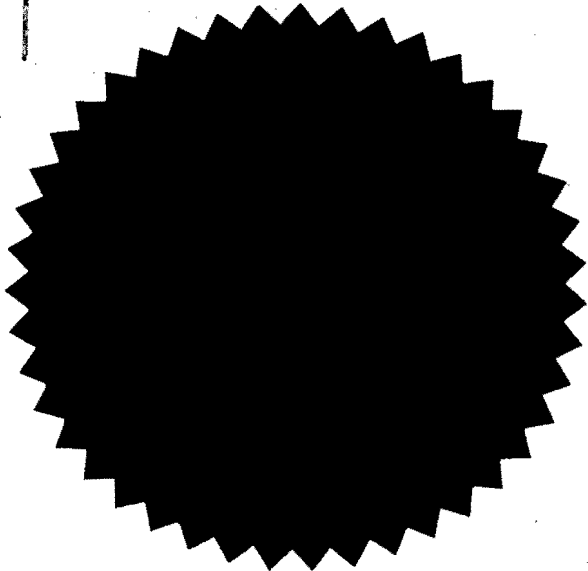


JAMAICA

No. 9 - 2012



I assent,

P. Allen

Governor-General.

13th day of November 2012

AN ACT to Amend the Legal Profession Act.

[The date notified by the Minister
bringing the Act into operation]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Jamaica, and by the authority of the same, as follows:—

1.—(1) This Act may be cited as the Legal Profession (Amendment) Act, 2012, and shall be read and construed as one with the Legal Profession Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title,
construction
and
commence-
ment.

(2) This Act shall come into operation on a day appointed by the Minister by notice published in the *Gazette*.

Amendment of
section 5 of
principal Act.

2. Section 5 of the principal Act is amended by deleting subsections (2) and (3) and inserting, next after subsection (1), the following subsections —

“ (2) Subject to section 7, a person shall not practise as a lawyer except by virtue of, and in accordance with, a practising certificate issued under subsection (3).

(3) A practising certificate shall be in the appropriate form as set out in the Second Schedule, and shall be issued by the Council where—

- (a) the prescribed fee has been paid to the Secretary of the Council; and
- (b) the Council is satisfied that the attorney has complied with such requirements for continuing legal professional development as may be prescribed.

(3A) Where the Council is satisfied that a person is practising in contravention of subsection (2), the Council shall, in writing, direct the person—

- (a) where the prescribed fee has not been paid, to pay the prescribed fee within a specified time;
- (b) where the Council is not satisfied that the prescribed requirements for continuing legal professional development have been met, to provide, within a specified time, evidence of having met the prescribed requirements; or
- (c) where the Council is satisfied that the person is unable to supply evidence of having met the prescribed requirements, to attend and complete, within a specified time, specified courses of training in order to meet the prescribed requirements.

(3B) A person who, having been issued with directions under subsection (3A)—

- (a) does not comply with the directions, within the time specified under subsection (3A)(a), (b) or (c), as the case may be; and
- (b) continues to practise as a lawyer,

is guilty of professional misconduct.”.

3. Section 10 of the principal Act is amended by renumbering paragraphs (a) and (b) as paragraphs (b) and (c) and inserting the following as paragraph (a)—

Amendment of section 10 of principal Act.

“ (a) requirements for continuing legal professional development to be complied with by attorneys-at-law for the purposes of sections 5(3)(b) and 12(4)(e) and by the officers referred to in section 7;”.

4. Section 12 of the principal Act is amended in subsection (4) by renumbering paragraphs (e) and (f) as paragraphs (f) and (g) and inserting, next after paragraph (d), the following paragraph—

Amendment of section 12 of principal Act.

“ (e) the attendance by the attorney at prescribed courses of training in order to meet the requirements for continuing legal professional development;”.

5. The principal Act is amended by inserting, next after Part IV, the following as Part IVA—

Insertion of new Part IVA in principal Act.

“ PART IVA. *Powers of the General Legal Council to take action to protect client property*

Interpre- 20A.—(1) In this Part—
tation.

- (a) a reference to the exercise of any function by the Council shall be deemed to include a reference to the exercise of that function by an agent of the Council duly authorized to act in that behalf;

(b) “client property” means any money or other property entrusted to an attorney in his capacity as an attorney.

