is made.

45. Penalty for offences against this Part.

Any advocate who is found guilty of an offence against any of the provisions of this Part of this Act in any disciplinary proceedings, in addition to any disciplinary punishment or costs that may be awarded against him or her, may be ordered by the Disciplinary Committee to pay a fine not exceeding twenty thousand shillings.

46. Saving.

Nothing in this Part of this Act or in the Advocates Accounts Rules or the Advocates Trust Accounts Rules shall deprive an advocate of any recourse or right, whether by way of lien, setoff, counterclaim, charge or otherwise against monies standing to the credit of a client account or a trust bank account.

47. Banks not liable to inquire into dealings with client accounts.

(1) Subject to this section, no bank shall, in connection with any transaction on any account of any advocate kept with it or with any other

bank (other than an account kept by an advocate as trustee for a specified beneficiary), incur any liability or be under any obligation to make an inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be kept under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it; but nothing in this subsection shall relieve a bank from any liability or obligation to which it would be subject apart from this Act.

(2) Notwithstanding subsection (1), a bank at which an advocate keeps an account for clients' money or trust money shall not, in respect of any liability of the advocate to the bank, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of setoff, counterclaim, charge or otherwise, against monies standing to the credit of that account.

48. Agreements with respect to remuneration for noncontentious business.

(1) Notwithstanding any rules as to remuneration for the time being in force, an advocate and his or her client may, either before or after or in the course of the transaction of any noncontentious business by the advocate, make an agreement as to the remuneration of the advocate in respect of that transaction.

(2) The agreement may provide for the remuneration of the advocate by a gross sum, or by commission or percentage, or by salary or otherwise, and it may be made on the terms that the amount of the remuneration stipulated in the agreement for either shall or shall not include all or any disbursements made by the advocate in respect of searches, plans, travelling, stamps, fees or other matters.

(3) The agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of an advocate; except that if on any taxation of costs the agreement is relied on by the advocate and objected to by the client as unfair or unreasonable, the taxing officer shall inquire into the facts and certify them to the court, and if on that certificate it appears just to the court that the agreement should be cancelled, or the amount payable under it reduced, the court may order the agreement to be cancelled, or the amount payable under it reduced, and may give such consequential directions as it thinks fit.

(4) This section shall be read subject to the provisions of section 74.

49. Remuneration of advocate who is a mortgagee.

(1) If a mortgage is made to an advocate, either alone or jointly with any other person, he or she or the firm of which he or she is a member, shall be entitled to recover from the mortgagor in respect of all business transacted and acts done by him or her or them in negotiating the loan, deducing and investigating the title to the property, and preparing and completing the mortgage, such usual costs as he or she or they would have been entitled to receive if the mortgage had been made to a person who was not an advocate and that person had retained and employed him or her or them to transact that business and do those acts.

(2) If, whether before or after the commencement of this Act, a mortgage has been made to or has become vested by transfer or transmission in an advocate, either alone or jointly with any other person, and if after the commencement of this Act any business is transacted or acts are done by that advocate, or by the firm of which he or she is a member, in relation to that mortgage, or the security created by the mortgage or the property comprised under it, then he or she or they shall be entitled to recover from the person on whose behalf the business was transacted or the acts were done, and to charge against the security such usual costs as he or she or they would have been entitled to receive if the mortgage had been made to and had remained vested in a person who was not an advocate and that person had retained and employed him or her or them to transact that business and do those acts.

(3) In this section, the expression “mortgage” includes any charge on any property for securing money or money’s worth.

50. Power to make agreements as to remuneration for contentious business.

(1) Notwithstanding any rules for the time being in force, an advocate may make an agreement with his or her client as to his or her remuneration in respect of any contentious business done or to be done by him or her providing that he or she shall be remunerated either by a gross sum or by salary.

(2) An agreement made under subsection (1)—

- (a) shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the advocate, and that person may, unless he or she has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof; except that the client shall not be entitled to recover from any other person under any order for the payment of any costs to which the agreement relates more than the amount payable by him or her to his or her advocate in respect thereof under the agreement;
- (b) shall be deemed to exclude any claim by the advocate in respect of the business to which it relates other than—
 - (i) the claim for the agreed costs; or
 - (ii) a claim for such costs as are expressly excepted therefrom.

(3) No suit shall be brought upon any such agreement, but the court may, on the application of any person who is a party to, or the representative of a party to, the agreement, or who is, or who is alleged to be liable to pay, or who is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates, enforce or set aside the agreement and determine every question as to the validity or effect of the agreement.

- (4) On any such application, the court—
 - (a) if it is of the opinion that the agreement is in all respects fair and reasonable, may enforce it;
 - (b) if it is of the opinion that the agreement is in any respect unfair or unreasonable, may declare it void and may order it to be given up to be cancelled and may order the costs covered by it to be taxed as if the agreement had never been made;
 - (c) in any case, may make such orders as to the costs of the application as it thinks fit.

