

ANTIGUA AND BARBUDA



THE LEGAL PROFESSION ACT, 2008

No. 22 of 2008

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I Assent,

[L.S.]

Louise Lake-Tack,
Governor-General.

11th November, 2008

ANTIGUA AND BARBUDA
THE LEGAL PROFESSION ACT, 2008

No. 22 of 2008

AN ACT to provide for the regulation of the legal profession, for the qualification, enrolment and discipline of its members and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I

PRELIMINARY

1. Short title

This Act may be cited as the Legal Profession Act, 2008 and shall come into operation on a date as the Minister may, by Notice published in the *Gazette*, appoint.

2. Interpretation

(1) In this Act—

“Agreement” means the Agreement, including the protocols thereto providing for a system of legal education and training and establishing the Council of Legal Education for the Commonwealth Caribbean;

“attorney-at-law” means a person whose name has been entered on the Roll of Attorneys-at law;

“Bar Association” and “Association” mean the Bar Association of Antigua and Barbuda;

“client” includes—

- (a) in respect of contentious business, any person who as principal or on behalf of another person retains or employs an attorney-at-law and any person who is or may be liable to pay to an attorney-at-law costs for that business; and
- (b) in relation to non-contentious business, any person who as a principal or on behalf of another or as a trustee or executor or in any other capacity, has authority, expressed or implied, to retain or employ and retains or employs and any person for the time being liable to pay to an attorney-at-law costs for that business;

“costs” includes fees for any legal business done by an attorney-at-law;

“Council” means the Council of the Bar Association of Antigua and Barbuda;

“Court” means the Eastern Caribbean Supreme Court of Antigua and Barbuda;

“Disciplinary Committee” and “Committee” mean the Disciplinary Committee established by section 36;

“fees” includes remuneration, charges, disbursements and expenses;

“Fund” means the Professional Liability Insurance fund established by the council;

“Minister” means the Minister responsible for Legal Affairs;

“practise law” means practising as a barrister, solicitor or both or the undertaking or performing the functions of a barrister, solicitor or attorney-at-law, as recognised by any law whether before or after the commencement of this Act;

“practising certificate” means a certificate issued pursuant to section 21;

“Registrar” means the Registrar of the Court;

“Registry” means the Registry of the Court;

“Roll” means the register of attorneys-at-law maintained by the Registrar pursuant to section 13;

“Secretary of the OECS Bar “ means the Secretary of the Organization of the Eastern Caribbean States Bar Association; and

“Supreme Court Act” means the Eastern Caribbean Supreme Court Act.

(2) Any reference, in any enactment or any document having legal effect, to a barrister or solicitor however expressed, with respect to the conferring of any right or privilege, the performance of any function or in relation to the qualification for appointment to any office shall from and after the commencement of this Act be considered to be reference to an attorney-at-law.

(3) For the purposes of any enactment where the qualification of an attorney-at-law for holding an office depends upon his having been a barrister or a solicitor for a specified period, the number of years during which he was previously a barrister or solicitor or registered under any enactment relating to the registration of barristers or solicitors as the case may be, shall be treated as part of the period of his enrolment as an attorney-at-law.

PART II

BAR ASSOCIATION

3. The Bar Association

The Antigua and Barbuda Bar Association is continued.

4. Council to manage affairs of Association

The affairs of the Association shall be managed and its functions performed by a Council constituted in accordance with Schedule 1.

5. The purposes of the Association

The purposes of the Association are to—

- (a) maintain and improve the standards of professional conduct of attorneys-at-law in Antigua and Barbuda;
- (b) represent and protect the interests of the legal profession in Antigua and Barbuda;
- (c) protect and assist the public in Antigua and Barbuda in all matters relating to law;
- (d) promote good relations within the profession, between the profession and persons concerned in the administration of justice in Antigua and Barbuda and between the profession and the public generally;

- (e) promote good relations between the profession and professional bodies of the legal profession in other countries and to participate in the activities of any regional and international associations of attorneys-at-law and to become a member thereof;
- (f) promote, maintain and support the administration of justice and the rule of law;
- (g) provide independently or with government a legal aid programme to qualifying members of the public;
- (h) provide an ongoing public education programme on basic issues of law and current legislation;
- (i) provide a program of continuing legal education for its members whether by way of seminars, workshops or lectures; and
- (j) do all other things incidental or conducive to the achievement of the purposes set out at (a) to (i).

6. Practitioner members

(1) Every attorney-at-law to whom a practising certificate is issued may be a member of the Association and shall remain a member for so long as his practising certificate has effect.

(2) A practising certificate shall immediately cease to have effect if the attorney-at-law to whom it relates fails to pay an instalment of the insurance fee or the related amount referred to in section 51(3) by the due date in accordance with rules made pursuant to section 51(4).

(3) Every attorney-at-law who is a member of the Association by virtue of subsection (1) is in this Act referred to as “practitioner member”.

7. Non-practitioner member

A non-practitioner member is an attorney-at-law who is not the holder of a practising certificate.

8. Honorary members

The Council may confer honorary membership in the Association on those distinguished attorneys-at-law as it may think fit and may in its discretion revoke that honorary membership.

9. Privileges of membership

(1) Subject to section 10, all members of the Association have the same rights and privileges.

(2) Only practitioner members who pay the annual subscription to the Association are eligible—

- (a) to attend and vote at a general meeting or at an election of members of the Council;
- (b) to be elected to the Council; or
- (c) to be issued certificates of good standing.

(3) Practitioner members may by a resolution exclude from a general meeting of the Association or any part thereof all other members where a meeting concerns business pertaining only to practitioner members.

10. Expulsion and suspension of rights and privileges

(1) A practitioner member or a non-practitioner member of the Association may in the prescribed manner, and upon those grounds as may be prescribed, after being given reasonable opportunity to answer all allegations made against him—

- (a) be expelled from membership; or
- (b) be deprived of any one or more rights and privileges of membership.

(2) In this section “prescribed” means prescribed by rules made by the Council.

11. Termination of membership

A member of the Association other than an honorary member, who ceases to be qualified for membership thereupon ceases to be a member.

12. Annual subscription to Association

(1) The amount of the annual subscription payable by members other than honorary members of the Association shall, subject to subsection (3), be fixed by the Council and shall be paid to the Treasurer of the Association. The annual subscription is in respect of the period of twelve months commencing on the 1st October, in each year.

(2) In fixing the annual subscription the Council may divide the members into classes and provide that different amounts shall be paid by different classes of members and for different periods, and generally regulate and vary from time to time the subscription payable by members or by different classes of members as the Council may think fit.

(3) The Council may fix levies payable by practitioner members for any of the purposes of the Association.

PART III

ENROLMENT, ADMISSION, STATUS

13. Roll of attorneys-at-law

(1) The Registrar shall maintain in accordance with this Act and any rules of Court a register of all attorneys-at-law to be known as the Roll together with the following particulars in respect of each attorney-at-law—

- (a) full name and address;
- (b) the date of admission to practise law; and
- (c) a description and date of the qualifications obtained to practise law.

(2) The Roll shall at all reasonable times be open to inspection at the Registry of the Court.

(3) The Registrar shall keep an up to date register and in this regard shall from time to time—

- (a) make alterations in the particulars registered on the Roll as are necessary; and
- (b) remove from the Roll the name of any attorney-at-law who is deceased or no longer entitled to practise law.

(4) The Registrar shall pursuant to subsection (1) issue to every attorney-at-law a certificate of enrolment under the seal of the Court as set out in Form 1 of Schedule 3.

14. Registrar's duty

The Registrar shall, as soon as practicable after the commencement of this Act, cause to be registered on the Roll the name of every person that immediately before the commencement of this Act, appeared on the Roll of barristers/solicitors/attorneys at law kept pursuant to the Legal Profession Act, 1997 according to the dates on which they were respectively admitted to practise law.

15. Application fees

(1) The Minister for Legal Affairs may make regulations specifying the fees to be paid on an application—

- (a) to be admitted to practise law in Antigua and Barbuda; and
- (b) for a practising certificate.

(2) The application fees prescribed under subsection (1) shall be paid into the Consolidated Fund.

16. Application for admission

(1) A person who makes an application to the Court to be admitted to practise law, and who satisfies the Court that he—

- (a) is of good character;
- (b) has attained the age of twenty-one years;
- (c) is a citizen of Antigua and Barbuda or of a country listed in Schedule 2;
- (d) holds the qualifications prescribed for admission to practise as an Attorney-at-Law in Antigua and Barbuda under Article 3 of the Agreement; and
- (e) has not been disbarred or struck off the Roll of attorneys-at-law of any court of a country listed in Schedule 2, England, Scotland or Northern Ireland or has not done any act or thing which would render him liable to be disbarred or struck off the Roll of attorneys-at-law of any country;

shall, on payment to the Registrar of the prescribed fee, be admitted by order of the Court to practise law.

(2) A person applying to be admitted to practise law shall—

- (a) serve copies of the application on the chambers of both the Attorney General and the President of the Bar Association;
- (b) effect service under paragraph (a) on the same day; and
- (c) file an affidavit of service.

(3) The Registrar shall set the date for the court to hear the application to be admitted to practise law not earlier than two weeks from the date of service stated in the affidavit of service.

(4) Before any person is admitted as an attorney-at-law, the Registrar shall enquire from the Council and the Attorney General whether the person has fulfilled all the conditions for admission laid down by law, and if the Registrar is satisfied that the person has done so, he shall report accordingly to the Court.

(5) The Registrar shall cause to be registered on the Roll the name of every person admitted to practise law according to the dates on which the person was admitted to practise law.

(6) An appeal lies to the Court of Appeal from an order of the Court refusing an application made under this section.

(7) In this Part, “qualifications prescribed by law” means the qualifications for admission to practise law set out in the Agreement.