(2) In this Part and section 35(1), “banking account” means an account held at—

- (a) a bank licensed under the *Banking Act*;
- (b) a financial institution licensed under the *Financial Institutions Act*; or
- (c) a building society registered and licensed under the *Building Societies Act*.

Application of, and protection for, acts done under this Part.

20B.—(1) This Part applies where the Council acts to protect client property in accordance with section 20C.

(2) No action, suit or other proceedings may be brought or instituted against the Council, its servants or agents, or any member of the Council, in respect of any act done or omission made in good faith in the course of carrying out the provisions of this Part.

Intervention by Council.

20C.—(1) The Council may apply to the Court for an order to take action to protect client property in the possession or control of an attorney on the grounds that—

- (a) the attorney has been found guilty by a court of competent jurisdiction of any offence involving dishonesty, or any improper conduct, in relation to the money or other property of any other person;
- (b) the attorney is of unsound mind or, by reason of the attorney’s ill health, his clients’ accounts are not being properly administered;

- (c) an employee or agent of the attorney has stolen client property, and any client property, or any records concerning client property, in the possession or control of the attorney are at risk of loss or destruction as a result; or
- (d) the attorney has ceased to practise, or has ceased to reside in Jamaica, but has failed to wind up his practice or settle his clients' accounts,

and the Court may grant the application if satisfied as to any of the grounds set out in paragraphs (a) to (d).

(2) The Council may—

- (a) subject to subsection (3) and without an application to the Court for an order to do so, take action to protect client property in the possession or control of an attorney, where—
 - (i) a Court has made an absolute order for bankruptcy against the attorney, under the *Bankruptcy Act*; or
 - (ii) the attorney has died; or
- (b) subject to subsection (4), apply without notice to a Judge in Chambers for an order to take action to protect client property in the possession or control of an attorney where—
 - (i) the attorney's name has been struck off the Roll; or

- (ii) the attorney is suspended from practice for a period of six months or more.

(3) The powers of the Council under subsection (2)(a) shall be exercised only where the Council determines that no satisfactory arrangements are in place for protecting the interests of the attorney's clients.

(4) An order under subsection (2)(b) shall—

- (a) be granted only where the Judge determines that no satisfactory arrangements are in place for protecting the interests of the attorney's clients;
- (b) expire after a period specified in the order, not being more than twenty-eight days, unless its duration is extended under subsection (6) or (7); and
- (c) direct that the attorney concerned and the Council attend, or be represented by a legal representative, before a Judge in Chambers on a date specified in the order, being a date before the expiration of the order, at a hearing for the purpose of determining whether the order should be varied or discharged or its duration extended.

(5) The actions which the Council may take pursuant to—

- (a) an order under subsection (1) or (2) (b), subject to the terms and conditions of the order; or
- (b) subsection (2) (a),

shall be any one or more of the actions specified in section 20D, 20E, 20F or 20G, as the circumstances require.

(6) Upon conducting a hearing under subsection (4) (c), the Judge may—

- (a) vary or discharge the order; or
- (b) extend its duration for such further period as may be specified.

(7) Notwithstanding subsection (4) (b) and (c), either party may at any time before the expiration of an order under subsection (2) (b), apply to a Judge in Chambers, after giving three days notice in writing to the other party, for a variation or discharge of the order or for the extension of its duration, and the Judge may grant the application if the Judge thinks fit.

(8) Where it is impossible or impracticable to serve any application under this section on an attorney, the Council may, in lieu of such service, publish the notice on at least two separate occasions in a daily newspaper in circulation throughout Jamaica.

Notice *re*
payment out of
money
entrusted to
attorney by
client.

20D.—(1) Pursuant to section 20C (5), the Council may serve on any person or entity in possession or control of any money entrusted to an attorney by a client, a notice in the prescribed form and duly authenticated by the Council, requiring that person or entity to pay to the Council the money so held.

(2) A person or entity who is served with a notice pursuant to subsection (1), shall pay the money to the Council, and shall incur no liability from having made the payment in accordance with the notice.

Council to pay
moneys into
separate
account.