51. Special requirements of agreements under sections 48 and 50.

- (1) An agreement under section 48 or 50 shall—
 - (a) be in writing;
 - (b) be signed by the person to be bound by it; and
 - (c) contain a certificate signed by a notary public (other than a notary public who is a party to the agreement) to the effect that the person bound by the agreement had explained to him or her the

nature of the agreement and appeared to understand the agreement. A copy of the certificate shall be sent to the secretary of the Law Council by prepaid registered post.

(2) An agreement under section 48 or 50 shall not be enforceable if any of the requirements of subsection (1) have not been satisfied in relation to the agreement, and any advocate who obtains or seeks to obtain any benefit under any agreement which is unenforceable by virtue of the provisions of this section shall be guilty of professional misconduct.

52. In certain circumstances taxing officer may reduce amount paid under an agreement.

(1) If the business covered by an agreement under section 50 is business done, or to be done, in any suit, and if the amount agreed for under any such agreement has been paid by or on behalf of the client or by any person entitled to do so, the person making the payment may, at any time within twelve months after payment, apply to the court; and the court, if it appears to it that the special circumstances of the case require the agreement to be reopened, may, on such terms as may be just, reopen the agreement and may order the costs covered thereby to be taxed and the whole or any part of the amount received by the advocate to be repaid by him or her.

(2) Where any agreement referred to in subsection (1) is made by the client as the guardian or committee of, or as a trustee under a deed or will for, any person whose property will be chargeable with the whole or any part of the amount payable under the agreement, the agreement shall, before payment, be laid before the taxing officer of the court, and that officer shall examine the agreement and may disallow any part of it or may require the opinion of the court to be taken on it.

(3) Any client mentioned in subsection (2) who pays the whole or any part of the amount payable under the agreement without the agreement having been allowed by the taxing officer or by the court shall be liable at any time to account to the person whose property is charged with the whole or any part of the amount so paid for the sum so charged, and the advocate who accepts the payment commits an offence and may be ordered by the court to refund the amount received by him or her.

53. Death, incapability or change of advocate, etc.

(1) If, after some business has been done under an agreement made under section 50 but before the advocate has wholly performed it, the advocate dies or becomes incapable of acting, then any party, or the representative of any party, to the agreement may apply to the court; and the court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as it would have had if the advocate had not died or become incapable of acting; except that the court may, notwithstanding that it is of opinion that the agreement is in all respects fair and reasonable, order the amount due in respect of the business done under it to be ascertained by taxation, and in that case—

- (a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and
- (b) payment of the amount found by him or her to be due may be enforced in the same manner as if the agreement had been completely performed.

(2) The provisions of subsection (1) shall apply in the event of the client changing his or her advocate, as notwithstanding the agreement, he or she shall be entitled to do, before the conclusion of the business to which the agreement relates in the same manner as they apply when the advocate dies or is incapacitated, with this modification, that if an order is made for the taxation of the amount due to the advocate in respect of the business done under the agreement, the court shall direct the taxing officer to have regard to the circumstances under which the change of advocate has taken place, and the taxing officer, unless he or she is of opinion that there has been default, negligence, improper delay or other conduct on the part of the advocate affording to the client reasonable ground for changing his or her advocate, shall allow to the advocate the full amount of the remuneration agreed to be paid to him or her.

54. Agreement excludes taxation.

Subject to sections 52 and 53, the costs of an advocate in any case where an agreement has been made under section 50 shall not be subject to taxation nor to the subsequent provisions of this Part of this Act with respect to the signing and delivery of an advocate's bill.

55. Miscellaneous provisions as to remuneration for contentious business.

- (1) Nothing in section 50, 51, 52, 53 or 54 shall give validity to—
 - (a) any purchase or acquisition through other means by an advocate of the interest, or any part of the interest, of his or her client in any suit or other contentious proceedings;
 - (b) any agreement by which an advocate retained or employed to prosecute any suit or other contentious proceeding stipulates for payment only in the event of success of that suit or proceeding; or
 - (c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is under the law relating to bankruptcy invalid against a trustee or creditor in any bankruptcy or composition.

(2) An advocate may, with respect to any contentious business to be done by him or her, take security from his or her client for his or her costs to be ascertained by taxation or otherwise.

(3) Subject to any regulations, upon every taxation of costs with respect to any contentious business, the taxing officer may—

- (a) allow interest at such rate and from such time as he or she thinks just on monies disbursed by the advocate for the client, and on monies of the client in the hands of, and improperly retained by the advocate;
- (b) in determining the remuneration of the advocate, have regard to the skill, labour and responsibility involved in the business done by him or her.