(8) Nothing in this Act affects any enactment relating to the placing of restrictions on any person, not being a citizen of Antigua and Barbuda, entering, leaving, residing, or working in Antigua and Barbuda.

17. Limited admissions

(1) In this section—

“visiting advocate” means a barrister or Attorney-at-Law who—

- (a) has not been admitted to practise law in Antigua and Barbuda; and
- (b) does not hold the qualifications prescribed by law to be eligible to be admitted by the Court to practise as an attorney-at-law in Antigua and Barbuda; and

“matter” includes any interlocutory or appeal proceedings.

(2) A visiting advocate may apply to the Court to be admitted to practise law in Antigua and Barbuda for the purpose of participating in any one matter and on application shall pay the prescribed fee to the Registrar and—

- (a) serve copies of the application on the chambers of both the Attorney General and the President of the Bar Association;
- (b) effect service under paragraph (a) on the same day; and
- (c) file an affidavit of service.

(3) The Registrar shall set the date for the court to hear the application to be admitted to practise law not earlier than two weeks from the date of service stated in the affidavit of service.

(4) Where an application is made under subsection (2) the Court may, where it is satisfied that the matter is difficult and complex, admit a visiting advocate to practise law in Antigua and Barbuda who

- (a) is of good character;
- (b) has attained the age of twenty-one years;

- (c) has special qualifications or experience for the purpose of the matter;
- (d) has not been disbarred or struck off the Roll of attorneys-at-law of any court; and
- (e) has not done any act or thing which would render him liable to be disbarred or struck off the Roll of attorneys-at-law of any country.

(5) If the application under this section is granted the Registrar shall, after the visiting advocate has presented a valid work permit and paid the fee for the practising certificate, issue to the visiting advocate a certificate to practise law specifying in it the matter in which the visiting advocate is permitted to appear.

(6) The Registrar shall not enter the name of the visiting advocate admitted under this section upon the roll but shall keep a separate roll for visiting advocates admitted under this section.

(7) An appeal lies to the Court of Appeal from an order of the Court refusing an application made under this section.

18. Objections to application to practise law

(1) The Attorney General or the President of the Bar Association may, before the hearing of an application to be admitted to practise law, object to the application by filing and serving on the applicant, an affidavit in which the grounds for the objection are set out.

(2) An affidavit filed and served pursuant to subsection (1) if filed by —

- (a) the Attorney General shall be served on the President of the Bar Association; and
- (b) the President of the Bar Association shall be served on the Attorney General.

19. Oath of attorney-at-law

Every person on being admitted to practise law shall take the following oath—

“Ido swear/affirm that I will truly and honestly conduct myself in the practice of law as an attorney-at-law according to the best of my knowledge and ability and the laws of Antigua and Barbuda.”

20. Status of attorney-at-law

(1) Every person whose name is entered on the Roll in accordance with this Act shall be known as an attorney-at-law and—

- (a) subject to subsection (2), is entitled to practise law and to sue and recover his fees for services rendered in that respect;
- (b) subject to subsection 2(b), has the right of audience before any court;
- (c) except where engaged as an advocate in any court, is subject to liability in respect of negligence, in a professional capacity; and
- (d) is an officer of the Supreme Court save and except when he appears in the presentation of a case before any Tribunal.

(2) A person may not practise law unless—

- (a) his name is entered on the Roll in accordance with this Act; and
- (b) he is the holder of a valid practising certificate.

(3) A person who practises law in contravention of subsection (2) is not entitled to maintain any action for the recovery of any fee on account of or in relation to any legal business done by him in the course of practice.

(4) An attorney-at-law who draws or prepares a legal document shall sign his name under his hand and print his name or the name of the firm (if any) in which he is employed together with the appropriate address.

(5) An attorney-at-law who contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of one thousand dollars.

21. Practising certificate

(1) An attorney-at-law whose name has been entered on the Roll and who desires to practise law shall pay to the Registrar the prescribed application fee for a certificate to be called a Practising Certificate and shall make an application in writing to the Registrar for the certificate.

(2) On being satisfied that an attorney-at-law has paid the application fee under subsection (1) and any fee or amount due for professional liability insurance under section 51, the Registrar shall issue to him a practising certificate.

(3) A practising certificate shall be for a period of one year from the date of insurance and shall be in the form set out in Form 2 in Schedule 2.

(4) The Registrar shall cause to be published in the *Gazette* and on the Government's website—

- (a) in the month of February in every year, an alphabetical list of persons who have as of the 31st January of that year obtained a practising certificate; and
- (b) as soon as practicable after he obtains a practising certificate the name of any person obtaining a practising certificate after the 31st January, in any year.

(5) A copy of the *Gazette* containing the name of any person published pursuant to subsection (4) is *prima facie* evidence in any court of the registration on the Roll of the name of, and the holding of a valid practising certificate by that person.

(6) The Minister for Legal Affairs may by Order direct that a proportion of the total amount received from the fees paid on the applications for practising certificates in any year be transferred to the Association.

(7) If the Minister makes an order under paragraph (6), the Council shall ensure that a copy of the accounts presented to the Annual General Meeting of the Association are presented to the Minister no later than they are presented to that meeting.

22. Special cases

(1) In the cases enumerated in subsection (2), an attorney-at-law applying for a practising certificate shall, unless the Court otherwise orders, give to the Registrar at least six weeks before the application is made notice of intention to make the application and the Court may in its discretion order that the Registrar issue or refuse the application or to issue a certificate to the applicant subject to the terms and conditions as it may think fit.

(2) Subsection (1) applies to any case where an attorney-at-law makes an application for a practising certificate—

- (a) where for twelve months or more he has ceased to hold a valid practising certificate;
- (b) where he is an undischarged bankrupt or there is in force against him a receiving order in bankruptcy;
- (c) where having been suspended from practice or having had his name struck off the Roll, the period of his suspension has expired, or his name has been restored to the Roll, as the case may be;
- (d) not having held a practising certificate within twelve months next following the date of his registration on the Roll;
- (e) when he has been adjudicated a person of unsound mind;

- (f) without having paid any penalty, compensation or reimbursement or costs ordered by the Disciplinary Committee to be paid by him, or without having otherwise complied with any order of the Disciplinary Committee;
- (g) after having had an order made against him for the issue of a writ of attachment;
- (h) after having been adjudicated a bankrupt and obtained his discharge or after having entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors; or
- (i) after having had given against him any judgment which involves the payment of moneys other than costs and is not a judgment as to the whole effect of which upon him he is entitled to indemnity or relief from any other person, and without having produced to the Court evidence of the satisfaction of the judgment.

(3) In the event of an appeal having been made against a receiving order referred to in subsection (2)(b) or against the order for the issue of a writ of attachment referred to in subsection (2)(g), the court shall not refuse the application while the appeal is pending unless in its opinion the proceedings on the appeal have been unduly protracted by the appellant or is unlikely to be successful.

(4) Where, having regard to certain facts, a discretion becomes exercisable by the Court in any of the cases set out in subsections 2(a), (c), (d), (g), (h) and (i), as soon thereafter as a practising certificate has been issued in the exercise of that discretion to the applicant free of conditions, those facts shall cease to operate so as to require the attorney-at-law to give the notice mentioned in this section or to vest any discretion on the court.

23. Suspension of practising certificate

(1) When and so long as any of the provisions of paragraph (b), (e), (f) or (g) of section 22(2) shall apply to an attorney-at-law, he shall be suspended from practising law.

(2) Where an application is made pursuant to section 22(2) and the Court is satisfied that paragraphs (b), (e), (f) or (g) of section 22(2) apply to an attorney-at-law, the Court shall order that the attorney-at-law be suspended from practising law.

(3) The Attorney General may apply to the Court to have an attorney-at-law suspended from practising law if an attorney-at-law—

- (a) is found to be an undischarged bankrupt or there is in force against him a receiving order in bankruptcy;
- (b) is adjudicated a person of unsound mind;

- (c) has not paid any penalty, compensation or reimbursement or costs ordered by the Disciplinary Committee to be paid by him, or has not otherwise complied with any order of the Disciplinary Committee; or
- (d) has had an order made against him for the issue of a writ of attachment.

24. Unlawful practice and similar offences

(1) If a person whose name is not registered on the Roll or who is suspended from practising law—

- (a) practises law;
- (b) wilfully pretends to be an attorney-at-law; or
- (c) makes use of any name, title or description implying that he is entitled to be recognised or to act as an attorney-at-law;

he commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years or on conviction on indictment to imprisonment for a term not exceeding three years.

(2) A person who, not being entitled to act as an attorney-at-law, acts in any action or matter or in any court in the name or through the agency of an attorney-at-law entitled to act commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years or on conviction on indictment to a term of imprisonment not exceeding five years.

(3) Notwithstanding the provisions of any other law, an information for an offence under this section may be laid at any time within two years after the commission of an offence or within six months after the first discovery of the offence by the informant, whichever period is the shorter.

(4) An attorney-at-law shall not, without the written permission of the Council, employ a person who to his knowledge has been suspended from practising law or whose name has been removed from the Roll otherwise than at his own request in accordance with section 26; permission may however be given for a period subject to conditions as the Council may determine.

25. Law officers

(1) For the purposes of this Act, a law officer is an attorney-at-law who holds office in the Public Service.

(2) A law officer shall be considered to be the holder of a valid practising certificate.

(3) A certificate in the form set out in Form 3 of Schedule 3 to the effect that a person is a law officer is *prima facie* evidence of that fact.

(4) A law officer may not be a member of the Bar Association.

26. Voluntary removal from the Roll

An application by an attorney-at-law to procure the removal of his name from the Roll shall be made in a summary manner to the Court which shall make an order thereon as it thinks fit.