20E.—(1) Where the Council receives any money pursuant to section 20D—

- (a) the Council shall pay the money into a separate banking account in the name of the Council or of a person nominated on behalf of the Council; or

- (b) if the client concerned instructs that the money be paid over to another attorney or into a banking account, the Council shall pay the money to that attorney or into the banking account (as the case may require), in accordance with those instructions.

(2) The Council shall hold sums of money to which this section applies on trust and shall, subject to the rights of those beneficially entitled thereto, exercise in relation to such sums the powers conferred by this Part.

Possession of records or documents of attorney.

20F.—(1) Pursuant to section 20C (5), the Council may take possession of any records or documents belonging to or in the possession, or under the control, of the attorney in the course of his practice and may for that purpose enter and search premises pursuant to a warrant issued under subsection (2).

(2) The Court, on the application of the Council, may issue a warrant authorizing the Council to enter premises specified in the warrant in order to search for, and seize, any records or documents to which subsection (1) relates.

(3) In the case of any records or documents which are the subject of a lien for unpaid fees owing to the attorney, the Council, when acting pursuant to the powers conferred by subsection (1) or (2), shall be entitled only to make copies of such records or documents.

Order for postal articles of attorney to be redirected to Council.

20G.—(1) Pursuant to section 20C (5), the Council may, from time to time, apply to the Court for an order that for such period, not exceeding eighteen months, as the Court thinks fit, any—

- (a) postal article; or
 (b) article deliverable by courier,

addressed to the attorney or his firm at any place mentioned in the order, shall be directed instead to the Council.

(2) The Council may, pursuant to an order made under subsection (1), take possession of any such redirected article.

(3) Where an order under subsection (1) is made, the Council shall pay to the Post Office or courier agency, as the case may be, the like charges (if any), as would have been payable for the redirection of the articles if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the Post Office or courier agency to redirect them to him at the address mentioned in the order.

(4) Where the Council takes possession of any article pursuant to this section—

- (a) the Council shall, where reasonably practicable, give the attorney concerned, his personal representative, or a person designated by either of them, the opportunity to observe when the article is opened; and
- (b) if it appears to the Council that the article does not relate to the practice of the attorney concerned, the Council shall give the article—
 - (i) to the attorney or his personal representative;
 - (ii) as the circumstances require, to such other person to whom the article belongs or to whom the Court directs it to be given pursuant to directions made under section 20I.

(5) For the purposes of this section and section 20H, “postal article” has the meaning assigned to it by section 2 (1) of the *Post Office Act*.

(6) The Court shall require an order under subsection (1) (b) to be served on all known courier agencies operating in Jamaica, and published in a daily newspaper in circulation throughout Jamaica.

Notice of possession to be given to attorney or personal representative.

20H.—(1) The Council on taking possession of any money, record, document, postal article or article deliverable by courier, under section 20D, 20F or 20G, shall serve upon the persons specified in subsection (2) a notice—

- (a) stating that possession has been taken on the date specified in the notice and, in the case of postal articles or articles deliverable by courier—
 - (i) informing the attorney of his entitlement under section 20G (4) to be present when the article is opened; and
 - (ii) specifying the date and time when the article is to be opened; and
- (b) identifying the money, records, documents or articles taken.

(2) The persons referred to in subsection (1) are—

- (a) the attorney concerned, or his personal representative;
- (b) any other person from whom, or from whose premises, the possession was taken; and

- (c) any other person to whom the Court directs that a notice under subsection (1) should be given, in any order for directions made under section 20I.

Application to Court for directions.

20I.—(1) The Council may apply to the Court for an order for directions in relation to any matter in which the Council may exercise functions under this Part.

(2) Without prejudice to the generality of subsection (1), an order for directions under that subsection may—

- (a) give the Council, or any other person concerned in the matter, directions as to the powers exercisable by the Council in relation to the practice of the attorney concerned in the matter;
- (b) prohibit any person (whether or not named in the order) from dealing with any client property concerned in the matter, without the leave of the Court; and
- (c) where there are reasonable grounds to believe that a person holds client property concerned in the matter, direct that person to give to the Council, within a specified time, information as to the particulars of such property and the places at which they are held.

Application to Court for return of records and documents.

20J.—(1) Any person adversely affected by the removal of records or documents pursuant to section 20F may, within twenty-one days after the service of a notice under section 20H or such longer period as the Court may allow, apply to the Court for an order directing the Council to return, or deliver (as the case may require), to the applicant any records or documents referred to in the notice.