56. Power of court to order advocate to deliver his or her bill, deeds, etc.

(1) The jurisdiction of the court to make orders for the delivery by an advocate of a bill of costs and for the delivery up of, or otherwise in relation to, any deeds, documents or papers in his or her possession, custody or power, is declared to extend to cases in which no business has been done by him or her in the court.

(2) In this and sections 57, 58 and 59, the expression “advocate” includes the executors, administrators and assignees of the advocate in

question.

57. Action to recover advocate's costs.

(1) Subject to this Act, no suit shall be brought to recover any costs due to an advocate until one month after a bill of costs has been delivered in accordance with the requirements of this section; except that if there is probable cause for believing that the party chargeable with the costs is about to quit Uganda, or to become a bankrupt, or to compound with his or her creditors, or to do any other act which would tend to prevent or delay the advocate obtaining payment, the court may, notwithstanding that one month has not expired from the delivery of the bill, order that the advocate be at liberty to commence a suit to recover his or her costs and may order those costs to be taxed.

(2) The requirements referred to in subsection (1) are as follows—

- (a) the bill must be signed by the advocate, or if the costs are due to a firm, one partner of that firm, either in his or her own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and
- (b) the bill must be delivered to the party to be charged with it, either personally or by being sent to him or her by registered post to, or left for him or her at, his or her place of business, dwelling house, or last known place of abode,

and where a bill is proved to have been delivered in compliance with these requirements, it shall not be necessary in the first instance for the advocate to prove the contents of the bill (which shall be presumed until the contrary is shown) to be a bona fide bill complying with this Act.

58. Taxation of bills on the application of the party chargeable or the advocate.

(1) Within one month of the delivery of an advocate's bill, the party chargeable with the bill may, by notice in writing, a copy of which shall be served by the person giving the notice on the advocate, require the taxing officer to fix a date for the taxation of the bill, and the taxing officer shall thereupon fix a date accordingly and shall give notice of the date to the party chargeable with the bill and to the advocate.

(2) The advocate, on receipt of a copy of the notice as provided in subsection (1), shall immediately forward to the taxing officer a copy of the

bill to be taxed, and, if the bill is not fully itemised, shall immediately send forward to the taxing officer and to the party chargeable with the bill a fully itemised statement of account in support of the bill.

(3) On the date fixed for the taxation, or on such other date as the taxing officer may fix in lieu of that date, the bill shall be taxed.

(4) Where the party chargeable with an advocate's bill gives notice as provided in subsection (1), no suit shall be commenced on the bill to which the notice relates, and any suit already commenced on the bill shall be stayed, until the taxation of the bill is completed.

(5) If notice is not given by the party chargeable with the bill as provided in subsection (1) within the period specified in that subsection, then, on the application either of the advocate or of the party chargeable with the bill, the court may, upon such terms, if any, as it thinks fit, not being terms as to the costs of the taxation, order—

- (a) that the bill shall be taxed;
- (b) that until the taxation is completed, no suit shall be commenced on the bill, and any suit already commenced be stayed,

except that—

- (c) if twelve months have expired from the delivery of the bill, or if the bill has been paid, or if a decree, judgment or order has been obtained in a suit for the recovery of the costs covered by the bill, no order shall be made on the application of the party chargeable with the bill except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the taxation as the court may think fit;
- (d) in no event shall any such order be made after the expiration of twelve months from the payment of the bill.

(6) On every taxation of a bill, the taxing officer shall tax not only the bill but also the costs of the taxation and shall certify what is due to or from the advocate in respect of the bill and in respect of the costs of the taxation.

(7) If, after due notice of any taxation, either party to the taxation fails to attend, the taxing officer may proceed with the taxation ex parte.

(8) Unless—

- (a) an order for taxation was made on the application of the advocate and the party chargeable does not attend the taxation; or

(b) the order for taxation otherwise provides, the costs of the taxation shall be paid according to the event of the taxation, that is to say, if one-sixth of the amount of the bill is taxed off, the advocate shall pay the costs, but otherwise the party chargeable shall pay the costs; except that the taxing officer may, for special reasons to be recorded by him or her, make any order as he or she may think fit respecting the payment of the costs of the taxation.

59. Taxation on application of third parties and beneficiaries under trusts, etc.

(1) Where a person, other than the person who is the party chargeable with the bill for the purposes of section 58, has paid, or is, or was, liable to pay, the bill either to the advocate or to the party chargeable with the bill, that person or his or her administrators, executors or assignees may apply to the court under section 58(5) for an order for the taxation of the bill as if he or she were the party chargeable with the bill, and the court may make on that application the same order, if any, as it might have made if the application had been made by that party; but in cases where the court has no power to make an order except in special circumstances, the court may, in considering whether there are special circumstances sufficient to justify it in making an order, take into account circumstances affecting the applicant, but which do not affect the party chargeable with the bill.