27. Removal from Roll and suspension from practice by order of court

(1) The Registrar shall make the appropriate entry or alteration in the Roll and publish the appropriate notice in the Gazette and twice at an interval of sixty days in a newspaper circulating daily in Antigua and Barbuda, whenever the Court orders the name of an attorney-at-law to be removed from the Roll or that an attorney-at-law be suspended from practising law.

(2) An appeal lies to the Court of Appeal from an order made by the Court to remove the name of an attorney-at-law from the Roll or that an attorney-at-law be suspended from practising law and such an appeal shall be filed within 14 days of the order.

(3) Where an appeal is made under subsection (2), the Registrar shall ensure that he takes no action under subsection (1) until the order altering the Roll has been confirmed on appeal.

(4) Where the name of an attorney-at-law is removed from the Roll his practising certificate ceases to be valid.

(5) During the period of suspension of an attorney-at-law from practising law, no practising certificate shall be issued to him and any practising certificate issued to him prior to suspension, ceases to be valid for the period of that suspension.

28. Expiration of suspension to be noted on Roll

Upon the termination of the suspension of an attorney-at-law from practising law, the Registrar shall forthwith cause a note of termination of the suspension to be entered in the Roll against the name of the attorney-at-law, and cause a notice thereof to be published in the *Gazette*.

29. Restoration of name to Roll and termination of suspension

(1) An attorney-at-law whose name has been removed from the Roll or who has been suspended from practising law may, subject to section 30, apply to the Court by petition to have his name restored to the Roll or the order of his suspension withdrawn.

(2) A petition filed under subsection (1) shall be served on the chambers of both the Attorney General and the President of the Bar Association and the Attorney General or the President of the Bar Association may, before the hearing of such an application, object to the application by filing and serving on the applicant, an affidavit in which the grounds for the objection are set out.

(3) An affidavit filed and served pursuant to subsection (2) if filed by —

- (a) the Attorney General shall be served on the President of the Bar Association; and
- (b) the President of the Bar Association shall be served on the Attorney General.

(4) An appeal lies to the Court of appeal from an Order of the Court refusing an application made under this section.

30. Procedure on application

(1) On the hearing of an application made pursuant to section 29, the Court may request a report on the applicant from the Disciplinary Committee, and may, if satisfied that the applicant is a fit and proper person to practise law, order that his name be restored to the Roll or that the order suspending him from practising law be withdrawn.

(2) Any order made by the Court under this section restoring the name of an attorney-at-law or terminating the suspension of an attorney-at-law shall be published in the *Gazette* by the Registrar and twice at an interval of sixty days in a newspaper circulating daily in Antigua and Barbuda, at the expense of the reinstated Attorney-at-Law.

(3) Upon the publication in the *Gazette* of an order made under subsection (2) and on the payment of any fee prescribed the Registrar shall make the appropriate entry on the Roll and where appropriate restore the name of the attorney to the Roll.

PART IV

ACCOUNTS

31. Rules as to accounts and interest

(1) All moneys received for or on behalf of a client by an attorney-at-law shall be held —

- (a) on trust for that client to be paid to the client or as the client may direct; and
- (b) in a bank account—
 - (i) in the name of the attorney-at-law; and

(ii) designated a client's account.

(2) Where the moneys received for or on behalf of a client by an attorney-at-law are held by that attorney-at-law in an interest bearing account, the interest earned on those moneys shall be for the benefit of the client.

(3) Where moneys are held by an Attorney-at-Law in an interest bearing account on a client's behalf, the Attorney-at-Law shall pay to the client all of the interest earned on those moneys.

(4) The Council may, after consultation with the Bar Association, make rules generally for the keeping and operating of bank accounts of clients' money by attorneys-at-law, and without prejudice to the generality of the foregoing, the rules may provide—

- (a) for attorneys-at-law to open and keep accounts at banks for clients' money;
- (b) for attorneys-at-law to keep accounts containing particulars and information as to moneys received, held or paid by them for or on account of their clients; and
- (c) for the Council to take whatever action as may be necessary to enable them to ascertain whether or not the rules are being complied with.

(5) Rules made under this section may also require an attorney-at-law, in prescribed cases to—

- (a) keep on deposit in a separate account at a bank for the benefit of the client, money received for or on account of a client; or
- (b) make good to the client out of the attorney-at-law's own money a sum equivalent to the interest which would have accrued if the money received had been kept on deposit.

(6) An attorney-at-law shall be required to keep a record of any sum of money received and the period for which it is or is likely to be retained or both.

(7) Nothing in subsections (4) and (5), or in rules made pursuant to subsection (3) shall—

- (a) affect any arrangement in writing, whenever made, between an attorney-at-law and his client as to the application of the client's money or interest on that money; or
- (b) apply to money received by an attorney-at-law being money subject to a trust of which the attorney-at-law is a trustee.

32. Relief to banks

(1) Subject to subsection (2) a bank shall not be liable on any transaction concerning the account of an attorney-at-law other than an account kept by an attorney-at-law as trustee for a specified ben-

eficiary; and a bank shall be under no obligation to make any enquiry or be considered to have knowledge of any right of any person to money paid or credited to that account.

(2) Notwithstanding anything in subsection (1) a bank or other financial institution at which an attorney-at-law keeps an account for clients' moneys shall not, in respect of any liability of the attorney-at-law to the bank, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against moneys standing to the credit of that account.

33. Dealings with clients' accounts where improper conduct alleged

(1) Where a Judge is satisfied on application made to him in Chambers by a client, Attorney-at-law or the Attorney General that there is reasonable cause to believe that—

- (a) an attorney-at-law has committed an offence involving fraud or improper conduct in relation to the money or property of a person; or
- (b) any money entrusted to the attorney-at-law has been appropriated by the attorney-at-law, his employee or agent;

the Judge shall cause the Registrar forthwith to inform the attorney-at-law of the application and the grounds upon which it is based and summon him to appear in Chambers before a Judge of the Court on a date and at a time stated in the order to be examined concerning the matter and shall cause the Registrar to summon the person who made the application also to appear before the same Judge on that date and at that time.

(2) If on examination it appears to the Judge that the attorney-at-law has committed an offence involving fraud or improper conduct he may order that—

- (a) an account be kept by the attorney or his firm with a bank or other financial institution for the client or make an order as to the keeping of an account by a bank or other financial institution for the client by the attorney-at-law or his firm as he thinks proper, and that order shall be served on the bank or financial institution; and
- (b) that the Registrar make or cause to be made an application to the Council in respect of the attorney-at-law, and Part B of the Code shall apply insofar as is practicable.

(3) If the Judge makes an order under subsection (2), the judge may also refer the matter to the Director of Public Prosecutions.

(4) Rules of court may prescribe the form and procedure for any application or proceedings made or brought under this section.

34. Dealing with clients' accounts on death of attorney-at-law practising on his own account

(1) At any time after the death of an attorney-at-law who immediately before his death was practising as an attorney-at-law on his own account and not in partnership with another attorney-at-law the Council may, if it thinks fit, serve notice on any banker holding money in any clients' account of the attorney-at-law or his firm that this section applies to that account.

(2) From the date of the service of a notice under subsection (1) the right to operate or otherwise deal with the account to which the notice relates shall vest in the Council to the exclusion of any other person.

(3) Not later than the date on which a notice is served on a banker under subsection (1) the Council shall serve a copy of the notice on the legal personal representative of the attorney-at-law unless the identity or address of the representative cannot after reasonable enquiry be ascertained in which case the notice shall be given as soon as is reasonably practicable.

(4) If the Council fails to serve a copy of the notice as required by subsection (3) and in consequence of that failure the legal personal representative suffers loss as a result of his doing a lawful act in good faith in relation to the account to which the notice relates, the Council shall indemnify him against the loss so suffered.

(5) For the purposes of this section a certificate signed by the Secretary of the Council and certifying that a banking account of an attorney-at-law is a clients' account is evidence of the matter certified.

PART V

DISCIPLINE

35. Rules to govern professional practice and conduct

(1) The Code of Ethics Rules set out in Schedule 4 shall regulate the professional practice, etiquette, conduct and discipline of attorneys-at-law.

(2) A breach of the rules in Part A of the Code may constitute professional misconduct; but a breach of the rules in Part B of the Code shall constitute professional misconduct.

(3) Where no provision is made in the rules in respect of any matter, the rules and practice of the legal profession which obtained immediately before the commencement of this Act shall apply in so far as is practicable.

(4) The Council, with the approval of the Chief Justice, may amend Schedule 4.

36. Disciplinary Committee

(1) A Disciplinary Committee (hereinafter referred to as “the Committee”) is established for the purpose of dealing with complaints against attorneys-at-law.

(2) The Secretary of the OECS Bar shall perform the duties of secretary to the Committee.

(3) In performing the duties in subsection (2) the Secretary shall not divulge any of the complaints or proceedings or exhibits which come into his hands or knowledge to anyone unless so authorised by the Disciplinary Committee or a Court of law.

(4) The provisions of Schedule 5 shall have effect in relation to the constitution of the Committee and other matters relating to it.

(5) Expenses incurred by the Committee shall be met from the Fund.

37. Complaints to Committee

(1) A client or, by leave of the Committee, any other person alleging himself aggrieved by an act of professional misconduct committed by an attorney-at-law, other than the Attorney General or law officer, may apply to the Committee to require the attorney-at-law to answer allegations contained in an affidavit made by that person, and the Registrar or any member of the Committee may make a like application to the Committee in respect of allegations concerning any professional misconduct or any criminal offence as may for the purposes of this section be prescribed by the Council with the approval of the Chief Justice.

(2) In any matter or hearing before any court, where the court considers that an act referred to in subsection (1) has been committed by an attorney-at-law other than the Attorney General or law officer, the court may make or cause the Registrar to make an application to the Committee in respect of the attorney-at-law under that subsection.