(2) Upon an application under subsection (1) the Court may, if it thinks fit—

- (a) order that the records or documents be returned or delivered, or that only such parts of the records or documents as it may specify in the order be returned or delivered; and
- (b) authorize the Council to make and retain copies of any such records or documents, or parts thereof, before their return or delivery pursuant to paragraph (a).

Application to Court for repayment of money under section 20D.

20K.—(1) Any person who is, or may be, adversely affected by any payment made pursuant to section 20D may apply to the Court for—

- (a) an order directing the Council to repay the money, or any part of it, into the account from which it was paid; or
- (b) such other order as the Court thinks fit.

(2) The Court may, on hearing an application under subsection (1), make an order directing the Council to repay the money into the account from which it was paid, or make such other order as the Court thinks fit.

Rules and regulations.

20L.—(1) Rules of Court may make provision—

- (a) governing the procedure in respect of applications made to the Court under this Part; and
- (b) specifying the modes of service of notices and other documents required to be given in respect of applications made pursuant to this Part.

(2) The Council may, with the approval of the Minister, make regulations governing the procedures to be followed in respect of actions to protect client property under this Part.”.

6. Section 35 of the principal Act is amended by deleting subsection (1) and substituting therefor the following—

Amendment of section 35 of principal Act.

- “ (1) The Council may make regulations—
- (a) requiring attorneys to—
 - (i) keep accounting records containing particulars and information as to moneys received, held or paid, by them for or on account of their clients;
 - (ii) furnish, at such intervals as may be prescribed, an accountant’s report containing such information as may be prescribed;
 - (iii) open and keep separate banking accounts for clients’ moneys; and
 - (b) prescribing the manner in which such banking accounts are to be operated.”.

7. The principal Act is amended by inserting next after section 40 the following as sections 41 and 42—

Insertion of new sections 41 and 42 in principal Act.

“Amendment of penalties by order. 41. The Minister may, by order published in the *Gazette* and subject to affirmative resolution, upon the recommendation of the Council amend any monetary penalty imposed by this Act.

Compensation fund. 42.—(1) There shall be established a compensation fund, which shall be administered by the Council, for the purpose of compensating, on an *ex gratia* basis, persons who have suffered any loss of client property as a result of—

- (a) any act or omission of an attorney or former attorney;
- (b) any act or omission of an employee, or former employee, of an attorney or former attorney; or

(c) the exercise by the Council of any of its powers under Part IVA.

(2) The Council may make regulations concerning the maintenance, protection and administration of the compensation fund.

(3) Without prejudice to the generality of subsection (2), regulations made under that subsection may provide for—

- (a) the sources of funding of the compensation fund;
- (b) the circumstances in which grants out of the compensation fund may or may not be made;
- (c) the form or manner in which claims for compensation are to be made;
- (d) the procedure for determining claims for compensation out of the compensation fund;
- (e) the making of advances in respect of any claim for compensation out of the compensation fund before such claim is finally determined;
- (f) the making of advances out of the compensation fund by way of loan in such circumstances and on such terms as may be prescribed in, or determined in accordance with, the regulations;
- (g) the making of grants out of the compensation fund by way of making good any deficiency in moneys received by the Council pursuant to section 20D;

- (h) the minimum and maximum grants payable out of the compensation fund in respect of a compensation claim, or a compensation claim of a prescribed description;
- (i) the subrogation of the Council, to such extent as may be prescribed, to any rights and remedies of a person to whom compensation is paid out of the compensation fund in relation to the loss in respect of which the compensation is paid; and
- (j) the criteria to be applied in deciding whether to make a grant in respect of a compensation claim or part of a compensation claim.

(4) For the purposes of subsection (3) (g), there is a deficiency if the moneys mentioned in that provision are insufficient to satisfy the claims of all persons with a beneficial interest in the moneys.”.

Passed in the Senate this 13th day of July 2012 with three (3) amendments.


STANLEY ST. J. REDWOOD

President.

Passed in the Honourable House of Representatives this 16th day of October, 2012.

MICHAEL PEART
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.


Keith G. Cook
Clerk to the Houses of Parliament