(2) If a trustee, executor or administrator has become liable to pay the bill of an advocate, the court may, upon the application of any person interested in the property out of which the trustee, executor or administrator has paid, or is entitled to pay, the bill to be taxed, and upon such terms, if any, as it thinks fit, order the bill to be taxed, and may order such payments, in respect of the amount found due to or from the advocate, or to the executor, administrator or trustee, as it thinks fit; except that in considering any such application, the court shall have regard to—

- (a) the provisions of section 58 as to applications by the party chargeable with the taxation of an advocate's bill so far as they are capable of being applied to an application made under this subsection;
- (b) the extent and nature of the interest of the applicant.

(3) If an applicant under subsection (2) pays any money to the advocate, he or she shall have the same right to be paid that money by the trustee, executor or administrator chargeable with the bill as the advocate

had.

(4) The following provisions shall apply to applications made under this section—

- (a) except in special circumstances, no order shall be made for the taxation of a bill which has already been taxed;
- (b) the court may, if it orders taxation of the bill, order the advocate to deliver to the applicant a copy of the bill upon payment of the costs of that copy.

60. General provisions as to taxation.

(1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.

(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

(3) Where an advocate's bill is taxed under section 58(1) to (4) at the instance of the party chargeable with it, subsection (2) of this section shall apply in all respects as if the taxation had been ordered by the court on an application made by the party chargeable with the bill in the matter of the advocate concerned.

61. Charging orders.

Any court in which an advocate has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the advocate entitled to charge on the property recovered or preserved through this instrumentality for his or her taxed costs in reference to that suit, matter or proceeding, and may make such orders for the taxation of those costs and for raising money to pay or for paying those costs out of that property as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the advocate; but no order shall be made if the right

to recover the costs is barred by limitation.

62. Appeals and references.

(1) Any person affected by an order or decision of a taxing officer made under this Part of this Act or any regulations made under this Part of this Act may appeal within thirty days to a judge of the High Court who on that appeal may make any order that the taxing officer might have made.

(2) If any matter arising out of a taxation of a bill of costs appears to the taxing officer proper for the decision of a judge of the High Court, he or she may on his or her own motion refer the matter to such a judge who may either dispose of the matter or refer it back to the taxing officer with such directions as the judge may think fit to make.

(3) With the consent of both parties the taxing officer may refer any matter in dispute arising out of the taxation of a bill of costs for the opinion of a judge of the High Court.

(4) The Law Council may make regulations as to the manner in which appeals and references shall be made under this section and the fees, if any, that shall be paid on such appeals or references and the persons who shall be liable for the payment of the fees.

(5) An appeal or reference under this section shall not act as a stay of execution unless the taxing officer or a judge so orders.

63. Saving.

Nothing in this Part of this Act shall affect the provisions of any other law, not expressly repealed by this Act, prescribing or authorising or regulating the payment of fees or costs in respect of any legal matters.

PART VII—OFFENCES.

64. Unqualified person not to practise.

(1) Any person other than an advocate who shall either directly or indirectly act as an advocate or agent for suitors, or as such sue out any summons or other process, or commence, carry on or defend any suit or other proceedings in any court, unless authorised to do so by any law, commits an

offence.

(2) Subsection (1) shall be subject to any regulations made by the Law Council for the provision of legal aid and advice to indigent persons, and no person who acts in accordance with those regulations commits an offence under that subsection.

65. Unqualified person not to hold himself or herself out as qualified.

(1) No person, not being an advocate, shall pretend to be an advocate, or shall take or use any name, title, addition or description implying that he or she is qualified or recognised by law as being qualified to act as an advocate.

(2) No person shall take or use any name, title, addition or description implying that he or she holds any legal qualification unless he or she in fact holds that legal qualification.

(3) Any person who contravenes any of the provisions of this section commits an offence.

66. Penalty for unqualified persons preparing certain instruments.

(1) Any person other than an advocate with a valid practising certificate or a person specifically authorised by any written law to do so who, unless he or she proves that the act was not done for, or in expectation of, any fee, gain or reward, either directly or indirectly, draws or prepares any instrument—

- (a) relating to movable or immovable property or any legal proceeding;
- (b) for or in relation to the formation of any limited liability company whether private or public;
- (c) for or in relation to the making of a deed of partnership or the dissolution of a partnership,

commits an offence.

(2) This section shall not apply to—

- (a) any public officer drawing or preparing instruments in the course of his or her duty;
- (b) any person employed merely to engross any instrument, application or proceeding; or

- (c) any person in the full-time employment of a limited liability company drawing or preparing instruments in the course of his or her duty for and on behalf of that company.