(3) A complaint against an attorney-at-law for misconduct shall not be brought more than three years after—

(a) the date of occurrence of the facts giving rise to the complaint; or

(b) the date of knowledge of the facts giving rise to the complaint of the complainant.

38. Disciplinary Proceedings Schedule 6

(1) Schedule 6 shall have effect in relation to disciplinary proceedings against attorney-at-law other than the Attorney General or law officers.

(2) For the purposes of an application made to it pursuant to this Act, the Committee shall have the powers of the Court to summon witnesses, call for the production of books and documents and examine witnesses and parties concerned on oath.

(3) The conviction of an attorney-at-law of a criminal offence may, for the purposes of disciplinary proceedings against him, be accepted by the Committee as proof of his having committed the offence.

39. Hearing of application

(1) On the hearing of an application under this Part, the Committee may—

- (a) dismiss the application;
- (b) impose on the attorney-at-law to whom the application relates, a fine as it thinks proper;
- (c) reprimand the attorney-at-law to whom the application relates; and
- (d) make an order as to costs as it thinks fit, and in addition, except where the application is dismissed, the Committee may order the attorney-at-law to pay the applicant or person aggrieved a sum by way of compensation and reimbursement and any further sum in respect of expenses incidental to the hearing of the application and the consideration of the report as it thinks fit.

(2) The removal from the Roll of the name of an attorney-at-law shall not be a bar to the continuation of the hearing and determination of an application.

(3) Where the Committee is of the opinion that a case has been made out which justifies punishment more severe than may be imposed by it under this section like suspension from practice or removal from the Roll, the Committee shall forward to the Chief Justice and to the Attorney General a copy of the proceedings before it and a report of its findings.

(4) Every decision or order made under this section shall be drawn up, settled and signed by the Registrar who shall keep a written record of all decisions and orders.

(5) In addition to the register kept under section 43A, the Council shall also maintain a written record of all decisions and orders referred to in subsection (4).

(6) Where an attorney-at-law is ordered by the Committee to pay compensation or to make reimbursement to an applicant or other aggrieved person, any compensation or reimbursement shall be taken into account in the assessment of damages recoverable against the attorney-at-law in any civil proceedings brought against him by the applicant or other aggrieved person in respect of any act or default which was the subject matter of the application which gave rise to the order of the Committee.

40. Appeal from Disciplinary Committee

(1) An attorney-at-law aggrieved by a decision given or penalty imposed by the Committee may appeal against that decision or penalty to the Court of Appeal.

(2) Upon an appeal under this section, the Court of Appeal may affirm or set aside the decision or penalty appealed against or may substitute any other decision or penalty which the Committee could have made or imposed or resubmit the matter to the Committee for a rehearing.

(3) Where in any proceedings brought under Part V an attorney-at-law is found to be guilty of professional misconduct by the Committee and the Court of Appeal affirms the decision of the Committee, the Court of Appeal may make an order as to the keeping or distribution of money standing to the credit of the account of an attorney-at-law as it thinks proper in the circumstances of the case.

41. Disciplinary proceedings before the Court

(1) The Attorney General may commence disciplinary proceedings before the court against an attorney-at-law where he receives a report pursuant to section 39(3).

(2) Without prejudice to any other rule of law or to any rule of practice whereby the Supreme Court is empowered to take disciplinary action against a person admitted to practise as an attorney-at-law before it, it is hereby declared that the Court has the power to take disciplinary action in accordance with rules of court made for the purpose pursuant to section 86 of the Eastern Caribbean Supreme Court Act with respect to his professional conduct against an attorney-at-law and in particular the Court may make any one or more of the following orders, namely—

- (a) an order removing from the Roll the name of the attorney-at-law against whom disciplinary proceedings have been instituted;
- (b) an order suspending the attorney-at-law from practice for a time that the Court considers fit;
- (c) an order as to costs, as regards both the proceedings before it and the proceedings before the Committee as the Court considers fit; and
- (d) any further or other order as the circumstances of the case may require.

(3) In the exercise of the powers under subsection (1) the Court shall sit as a full court consisting of three judges.

(4) The attorney-at-law whose professional conduct is the subject of any disciplinary proceedings before the Court shall be entitled to a right of appeal to the Court of Appeal from any decision or other determination of the Court in those proceedings.

42. Saving of jurisdiction of courts

Notwithstanding anything contained in this Act, the jurisdiction, power or authority vested in any court immediately before the commencement of this Act—

(a) by the common law with respect to discipline; or

(b) by any enactment to deal with contempt of court committed by attorneys-at-law

shall continue to be exercisable after the commencement of this Act.

43. Control of employment of certain clerks

(1) An attorney-at-law shall not knowingly hire a person who is or was a clerk to an attorney-at-law and who has been convicted by a court —

(a) of larceny, embezzlement or fraudulent conversion; or

(b) of any other criminal offence in respect of any money or property belonging to or held or controlled by an attorney-at-law by whom he is or was employed or any client of that attorney-at-law.

(2) An attorney-at-law who breaches the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of seven thousand five hundred dollars or to imprisonment for two years or to both and may be guilty of professional misconduct.

43A. Register

The Council shall maintain a register containing the names of all clerks referred to in subsection 43(1) along with the particulars of the relevant matters.

PART VI

LEGAL EDUCATION AND LAW REPORTING

44. Legal education and law reporting

(1) The Council may make arrangements—

(a) for the provision of a system of legal education and practical legal training and professional development; and

(b) for the provision of a system of law reporting.

(2) The Council may make rules relating to matters connected with its functions under subsection (1) and, in particular, but without prejudice to the generality of the foregoing, concerning—

- (a) courses of instruction for students and generally for affording opportunities for students to read and obtain practical experience in law; and
- (b) the nature and conditions of examinations and fees payable in respect of these examinations.

(3) Rules made under subsection (2) shall be subject to a negative resolution of Parliament.

PART VII

REMUNERATION AND COST

45. Interpretation of this Part

In this Part

“attorney-at-law” includes the executors, administrators and assignees of an attorney-at-law;

“costs” includes fees for any legal business done by an attorney-at-law;

“person chargeable” in relation to an attorney-at-law’s bill of costs, includes any person who has paid or is liable to pay the bill either to the attorney-at-law or to any other person chargeable with the bill;

“taxing officer” means in relation to the Court or any Court of Record, the Registrar of that Court.

46. Payments in advance and accountability

(1) An attorney-at-law who receives any money in advance from or on behalf of a client to cover prospective costs, other than a retainer, or as security for future costs shall, on the written demand of the client made at any time after the expiration of three months from the receipt of the money or at any subsequent time during any period which is at least three months from the date of the last demand, deliver to the client a statement in writing showing—

- (a) the amounts of money received up to the date of the statement;
- (b) the dates when the amounts of money were received; and
- (c) the purposes for which the money or so much of it as has been expended have been applied.

(2) If a client fails to obtain the statement referred to in subsection (1) after demanding it in accordance with the subsection, he may apply to the Council or a Judge in Chambers for an order requiring the attorney-at-law to deliver the statement, and the Council or Judge may on the making of that order give other directions as it or he thinks fit.

47. Bills of costs to be prepared

(1) Subject to subsection (2), an attorney-at-law may not commence a claim for the recovery from his client of the amount of any bill of costs for any legal business done by him unless the bill of costs is prepared in accordance with Parts 64 and 65 of the Civil Procedure Rules, 2000, Eastern Caribbean Supreme Court, and is served on the client with a demand in writing for payment thirty days before the filing of the suit.

(2) The Court may on the application of an attorney-at-law authorise him to commence or proceed with a suit for the recovery of any costs before the expiration of fifteen days from the delivery of the copy of the bill of costs required by subsection (1) if it is satisfied that there is reasonable cause for believing that the person chargeable with the costs is about to—

- (a) leave Antigua and Barbuda;
- (b) become bankrupt; or
- (c) do any other act which would tend to prevent or delay the attorney-at-law from obtaining payment.

(3) If in any proceedings before a court the amount set out in a bill of costs is sought to be recovered or is disputed and the bill of costs or part of it relates to matters in respect of which no scale of fees is prescribed, the court shall decide whether the fees set out in respect of those matters are fair and reasonable having regard to the work done, or are excessive, and shall allow or reduce them accordingly.

(4) It shall not be necessary in the first instance for an attorney-at-law in proving compliance with this section to prove the contents of the bill of costs served, and it shall be sufficient to prove that the bill—

- (a) signed by the attorney-at-law or, in the case of a partnership, by any one of the partners either in his own name or in the name of the partnership; or
- (b) being enclosed in or accompanied by a letter signed in the manner specified in paragraph (a) referring to the bill;

was duly served.

48. Bills for noncontentious matters

Where an attorney-at-law issues a Bill to a client for a noncontentious matter, the attorney-at-law shall also prepare and deliver to the client an itemised statement disclosing the basis upon which each item is charged.

49. Rules as to costs for noncontentious business

(1) The Association may with the approval of the Chief Justice, make rules prescribing and regulating the remuneration of attorneys-at-law in respect of non-contentious business.

(2) Rules made under this section may—

- (a) regulate the amount of remuneration which may be charged, having regard to the following—
 - (i) the skill, labour and complexity required by the attorney-at-law in handling the business;
 - (ii) the number and importance of documents prepared or perused by the attorney-at-law;
 - (iii) the place where and the circumstances in which the business or any part of it is transacted; and
 - (iv) the amount of money that is expended or likely to be expended in the business; and
- (b) authorise and regulate—
 - (i) the taking by an attorney-at-law from his client of security for payment of remuneration to be ascertained by taxation or otherwise which may become due to him; and
 - (ii) the allowance of interest.

(3) Where rules made under this section are in force, the taxation of a bill of costs of an attorney-at-law in respect of non-contentious business shall be regulated by those rules.

50. Remuneration agreements for non-contentious business

(1) Notwithstanding section 47, an attorney-at-law and his client may either before, after or in the course of the transaction of any noncontentious business by the attorney-at-law, enter into an agreement as to the remuneration of the attorney-at-law in respect of the work to be performed.

(2) The agreement made by virtue of subsection (1) may provide for the remuneration of the attorney-at-law by gross sum, by commission, by percentage, by salary, or otherwise, and it may be made on terms that the amount of the remuneration stipulated in the agreement shall not include all or any disbursements made by the attorney-at-law in respect of searches, plans, travelling, stamps, fees or other matters.

(3) An agreement made by virtue of subsection (1) shall be in writing and signed by the person to be bound or his agent.

(4) An agreement made by virtue of subsection (1) may be sued and recovered on or set aside in the same manner and on the same grounds as an agreement not relating to the remuneration of an attorney-at-law, but if on any taxation of costs the agreement is relied on by the attorney-at-law and objected to by the client as unfair or unreasonable, the taxing officer may 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 to be reduced, and may give consequential directions as it may think fit.

PART VIII

MISCELLANEOUS

51. Professional liability insurance

(1) The Council may make rules requiring attorneys-at-law to maintain professional liability insurance.

(2) The Council may establish, administer, maintain and operate a professional liability insurance scheme and may use for that purpose fees set under this section.

(3) The Council may, by resolution, set—

(a) the insurance fee, and

(b) the amount to be paid for each type of transaction under subsection (4) (c).

(4) The Council may make rules to do any of the following—

(a) permit attorneys-at-law to pay the insurance fee by instalments on or before the date by which each instalment of that fee is due;

(b) establish classes of membership for insurance purposes and exempt an attorney-at-law or class of attorneys-at-law from the requirement to maintain professional liability insurance or from payment of all or part of the insurance fee; and

- (c) designate types of transactions for which the attorney-at-law must pay a fee to fund the professional liability insurance scheme.

(5) The Council may use fees set under this section to act as the agent for the members in obtaining professional liability insurance.

(6) If the Council establishes a professional liability insurance scheme then it shall establish a professional liability insurance fund, comprised of the insurance fees and other income of the professional liability insurance scheme, and the fund—

- (a) must be accounted for separately from other funds, and
- (b) is not subject to any process of seizure or attachment by a creditor of the Association.

(7) An attorney-at-law must not practise law unless the attorney-at-law has paid the insurance fee when it is due, or is exempted from payment of the fee.

(8) An attorney-at-law must immediately surrender to the President his or her practising certificate and any proof of professional liability insurance issued by the Association, if—

- (a) the Association has paid a deductible amount on behalf of the attorney-at-law in respect of a claim against the attorney-at-law, under a professional liability insurance scheme; and
- (b) the attorney-at-law has not reimbursed the Association, at the date that the insurance fee or an instalment of that fee is due.

(9) The Council may waive or extend the time—

- (a) to pay all or part of the insurance fee; or
- (b) to repay all or part of a deductible amount paid on behalf of an attorney-at-law.

(10) If the Council extends the time for a payment under subsection (9), the later date for payment is the date when payment is due for the purposes of subsections (7) and (8).

52. Rules

The Council may, after consulting the Chief Justice, make rules to give effect to the provisions of this Act.

53. Repeal 9/1997

The Legal Profession Act, 1997, is hereby repealed.

SCHEDULE 1

[Section 4]

Constitution of the Council

Council to be governing and executive body of Association

1. The Council shall be the governing and executive body of the Association and shall exercise and perform all functions, duties and powers as are imposed or conferred upon it by this Act or any other enactment.

Type of members

2. (1) The Council shall consist of—
- (a) the immediate past president of the Association when he is resident in Antigua and Barbuda
 - (b) elected members comprising—
 - (i) officers of the Association, and
 - (ii) ordinary members,

Officers of the Association

3. (1) The officers of the Association shall be the President, the Vice-President and the Treasurer who shall be elected at the same time as the ordinary members in accordance with paragraph 6 and the Secretary who shall be appointed by the Council as soon as it is constituted from among elected ordinary members.

(2) Every practitioner member of the Association of more than ten years standing shall be eligible for election as President, Vice-President or Treasurer.

Ordinary members

4. There shall be seven ordinary members of the Council comprising seven practitioner members, each of whom shall be of not less than five years standing on the day of his nomination for election to the Council.

Elections to be held every two years

5. Every two years elections shall be held in accordance with this Schedule and any rules made

thereunder for the election of President, Vice-President and Treasurer of the Association and the ordinary members of the Council.

Closing date for nomination

6. In the month of January every election year the Council shall publish in the *Gazette* and in any other manner which it considers expedient so to do, the closing date for nominations of candidates for election to the Council.

Candidate's consent to be obtained

7. Every nomination of a candidate for election to the Council shall be in writing signed by not less than five practitioner members and shall name only one candidate whose consent shall be endorsed thereon.

Date of election and the publication

8. Election of members to the Council shall be held at the general meeting as soon as practicable after the month of January in every election year but the names of the candidates nominated shall not be published before the first day of February in that year.

Ballot voting

9. Voting shall be by ballot.

Election to offices

10. (1) A person may at the same election be a candidate for two or more of the offices of President, Vice-President, Treasurer and ordinary member of the Council.

(2) The election to these offices shall be determined in the order in which the offices are mentioned in subparagraph (1).

Equality of votes

11. In the event of an equality of votes between candidates, the one to be declared elected shall be determined by lot in the manner prescribed.

Names of members of new Council to be published in the Gazette

12. (1) The names of the members of the new Council shall be published in the *Gazette*.

(2) On the date of the publication the new Council shall be considered to have been constituted and its members to have taken office.

(3) On that date, the term of office of each member of the previous Council shall expire.

New Council

13. All members of the Council shall hold office until the coming into office of a new Council under paragraph 12.

Filling of vacancies

14. If a vacancy arises in the office of an elected member it shall be filled in one of the following ways—

- (a) where it arises less than six months after a member took office, by a by-election; and
- (b) where it arises six months or more after the member took office, by the appointment by the Council of a person qualified for election to the office.

15. If the position of President becomes vacant then it shall be filled only by an election from among the members of the Association.

Presiding at meetings of Council and Association

16. (1) The President of the Association or, in his absence the Vice-President of the Association shall be the Chairman of the Council and the Association and shall preside at all meetings of the Council and the Association.

(2) In the absence from a meeting of both the President and the Vice-President the members presents shall select one of their members to preside at that meeting.

Appointment of officer due to illness, etc.

17. Subject to paragraph 15, where for any reason an officer of the Association is unable to carry out his functions pursuant to this Act, the Council shall appoint a member from among the elected members of the Council to act in his place.

Vacation of office of member of Council

18. A member of the Council shall vacate his office if—

- (a) he is struck off the Roll or is suspended from practising as an attorney-at-law;
- (b) he becomes bankrupt or is insolvent;
- (c) he becomes of unsound mind; or

- (d) he resigns his seat on the Council.

Vacation of office of elected member

19. An elected member shall vacate his office in any of the circumstances specified in paragraph 18 and shall also vacate his office if—

- (a) being elected under paragraph 5, he ceases for any reason to have in force a practising certificate; or
- (b) he is absent from three consecutive meetings of the Council without its consent.

Quorum of Council

20. Seven members present at a meeting of the Council shall constitute a quorum for the transaction of any business.

Out-of-pocket expenses to be paid to members of the Council.

21. No fees shall be paid to any member of the Council but a member may be reimbursed from the funds of the Association for out-of-pocket and travelling expenses incurred by him in relation to any business of the Association.

Annual General Meeting

22. (1) The Council shall convene an Annual General Meeting which shall be held on or before the 31st day of March in each year and shall cause to be prepared and presented to the Annual General Meeting—

- (a) a report on the activities of the Association, and
- (b) proper accounts, duly audited, of all funds, property and assets of the Association, for the year terminating on the 31st day of January preceding the General Meeting.

(2) The Auditor shall be appointed at each Annual General Meeting.

General Meeting

23. The Council may convene a Special General Meeting of the Association at the time or times that the Council considers expedient.

Twenty practitioner members can requisition Special General Meeting

24. (1) Any twenty practitioner members of the Association may at any time requisition a Special

General Meeting by written notice signed by them stating the objects of the meeting and served on the President, the Vice-President or Secretary of the Association.

(2) The Council shall convene a Special General Meeting to be held in thirty days of the service of the notice.

(3) If the Council fails to convene a Special General Meeting within the time required by subparagraph (2), the requisitioning members may convene that General Meeting within sixty days of the service of the Notice.

Chairman to have casting vote at general meeting

25. At every General Meeting, every practitioner member present shall have one vote and the person presiding at that meeting shall have a casting as well as an original vote.

Management of Association to be vested in Council

26. (1) All powers, acts, or things which are not by this Act expressly authorized, directed or required to be exercised or done by the Association in General Meeting may, subject to this Act or any rules made thereunder or any resolution passed from time to time by the Association in General Meeting, be exercised or done by the Council.

(2) No resolution of the Association passed under subparagraph (1) shall invalidate the previous exercise of any power or the previous doing of any act or thing by the Council which would have been valid if that resolution had not been passed.

Council to have power to make rules

27. (1) The Council shall have power to make rules to provide for all matters not expressly reserved to the Association in General Meeting (whether the same be expressed to be among its powers or not) and for all things which appear to it to be necessary or desirable for carrying out its functions pursuant to this Act or any other enactment.

(2) Without prejudice to the generality of the power conferred by subparagraph (1) the Council may make rules on any of the following matters—

- (a) the manner of nominating candidates;
- (b) the manner of communicating to members the names of the persons nominated for election;
- (c) the form of nomination paper and the ballot paper;

- (d) the times at which the various steps in an election are to take place;
- (e) the mode of voting; and
- (f) the number of practitioner members (not being less than twenty) to constitute a quorum at a General Meeting.