(3) For the purposes of this section and section 67, the expression “instrument” does not include—

- (a) a will or other testamentary instrument;
- (b) a letter or power of attorney; or
- (c) a transfer of stock or shares containing no trust or limitation thereof.

67. Instruments to be endorsed with name and address of drawer.

(1) Every person who draws or prepares any instrument to which section 66 applies shall endorse or cause to be endorsed on it his or her name and address; and any such person omitting to do so or falsely endorsing or causing to be endorsed any of such requirements commits an offence.

(2) It shall not be lawful for any registering authority to accept or recognise any such instrument unless it purports to bear the name and address of the person who prepared it endorsed on the instrument.

68. Penalty on unqualified person acting in preparation of papers for probate, etc.

Any person, not being an advocate with a valid practising certificate, or a person specifically authorised by any written law to do so, who, unless he or she proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly, or as an agent of any person other than a person qualified as above mentioned, takes instructions for or draws or prepares any papers on which to found or oppose a grant of probate or of letters of administration, without prejudice to any liability or disability to which he or she may be subject under any other section of this Act or any other written law, commits an offence.

69. No costs recoverable for acts constituting an offence.

No costs shall be recoverable in any suit, proceeding or matter by any person in respect of anything done, the doing of which constitutes an offence under this Act, whether or not any prosecution has been instituted in respect of the offence.

70. Offences by bodies corporate.

If any act is done by a body corporate or by any director, officer or servant of the body corporate, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified, or recognised by law as qualified to act as an advocate, the body corporate commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings and, in the case of an act done by any director, officer or servant of the body corporate, he or she, without prejudice to the liability of the corporation, commits an offence and is liable on conviction to a fine not exceeding five thousand shillings or imprisonment for a period not exceeding six months or to both.

71. Advocates not to act as agents for unqualified persons.

(1) No advocate shall knowingly act as an agent for any other person, other than an advocate, in the performance of any act which, under the provisions of this Act or any other written law, may only be performed by an advocate, nor shall he or she allow his or her name to be made use of by any person, other than an advocate in respect of the performance of such an act.

(2) Any advocate who acts in contravention of subsection (1) commits an offence.

72. Advocates not to employ a person removed from the roll or suspended.

(1) No advocate, in connection with his or her practice, shall employ or remunerate any person who to his or her knowledge is disqualified from practising as an advocate by reason of the fact that his or her name has been removed from the roll as a result of disciplinary proceedings or by reason of the fact that he or she has been suspended from practising for a like cause.

(2) Any advocate who acts in contravention of subsection (1) commits an offence.

73. Penalty on failure to disclose fact of having been removed from roll.

Any person who, while he or she is disqualified from practising as an

advocate by reason of the fact that he or she has been prohibited or suspended from the right to practise, otherwise than at his or her own request, or because of his or her conduct has become disentitled to practise, seeks or accepts employment by an advocate in connection with that advocate's practice, commits an offence.

74. Disciplinary offences by advocates.

- (1) No advocate shall—
 - (a) take instructions in any case except from the party on whose behalf he or she is retained or some person who is the recognised agent of that party within the meaning of the Civil Procedure Act or an Act amending or replacing that Act or some servant, relation or friend authorised by the party to give the instructions;
 - (b) mislead or allow any court or officer of any court to be misled;
 - (c) tender or give or consent to the retention out of any fee paid or payable to him or her for his or her services of any gratuity for procuring or having procured the employment in any legal business of himself or herself or any other advocate;
 - (d) directly or indirectly procure or attempt to procure the employment of himself or herself or his or her partner or assistant as an advocate, through or by the intervention of any person to whom remuneration for obtaining such employment has been given by him or her, or agreed or promised to be so given;
 - (e) accept any employment in any legal business through a tout or employ a tout as defined in section 75;
 - (f) advertise himself or herself in any way in relation to his or her profession or business as an advocate, except so far as may be necessary to mark his or her office or to give his or her address to persons having business communications or dealings with him or her;
 - (g) directly or indirectly hold himself or herself out or permit himself or herself to be held out, whether by name or otherwise, as being prepared to undertake professional business for any fee or consideration which shall be less than the scale of charges, if any, for the time being in force;
 - (h) agree with his or her client either before, during or after the conduct of any noncontentious professional business to undertake such business for any fee or consideration whatsoever that shall be less than that set out in the scale of charges, if any, for the time being in force;

- (i) deceive or mislead any client or allow him or her to be deceived or misled in any respect material to the client;
- (j) commit any contempt of court; or
- (k) act fraudulently or improperly in the discharge of his or her professional duty.