SCHEDULE 2

[Section 16]

Listed Caricom Territories

Anguilla
Antigua and Barbuda
Bahamas
Barbados
Belize
British Virgin Islands
Cayman Islands
Dominica
Grenada
Guyana
Jamaica
Montserrat
St. Kitts and Nevis
St. Lucia
Saint Vincent and the Grenadines
Trinidad and Tobago
Turks and Caicos Islands

SCHEDULE 3

[Section 13,21,25]

Forms

FORM 1

ANTIGUA AND BARBUDA

SUPREME COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE

(LEGAL PROFESSION ACT, 2008)

Certificate of Enrolment

It is hereby certified that is registered on the Roll of Attorneys-at-law pursuant to section 13 of the Legal Profession Act, 2008.

Dated this day of 200 .

.....
Registrar of the Court

FORM 2

THE LEGAL PROFESSION ACT 2008

PRACTISING CERTIFICATE

Pursuant to the Legal Profession Act , 2008 it is hereby certified thatof whose name is registered in the Roll of Attorneys-at-law is entitled to practise as an Attorney-at-law until the day of 20.

Dated this day of 200 .

.....
Registrar of the Court

FORM 3

THE LEGAL PROFESSION ACT 2008

LAW OFFICERS CERTIFICATE

It is hereby certified that is a law officer holding the office of in the Public Service at pleasure/ under contract from theday of 200 until theday of 200 and appointed by the Judicial and Legal Service Commission.

Dated this day of 200 .

.....
Attorney General

SCHEDULE 4

[Section 35]

Code of Ethics

PART A

GENERAL GUIDELINES

I In Relation to the Profession and Himself

1. An attorney-at-law shall observe the rules of this Code, maintain his integrity and the honour and dignity of the legal profession and encourage other attorneys-at-law to act similarly and both in the practise of his profession and in his private life, shall refrain from conduct which is detrimental to the profession or which may tend to discredit it.

2. An attorney-at-law shall in the discharge of his professional duties expose without fear or favour before the proper tribunals unprofessional or dishonest conduct by any other attorney-at-law and shall not lightly refuse a retainer against another attorney-at-law who is alleged to have wronged his client or committed any other act of professional misconduct.

3. (1) An attorney-at-law shall scrupulously preserve his independence in the discharge of his professional duties.

(2) An attorney-at-law practising on his own account or in partnership shall not engage in any other business or occupation which may cause him to cease to be independent.

4. An attorney-at-law shall protect the profession against the admission of any candidate whose moral character or education renders him unfit for admission.

5. An attorney-at-law shall not endeavour by direct or indirect means to attract the clients of another attorney-at-law and where a client is referred to him by another attorney-at-law, the client remains for all other purposes the client of the referring attorney-at-law and the attorney-at-law to whom the client is referred shall act with due deference to the relationship between the client and the referring attorney-at-law.

6. An attorney-at-law may speak in public or write for publication on legal topics so long that it is not likely to be regarded as a result of that action as being concerned with the giving of individual advice.

7. (1) An attorney-at-law shall endeavour to uphold standards of integrity, capability, dedication to work, fidelity, and trust.

(2) It is unprofessional for an attorney-at-law to seek retainers through agents of any kind.

8. An attorney-at-law shall defend the interest of his client without fear of judicial disfavour or public unpopularity and without regard to any unpleasant consequences to himself or to any other person.

9. An attorney-at-law has a right to decline employment and is not obliged to act either as adviser or advocate for every person who may wish to become his client.

10. A client is not entitled to receive nor is an attorney-at-law entitled to render any service or advice—

(a) exhibiting disrespect for a judicial office;

(b) concerning the corruption of any person exercising a public or private trust;
or

(c) concerning the deception or betrayal of the public.

11. Every attorney-at-law shall bear in mind that the oath of office taken on his admission to practice is not a mere formality but is a solemn undertaking to be strictly observed on his part.

II In Relation to the State and the Public

12. An attorney-at-law owes a duty to the State to maintain its integrity, constitution and laws and not to aid, abet, counsel or assist anyone to act in a manner contrary to this duty.

13. The primary duty of an attorney-at-law when engaged as a public prosecutor is not to secure a conviction but to see that justice is done and to that end he shall not withhold facts tending to prove either guilt or innocence of the accused.

14. An attorney-at-law shall endeavour by lawful means where the needs of society require to promote and encourage the modernisation, simplification and reform of legislation.

15. An attorney-at-law shall not by his actions, stir up strife or litigation by seeking out defects in titles, claims for personal injury or other causes of action for the purpose of securing a retainer to prosecute a claim or pay or reward any person directly or indirectly for the purpose of procuring him

to be retained in his professional capacity, and where it is in the interest of his client he shall seek to obtain reasonable settlement of disputes.

16. An attorney-at-law shall not except for good reason refuse his services in capital offences.

17. An attorney-at-law shall not be deterred from accepting proffered employment owing to the fear or dislike of incurring the disapproval of officials, other attorneys-at-law or members of the public.

18. Where an attorney-at-law consents to undertake legal aid and he is requested by the Council and consents to undertake the representation of a person who is unable to afford legal representation or to obtain legal aid, the attorney-at-law shall not, except for compelling reasons, seek to be excused from undertaking that representation.

19. An attorney-at-law in undertaking the defence of a person accused of crime shall use all fair and reasonable means to present every defence available at law.

III In Relation to Client

20. (1) An attorney-at-law shall always act in the best interest of his client, represent him honestly, competently and zealously and endeavour by all fair and honourable means to obtain for him the benefit of any and every remedy and defence which is authorised by law, always bearing in mind that his duties and responsibilities should be carried out within and not without the boundary of the law.

(2) The first concern of an attorney-at-law should always be the interest of his client and the exigencies of the administration of justice which should rank before his right to compensation for his services.

21. (1) An attorney-at-law should, before advising on the cause of a client, obtain a sound knowledge of the matter and give a candid opinion of its merits or demerits and the probable results of pending or contemplated litigation.

(2) An attorney-at-law should be reluctant in proffering bold and confident assurances to his client especially where his employment may depend on these assurances in light of the fact that the law is not always on the side of his client and that the law allows for the *audi alteram partem* rule to be followed.

(3) Where a dispute allows for settlement without litigation, an attorney-at-law should advise his client to avoid or settle the dispute.

22. (1) An attorney-at-law shall at the time of agreeing on a retainer disclose to his client all the circumstances of his relations to the parties and his interest in or connection with the dispute which may influence the client in his selection of an attorney-at-law.

(2) An attorney-at-law shall scrupulously guard and never divulge the secrets and confidence of his client except with his client's consent.

23. An attorney-at-law shall treat adverse witnesses, litigants and other attorneys-at-law with fairness and courtesy, refraining from offensive personal references and should refrain in conducting his professional duties from being influenced by his client's personal feelings and prejudices.

24. An attorney-at-law has the right to undertake the defence of a person accused of crime regardless of his own personal opinion as to the guilt of the accused and having undertaken to conduct the defence he is bound by all fair and honourable means to present every defence that the law of the land permits so that no person may be unjustly deprived of life or liberty.

25. (1) An attorney-at-law may represent multiple clients only if he can adequately represent the interests of each and if each consents to his representation after full disclosure of the possible effects of multiple representation.

(2) An attorney-at-law shall, in all situations where a possible conflict of interest arises, resolve the conflict by leaning against multiple representation.

26. (1) An attorney-at-law shall deal with the business of his client with all due expedition and shall whenever reasonably so required by the client, provide him with full information as to the progress of the business.

(2) It is improper for an attorney-at-law to accept a case unless he can handle it without undue delay.

27. Where an attorney-at-law determines that the interest of his client requires it, he may with the specific or general consent of the client refer his business or part of it to another attorney-at-law whether or not a member of his own firm.

28. (1) A Queen's Counsel/Senior Counsel may accept instructions, appear or do any work without a junior, except where he would otherwise be unable properly to carry out his instructions or conduct his case if he were to do so.

(2) Where more than one attorney-at-law appears as advocate for the same party in the same proceedings, the decision of who shall lead the conduct of the case shall, subject to the instructions of the client, be settled by the attorneys-at-law representing that party before they appear in court and shall not be altered during the course of the proceedings and the leader shall have all authority over the conduct of the case.

(3) An attorney-at-law, including a Queen's Counsel/Senior Counsel, who appears with the leader is entitled to an appropriate negotiated fee for his conduct of the case.

29. (1) An attorney-at-law is entitled to reasonable compensation for his services but should avoid charges which either overestimate or undervalue the service rendered.

(2) An attorney-at-law shall not charge in excess of the value of the service rendered because of the ability of a client to pay, however, he may consider the indigence of a client as a factor in charging below the value of the service rendered, or not charging at all.

(3) An attorney-at-law should avoid controversies with clients regarding compensation for his services as far as is compatible with self-respect and his right to receive compensation for his services.

30. The right of an attorney-at-law to ask for a retainer or to demand payment of out-of-pocket expenses and commitments and to withdraw his services for non-payment of these fees shall not be exercised where the client may be unable to find other timely assistance to prevent irreparable damage being done to his case.

31. Where an attorney-at-law engages a foreign colleague to advise on a case or to cooperate in handling it, he is responsible for the payment of the charges involved except if there is an express agreement to the contrary, but where an attorney-at-law directs a client to a foreign colleague he is not responsible for the payment of the charges, nor is he entitled to a share of the fee of his foreign colleague except where there is an express agreement to the contrary.