(2) Any advocate who contravenes or fails to comply with any of the provisions of subsection (1) commits an offence and is alternatively or in addition liable to proceedings under section 20.

75. Acting as tout prohibited.

(1) Any person who, on behalf of any advocate, or for his or her own account, acts as a tout commits an offence.

(2) For the purposes of this section, “tout” means a person who, in consideration of any payment or other advantage to himself or herself, procures the employment in any legal business of any advocate, or proposes to an advocate to procure him or her employment or other advantage.

76. Penalty for inducing clients to abandon their advocates.

Any person who induces or attempts to induce any client or prospective client of any advocate to cease to be the client of that advocate in order to become the client of the advocate whom that person serves in any capacity commits an offence.

PART VIII—MISCELLANEOUS PROVISIONS.

77. Power to make regulations.

(1) Without prejudice to any other provision of this Act, the Law Council may make regulations with regard to—

- (a) any matter concerning the professional practice, conduct and discipline of advocates;
- (b) the appropriate dress or robe of advocates for their appearance before a court;
- (c) the manner in which advocates shall keep accounts;
- (d) the annual submission to the registrar by advocates of a certificate, signed by an accountant holding one or more of the qualifications specified in the regulations, that he or she has

examined the books, accounts, and documents to such extent as may be prescribed;

- (e) the scale of fees to be charged by advocates for conveyancing and other noncontentious business and of costs in respect of contentious business whether as between party and party or advocate and client and providing for the manner and procedure of taxation thereof by officers of the courts and all matters connected with the allowance and disallowance of costs, fees and disbursements;
- (f) the granting of a special rank (howsoever styled) to advocates of long standing, skill and experience, the regulating of their practice and restricting such practice to certain courts;
- (g) the provision of legal aid and advice to indigent persons; and
- (h) the safeguarding of the interest or property of the clients of advocates—
 - (i) whose names have been struck off the roll;
 - (ii) whose right to practise has been suspended; or
 - (iii) who are unable for any other cause to practise.

(2) Any regulations made in respect of noncontentious business may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, and may regulate the amount of remuneration with reference to all or any of the following, among other considerations—

- (a) the position of the party for whom the advocate is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, charger or chargee and the like;
- (b) the place where, and the circumstances in which, the business or any part of the business is transacted;
- (c) the amount of capital money or rent to which the business relates;
- (d) the skill, labour and responsibility involved therein on the part of the advocate;
- (e) the number and importance of the documents prepared or perused, without regard to length.

(3) Regulations made in respect of noncontentious business may authorise and regulate—

- (a) the taking by an advocate from his or her client of security for

payment of any remuneration, to be ascertained by taxation or otherwise, which may become due to him or her under any such order; and

(b) the charging of interest.

(4) The Law Council may make regulations with regard to the training, qualifications, registration, conduct and discipline of legal assistants.

(5) Any advocate who contravenes or fails to comply with the provisions of any regulations made under subsection (1)(a) shall be guilty of unprofessional conduct, and the Law Council or any person may make a complaint to the Disciplinary Committee in respect of that conduct.

78. Jurisdiction to try offences.

Except as otherwise expressly provided in this Act, all offences under this Act, where no indictment is filed, shall be tried by a magistrate's court presided over by a chief magistrate or a magistrate grade I.

79. General penalty.

(1) Any person who commits an offence under this Act, for which no penalty is otherwise provided, is liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

(2) Any person who commits an offence under this Act is liable, whether or not he or she has been charged with, convicted or acquitted of that offence, to proceedings under Part V of this Act.

80. Taxing officer.

The taxing officer for the taxation of bills under this Act shall be the registrar or a district or deputy registrar of the High Court or, in the absence of a registrar, such other officer as the Chief Justice may appoint; except that in respect of the taxation of costs between party and party arising out of any contentious business brought in a court subordinate to the High Court, the taxing officer shall be a chief magistrate or a magistrate grade I with jurisdiction in the area where the suit was heard.

81. Agreements exempting advocates from negligence to be void.

Any provision in any agreement between an advocate and a client that the advocate shall not be liable for negligence or that he or she shall be relieved from any responsibility to which he or she would otherwise be subject as such advocate, shall be wholly void.

82. Savings of other laws.

Nothing in this Act shall prejudice or affect—

- (a) the provisions of any other written law empowering any person, not being an advocate, to conduct, defend or otherwise act in relation to any proceedings; or
- (b) the provisions of any other written law prohibiting any person or class of persons from conducting, defending or otherwise acting in relation to any proceedings.

83. Transitional and saving provisions.

The transitional and saving provisions in the Third Schedule to this Act shall have the effect notwithstanding any other provision of this Act.

SCHEDULES

First Schedule.

s. 40.

The Advocates Accounts Rules.