32. Subject to paragraph 12 of Part B, an attorney-at-law may at any time withdraw from employment—

- (a) where the client fails, refuses or neglects to carry out an agreement with or his obligation to the attorney-at-law as regards the expenses or fees payable by the client;
- (b) where his inability to work with colleagues indicates that the best interest of the client is likely to be served by his withdrawal;
- (c) where his client freely assents to the termination of his employment;
- (d) where by reason of his mental or physical condition or other good and compelling reason it is difficult for him to carry out his employment effectively; or
- (e) in cases of conflict as contemplated in paragraph 25 of this Part or paragraph 8 of Part B.

33. (1) An attorney-at-law may not appear as a witness for his own client except in merely formal matters or where the appearance is essential to the ends of justice.

(2) If an attorney-at-law is a necessary witness for his client with respect to matters other than those that are merely formal, he shall entrust the conduct of the case to another attorney-at-law of his client's choice.

IV In relation to the Courts and the Administration of Justice

34. (1) An attorney-at-law shall maintain a respectful attitude towards the Court and shall not engage in undignified or discourteous conduct which is degrading to the Court.

(2) An attorney-at-law shall encourage respect for the Courts and the Judges.

(3) An attorney-at-law shall not support unjust criticisms of Judges and Magistrates.

(4) Where there is ground for complaint against a Judge or Magistrate an attorney-at-law may make representation to the proper authorities and where this is done, the attorney-at-law shall be protected.

35. An attorney-at-law shall endeavour always to maintain his status as an advocate and shall not either in argument to the court or in address to the jury assert his personal belief in his client's innocence or in the justice of his cause or his personal knowledge as to any of the facts involved in the matter under investigation.

36. An attorney-at-law shall never seek privately to influence directly or indirectly the Judges of the Court in his favour or in the favour of his client, nor shall he attempt to influence juries by fawning, flattery or pretended solicitude for their personal comfort.

37. An attorney-at-law shall be punctual in attendance before the Courts and concise and direct in the trial and disposition of causes.

38. An attorney-at-law appearing before the Court shall at all times be attired in the manner prescribed or agreed upon by the proper authorities and as befits the dignity of the Court.

V In Relation to his Fellow Attorneys-at-law

39. (1) The conduct of an attorney-at-law towards his fellow attorneys-at-law shall be characterised by courtesy, fairness and good faith and he shall not permit ill-feelings between clients to affect his relationship with his colleagues.

(2) All personal conflicts between attorneys-at-law should be scrupulously avoided as should also colloquies between them which cause delay and promote unseemly wrangling.

40. (1) An attorney-at-law shall reply promptly to letters from other attorneys-at-law making inquiries on behalf of their clients.

(2) An attorney-at-law shall endeavour as far as reasonable to suit the convenience of the opposing attorney-at-law when the interest of his client or the cause of justice will not be injured by so doing.

41. An attorney-at-law shall not give a professional undertaking that he cannot fulfil.

42. (1) An attorney-at-law shall in the course of his professional duties report improper or unprofessional conduct by a colleague to himself or his client to the Council, except where the information relating to the improper or unprofessional conduct is received in professional confidence in which case he shall respect the duty of silence imposed in those circumstances.

(2) An attorney-at-law shall in the course of his professional duties expose without fear an attorney-at-law who is alleged to have wronged a client and shall not lightly refuse a retainer against another attorney-at-law if called upon to do so.

43. Where an attorney-at-law has been sent money, documents or other things by a colleague in pursuance of a legal matter on condition that the receiving party will use them for a particular purpose, he must comply with that request or forthwith return the money, document or other things.

44. An attorney-at-law shall not in any way communicate upon a subject in controversy or attempt to negotiate or compromise a matter directly with any party represented by another attorney-at-law except through that other attorney-at-law or with his prior consent.

45. (1) An attorney-at-law shall not ignore the customs or practices of the legal profession even when the law expressly permits it, without giving timely notice to the opposing attorney-at-law.

(2) An attorney-at-law should avoid all sharp practices and should refrain from taking any paltry advantage when his opponent has made or overlooked some technical error or matter, bearing in mind that no client has a right to demand that an attorney-at-law representing him shall be illiberal or shall do anything repugnant to his own sense of honour and propriety.

46. An attorney-at-law shall not accept instructions to act in court proceedings in which to his knowledge a client has previously been represented by another attorney-at-law, unless he first notified the other attorney-at-law of the change, and makes reasonable efforts to ensure that the other attorney-at-law has been paid for his services, however he shall be considered to have notified the other attorney-at-law if he has made reasonable efforts to notify him of the change.

47. An attorney-at-law shall not accept instructions to act in proceedings other than Court proceedings in which to his knowledge, another attorney-at-law has previously represented the client unless he makes reasonable efforts to ascertain that the retainer of that attorney-at-law has been determined by the client or that the client wishes both attorneys-at-law to represent him.

48. An attorney-at-law who instructs or employs another attorney-at-law to act on behalf of his client shall, unless otherwise agreed, pay the proper fee of that attorney-at-law whether or not he has received payment from the client.

VI General

49. Nothing contained in this Code shall be construed as derogating from any existing rules of professional conduct and duties of an attorney-at-law which are in keeping with the traditions of the legal profession and which are not specifically provided for in this code.

50. Where in any particular matter explicit ethical guidance does not exist, an attorney-at-law shall determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

51. (1) A person who previously held a substantive appointment as a Judge of the Supreme Court shall not appear as an attorney-at-law in any of the Courts of Antigua and Barbuda for a period of five years commencing on the date of his retirement, resignation or other termination of appointment.

(2) This rule shall not apply to a person who is appointed to act as a Judge in a temporary capacity.

PART B

MANDATORY PROVISIONS AND SPECIFIC PROHIBITIONS

1. An attorney-at-law shall not practise as an attorney-at-law unless he has been issued a practising certificate in accordance with the provisions of this Act.

2. (1) An attorney-at-law shall never knowingly mislead the Court.

(2) An attorney-at-law shall not withhold facts or secrete witnesses in order to establish the guilt or innocence of the accused.

3. An attorney-at-law shall not hold out any person who is not qualified to practise law as a partner, associate, consultant or attorney-at-law.

4. An attorney-at-law shall not become involved in a matter unless at the request of a party to the matter; however, it is proper for an attorney-at-law to become involved in matters referred by the Bar Association or by another attorney-at-law or for which he is engaged in any other manner not inconsistent with this Code.

5. An attorney-at-law shall not in the carrying on of his practice or otherwise permit any act or thing which is likely or is intended to attract business unfairly or can reasonably be regarded as touting or public advertising.

6. (1) An attorney-at-law shall not in any way make use of any form of public advertisement calculated to attract clients to himself or any firm with which he is associated and he shall not permit, authorise or encourage anyone to do so or reward anyone for doing so on his behalf.

(2) An attorney-at-law shall not permit his professional standing to be used for the purpose of advertising any particular product, service or commercial organisation.

(3) Notwithstanding subparagraphs (1) and (2)—

- (a) an attorney-at-law or law firm may have a website or publish professional newsletters, the contents which shall be in accordance with good practice of the legal profession, informing of the firm, its members and staff and current legal issues. Websites and professional newsletters must carry content of a professional nature and not contain anything derogatory of the legal profession, Government, judiciary or their respective members.
- (b) an attorney-at-law may permit limited and dignified identification of himself as an attorney-at-law—
 - (i) in political advertisements relevant to the cause of a political campaign or issue;
 - (ii) in public notices where the announcement of his professional status is required or authorised by law, or is reasonably necessary for a purpose other than attracting potential clients;
 - (iii) in reports and announcements of bona fide commercial, civic, professional or political organisations in which he serves as a director or officer;
 - (iv) in and on legal textbooks, articles, professional journals and other legal publications and in dignified and restrained advertisements of these publications;
 - (v) in announcements of any public address, lecture, or publication by him on legal topics except that these announcements do not emphasize his own professional competence and are not likely to be regarded as being concerned with the giving of individual advice by him;
- (c) an attorney-at-law may speak in public or write for publication on legal topics so long as it is not likely to be regarded as being concerned with the giving of individual advice;
- (d) the following cards, office signs, letterheads or directory listings may be used by an attorney-at-law but in a restrained and dignified form—
 - (i) a professional card identifying the attorney-at-law by name and as an attorney-at-law, giving his decorations and degrees, legal or otherwise, his addresses, telephone numbers and the name of his law firm or professional associates;
 - (ii) a brief professional announcement card which may be delivered only to attorneys-

at-law, clients, former clients personal friends and relations and government bodies stating new or changed associations, addresses, or firm names or similar professional matters;

- (iii) a sign of a size and design compatible with the existing practice of the profession displayed on or near the door of the office and in the building directory identifying the law office;
- (iv) a letterhead identifying the attorney-at-law by name and as an attorney-at-law and giving his decorations and degrees, legal or otherwise, his addresses, telephone numbers and the name of his law firm and of his associates;
- (v) a listing in a telephone directory, a reputable law list, legal directory or biographical reference giving a brief biographical or other relevant information and the professional card, office sign, letterhead or listing may also state that the attorney-at-law is a notary public.
- (vi) a listing in a legal or other related journal or publication giving information on the contact details of the attorney at law and his firm, and the services provided.

7. Where an attorney-at-law commits a criminal offence which in the opinion of the Council is of a nature likely to bring the profession into disrepute, the commission of the offence shall constitute professional misconduct if—

- (a) he has been convicted by a Court, including a foreign court of competent jurisdiction, for the offence; or
- (b) he has been prosecuted and has been acquitted by reason of a technical defence or he has been convicted but the conviction is quashed by reason of some technical defence.

8. An attorney-at-law shall not acquire directly or indirectly by purchase or otherwise a financial or other interest in the subject matter of a case which he is conducting.

9. (1) An attorney-at-law shall not enter into partnership or fee sharing arrangements concerning the practise of law with a non-qualified body or person.

(2) An attorney-at-law shall not enter into an arrangement for or charge or collect a fee in contravention of this Code or any law.