- 1. (1) In these Rules, unless the context otherwise requires—
 - (a) “advocate” includes a firm of advocates;
 - (b) “advocate-trustee” means an advocate who is a sole trustee or who is co-trustee only with a partner, clerk or servant of his or hers or with more than one of such persons;
 - (c) “client” means any person on whose account an advocate holds or receives client’s money;
 - (d) “client account” means a current or deposit account at a bank in the name of the advocate in the title of which the word “client” appears;
 - (e) “client’s money” means money held or received by an advocate

on account of a person for whom he or she is acting in relation to the holding or receipt of the money either as an advocate or, in connection with his or her practice as an advocate, as agent, bailee, stakeholder or in any other capacity; but the expression “client’s money” shall not include—

- (i) money held or received on account of the trustees of a trust of which the advocate is advocate-trustee; or
 - (ii) money to which the only person entitled is the advocate himself or herself or, in the case of a firm of advocates, one or more of the partners in the firm;
- (f) “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 or she is advocate-trustee of the trust.

(2) Other expressions in these Rules shall have the meanings assigned to them by the Act.

2. Subject to rule 8 of these Rules, every advocate who holds or receives client’s money, or money which under rule 3 of these Rules he or she is permitted and elects to pay into a client account, shall without delay pay the money into a client account. Any advocate may keep one client account or as many of such accounts as he or she thinks fit.

3. There may be paid into a client 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 which may, by mistake or accident, have been drawn from the account in contravention of rule 7(2) of these Rules; and
- (d) a cheque or draft received by the advocate, which under rule 4 of these Rules he or she is entitled to split but which he or she does not split.

4. Where an advocate holds or receives a cheque or draft which includes client’s money or trust money of one or more trusts—

- (a) he or she may where practicable split the cheque or draft and, if he or she does so, he or she shall deal with each part of it as if he or she had received a separate cheque or draft in respect of that part; or

- (b) if he or she does not split the cheque or draft, he or she shall, if any part of it consists of client's money, and may in any other case, pay the cheque or draft into a client account.

5. No money, other than money which under rules 2, 3 and 4 of these Rules an advocate is required or permitted to pay into a client account, shall be paid into a client account.

6. There may be drawn from a client account—

- (a) in the case of a client's money—
 - (i) money properly required for a payment to or on behalf of the client;
 - (ii) money 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) money drawn on the client's authority; and
 - (iv) money properly required for or towards payment of the advocate's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him or her will be applied towards or in satisfaction of the costs;
- (b) in the case of trust money—
 - (i) money properly required for a payment in the execution of the particular trust; and
 - (ii) money to be transferred to a separate bank account kept solely for the money of the particular trust;
- (c) such money, not being money to which either paragraph (a) or (b) of this rule applies, as may have been paid into the account under rule 3(b) or (d) of these Rules; and
- (d) money which may, by mistake or accident, have been paid into the account in contravention of rule 5 of these Rules, except that in any case under paragraph (a) or (b) of this rule the money so drawn shall not exceed the total of the money held for the time being in the account on account of the client or trust.

7. (1) No money drawn from a client account under rule 6(a)(ii) or (iv), (c) or (d) of these Rules, shall be drawn except by—

- (a) a cheque drawn in favour of the advocate; or
- (b) a transfer to a bank account in the name of the advocate not being

a client account.

(2) No money, other than money permitted by rule 6 to be drawn from a client account, shall be so drawn unless the High Court, upon an application made to it by the advocate, specifically authorises in writing its withdrawal.

8. (1) Notwithstanding these Rules, an advocate shall not be under obligation to pay into a client account client's money held or received by him or her—

- (a) which is received by him or her in the form of cash, and is without delay paid in cash in the ordinary course of business to the client or a third party;
- (b) which is received by him or her in the form of a cheque or draft which is endorsed over in the ordinary course of business to the client or a third party and is not passed by the advocate through a bank account; or
- (c) which he or she pays into a separate banking account opened or to be opened in the name of the client or of some person named by the client.

(2) Notwithstanding these Rules, an advocate shall not pay into a client account client's money held or received by him or her—

- (a) which the client for his or her own convenience requests the advocate to withhold from such account;
- (b) which is received by him or her 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) which is paid to him or her expressly on account of costs incurred in respect of which a bill of costs or other written intimation of the amount of the costs has been delivered, or as an agreed fee, or on account of an agreed fee, for business undertaken or to be undertaken.

(3) Where a cheque or draft includes other money of a client as well as client's money of the nature described in subrule (2) of this rule, the cheque or draft shall be dealt with in accordance with rule 4 of these Rules.

(4) Notwithstanding these Rules, the High Court may upon an application made to it by an advocate, specifically authorise him or her

in writing to withhold any client's money from a client account.

9. (1) Every advocate shall at all times keep properly written up such books and accounts as may be necessary—
 - (a) to show all his or her dealings with—
 - (i) client's money held or received or paid by him or her; and
 - (ii) any other money dealt with by him or her through a client account; and
 - (b) to distinguish such money held, received or paid by him or her on account of each separate client and to distinguish such money from other money held, received or paid by him or her on any other account.
- (2) Every advocate shall preserve, for at least six years from the date of the last entry therein, all books and accounts kept by him or her under subrule (1) of this rule.

10. A written intimation of the amount of an advocate's costs incurred and a notification to a client that money held for him or her will be applied as mentioned in rule 6(a)(iv) of these Rules may be delivered to a client in the same manner as a bill of costs is required to be delivered under section 57(2) of the Act.

Second Schedule.

s. 40.

The Advocates Trust Accounts Rules.

1. (1) In these Rules, unless the context otherwise requires—
 - (a) "advocate-trustee" means an advocate who is a sole trustee or who is co-trustee only with a partner, clerk or servant of his or her or with more than one of such persons;
 - (b) "client account" means a current or deposit account at a bank in the title of which the word "client" appears, kept and operated in accordance with the Advocates Accounts Rules;
 - (c) "trust bank account" means a current or deposit account in the title of which the word "trustee" or "executor" appears, kept at a bank in the names of the trustees of the trust and kept solely for money subject to a particular trust of which the advocate is advocate-trustee.

(2) Other expressions in these Rules shall have the meanings assigned to them by the Act.

2. Subject to rule 8 of these Rules, every advocate-trustee who holds or receives money subject to a trust of which he or she is advocate-trustee, other than money which is paid into a client account as permitted by the Advocates Accounts Rules, shall without delay pay the money into the trust bank account of the particular trust.

3. There may be paid into a trust bank account—

- (a) money subject to the particular trust;
- (b) 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; or
- (c) money to replace any sum which may, by mistake or accident, have been drawn from the account in contravention of rule 7 of these Rules.

4. Where an advocate holds or receives a cheque or draft which includes money subject to a trust or trusts of which the advocate is advocate-trustee—

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

5. No money, other than money which under rules 2, 3 and 4 of these Rules an advocate is required or permitted to pay into a trust bank account, shall be paid into a trust bank account.

6. There may be drawn from a trust bank account—

- (a) money properly required for a payment in the execution of the particular trust;
- (b) money to be transferred to a client account;
- (c) such money, not being money subject to the particular trust, as may have been paid into the account under rule 3(b) of these Rules; or
- (d) money which may, by mistake or accident, have been paid into the account in contravention of rule 5 of these Rules.

7. No money, other than money permitted by rule 6 of these Rules to be drawn from a trust bank account, shall be so drawn unless the High Court, upon an application made to it by the advocate, expressly authorises in writing its withdrawal.

8. Notwithstanding these Rules, an advocate shall not be under obligation to pay into a trust bank account money held or received by him or her which is subject to a trust of which he or she is advocate-trustee and which is received by him or her either in the form of cash which is without delay paid in cash in the execution of the trust to a third party or in the form of a cheque or draft which is without delay endorsed over in the execution of the trust to a third party and is not passed by the advocate through a bank account.

9. (1) Every advocate-trustee shall at all times keep properly written up such books and accounts as may be necessary—

- (a) to show separately all his or her dealings with money held, received or paid by him or her on account of each trust of which he or she is advocate-trustee; and
- (b) to distinguish that money from money held, received or paid by him or her on any other account.

(2) Every advocate-trustee shall preserve, for at least six years from the date of the last entry therein, all books and accounts kept by him or her under subrule (1) of this rule.

Third Schedule.

s. 83(2).

Transitional and saving provisions.

Part 1.

1. The statutory instrument made under the Advocates Act, Cap. 258, 1964 Revision (which is set out in Part 2 of this Schedule) shall remain in force until revoked or replaced by a statutory instrument made under this Act, and shall be deemed to be modified so as to make it consistent with this Act.

2. Where the provisions of section 77 of this Act are in conflict with

the provisions of section 40 of the Judicature Act, the provisions of section 77 of this Act shall prevail.

Part 2.

The Taxation of Costs (Appeals and References) Rules.

History: Act 22/1970; S.I. 140/1970; Decree 19/1976; Decree 21/1977; Decree 1/1979.

Cross References

Advocates Act, 1964 Revision, Cap. 258.

Civil Procedure Act, Cap. 71.

Evidence Act, Cap. 6.

Judicature Act, Cap. 13.

Mental Treatment Act, Cap. 279.

Penal Code Act, Cap. 120.

Prevention of Corruption Act, Cap. 121.

Taxation of Costs (Appeals and References) Rules.