10. (1) An attorney-at-law shall not charge fees that are unfair or unreasonable and in determining the fairness and reasonableness of a fee the following factors may be taken into account.

- (a) the time and labour required, the novelty and difficulty of the questions involved and the skill required to competently perform the legal service;

- (b) the likelihood that the acceptance of the particular employment will preclude other employment by the attorney-at-law;
- (c) the fee customarily charged in the locality for similar legal services;
- (d) the amount, if any involved;
- (e) the time limitations imposed by the client or by the circumstances;
- (f) the nature and length of the professional relationship with the client;
- (g) the experience, reputation and ability of the attorney-at-law concerned;
- (h) any scale of fees or recommended guide as to charges prescribed by law or by the Council.

(2) An attorney-at-law shall not accept any fee or reward for merely introducing a client or referring a case or client to another attorney-at-law.

(3) An attorney-at-law shall not charge a contingency fee except with the prior agreement of the client for reasonable commissions on the collection of liquidated claims.

11. (1) An attorney-at-law shall not act in any manner in which his professional duties and personal interests conflict or are likely to conflict except with the specific approval of his client given after full disclosure to the client.

(2) An attorney-at-law shall not accept or continue his retainer or employment on behalf of two or more clients if their interests are likely to conflict or if his independent professional judgment is likely to be impaired.

12. (1) An attorney-at-law who withdraws from employment under paragraph 32 of Part A shall not do so until he has taken reasonable steps to avoid foreseeable prejudice or injury to the position and rights of his client including—

- (a) giving adequate notice;
- (b) allowing time for employing another attorney-at-law;
- (c) delivering to the client all documents and property to which he is entitled subject however to any lien which the attorney-at-law may have over these items;
- (d) complying with any laws, rules or practice that may be applicable; and

- (e) where appropriate, obtaining the permission of the Court where the hearing of the matter has commenced.

(2) An attorney-at-law who withdraws from employment shall refund promptly that part of the fees, if any, already paid by his client as may be fair and reasonable having regard to all the circumstances of the case.

13. An attorney-at-law shall withdraw forthwith from employment or from a matter pending before a tribunal—

- (a) where the client insists upon his presenting a claim or defence that he cannot conscientiously advance;
- (b) where the client seeks to pursue a course of conduct which is illegal or which will result in deliberately deceiving the Court;
- (c) where a client has in the course of the proceedings perpetrated a fraud upon a person or tribunal and on request by the attorney-at-law has refused or is unable to rectify the same;
- (d) where his continued employment will involve him in the violation of the law; or
- (e) where the client by any other conduct renders it unreasonably difficult for the attorney-at-law to carry out his employment effectively, or in accordance with his judgment and advice, or the rules of law or professional ethics;
- (f) where for any good and compelling reason it is difficult for him to carry out his employment effectively.

14. An attorney-at-law shall not retain money he receives for his client for longer than is absolutely necessary.

15. An attorney-at-law shall never disclose, unless ordered to do so by the Court or required by statute, what has been communicated to him in his capacity as an attorney-at-law by his client or the attorney-at-law of his client and this duty not to disclose extends to his partners and to any junior attorney-at-law assisting him, however, an attorney-at-law may reveal confidences or secrets necessary to establish or collect his fee or to defend himself or associates against an accusation of wrongful conduct.

16. An attorney-at-law shall not permit his professional services or his name to be used in any way that would make it possible for persons who are not legally authorised to do so to practise law.

17. An attorney-at-law shall not delegate to a person not legally qualified and not in his employ or under his control any functions which are by the laws of Antigua and Barbuda should only to be performed by a qualified attorney-at-law.

18. An attorney-at-law shall not act with inexcusable or undue delay, negligence or neglect in the performance of his duties.

19. An attorney-at-law shall not engage in undignified or discourteous conduct which is degrading to the Court or his profession.

20. An attorney-at-law shall not wilfully make false accusations against a Judge or Magistrate.

21. An attorney-at-law who holds a public office shall not use his public position to influence or attempt to influence a tribunal to act in favour of himself or of his client.

22. An attorney-at-law shall not accept private employment in a matter upon the merits of which he previously acted in a judicial capacity or for which he had substantial responsibility while he was in public employment.

23. An attorney-at-law shall not give, lend or promise any thing of value to a Judge, juror or official of a tribunal before which there is pending any matter in which he is engaged.

24. An attorney-at-law shall not, in any proceedings in a Court, communicate or cause any other person to communicate with a juror information as to the merits of the proceeding, and shall only do so with a Judge or person exercising judicial functions—

(a) in the normal course of the proceedings; or

(b) where authorised by law or the practice of the Courts.

25. An attorney-at-law shall not for the purpose of making any person unavailable as a witness, advise or cause that person to secrete himself or leave the jurisdiction of the Court.

26. An attorney-at-law shall not pay or offer to pay or acquiesce in the payment of compensation to a witness for giving evidence in any cause or matter except as reimbursement for expenses reasonably incurred and as reasonable compensation for loss of time in attending, for preparation and testifying, and in the case of an expert witness a reasonable fee for his professional services.

27. An attorney-at-law shall not knowingly use perjured testimony or false evidence or participate in the creation or use of evidence that he knows to be false.

28. An attorney-at-law shall not counsel or assist his client or a witness in conduct that the attorney-at-law knows to be illegal or fraudulent, and where he is satisfied that his client has in the course of the particular representation perpetrated a fraud upon a person or tribunal, he shall promptly call upon the client to rectify the act.

29. An attorney-at-law shall not knowingly make a false statement of law or fact.

30. (1) An attorney-at-law shall not commit a breach of an undertaking given by him to a Judge, a Court, tribunal or any of its officials, whether the undertaking relates to an expression of intention as to future conduct or is a representation that a particular state of facts exists.

(2) An attorney-at-law shall not knowingly represent falsely to a Judge, a Court or tribunal that a particular state of facts exists.

31. In pecuniary matters an attorney-at-law shall be most punctual and diligent and shall never mingle funds of others with his own and shall at all times be able to refund money he holds for others.

32. (1) An attorney-at-law shall keep accounts as clearly and accurately as is possible to distinguish the financial position between himself and his client as and when required.

(2) An attorney-at-law shall comply with the rules that may be made by the Council pursuant to section 29 of the Act.

(3) Nothing contained in paragraphs 31 and 32 shall deprive an attorney-at-law of any recourse or right whether by way of lien, set-off, counterclaim, charge or otherwise against moneys standing to the credit of an account maintained by that attorney-at-law for a client.

33. An attorney-at-law shall reply promptly to any letter received from the Council relating to his professional conduct.

34. Where no provision is made in this Code in respect of any matter, the rules and practice of the legal profession which govern the particular matter shall apply in so far as is practicable.

35. (1) Breach by an attorney-at-law of any of the rules contained in this Part shall constitute professional misconduct and an attorney-at-law who commits a breach is liable to any of the penalties which the Disciplinary Committee and/or the Court is empowered to impose.

(2) Breach by an attorney-at-law of any of the provisions of Part A of this Code while not automatically amounting to punishable professional misconduct is a derogation from the standard of conduct expected from an attorney-at-law and may, depending on the circumstances of the particular case, amount to misconduct or form a material ingredient thereof.

SCHEDULE 5

[Section 36]

DISCIPLINARY COMMITTEE

Constitution and membership

1. (1) The Disciplinary Committee shall consist of the President of the Association and six other

persons appointed by the Chief Justice after consultation with the Council and the Attorney General.

(2) The appointed members shall include two members of the Council.

(3) Subject to subparagraph (4) the other appointed members shall be attorneys-at-law of not less than six years standing and at least two non-attorneys at law.

(4) The Chairman and the Vice-Chairman of the Committee shall be appointed by the Chief Justice after consultation with the Council and shall be persons who have held judicial office or are attorneys-at-law of not less than ten years standing.

Term of office

2. (1) The members of the Committee shall hold office for a period not exceeding three years, with the exception of the President whose membership on the Committee shall end on the expiration of his term of office as president.

(2) A member of the Committee shall be eligible for re-appointment upon the expiration of his term of office.

Power of Disciplinary Committee to sit in divisions

3. (1) For the purposes of hearing applications made pursuant to section 37 of the Act, the Disciplinary Committee may sit in two divisions.

(2) Subject to the directions of the Council, the Chairman of the Committee shall determine the composition of each division.

(3) Each division shall be entitled to hear and determine any application and shall be entitled to exercise all powers of the Disciplinary Committee; and any hearing by or determination or order of that division shall be considered to be a hearing by or determination or order the Disciplinary Committee.

Resignation

4. A member of the Committee may at any time resign his office by letter addressed to the Chief Justice and to the Chairman of the Committee.

5. The Chairman of the Committee may at any time resign his office by letter addressed to the Chief Justice.

Revocation of appointment

6. The Council may, if it thinks it expedient so to do and with the approval of the Chief Justice, at

any time revoke the appointment of any member of the Committee.

Filing of vacancies

7. Where an appointed member of the Council vacates his seat before the expiration of his term of office a person similarly qualified to him shall be appointed in a similar manner to fill the vacancy for the remainder of that term of office.

Publication of membership

8. The names of all members of the Committee as first constituted and every change in membership thereof shall be published—

- (a) in the *Gazette*; and
- (b) once annually in at least one newspaper upon appointment.

Liability for default of Committee

9. No member of the Committee shall be personally liable for any act or default of the Committee done or omitted to be done in good faith in the performance of its functions pursuant to this Act.
Proceedings at meetings

10. (1) The Committee shall meet in private at times expedient for the transaction of business and the meeting shall be held in places, at times and on days the Committee determines.

(2) The Chairman or, in his absence, the Vice-Chairman shall preside at the meetings of the Committee.

(3) If, at any meeting of the Committee, the Chairman or Vice-Chairman is for any reason unable to act, the members present may elect one of their members to preside at that meeting.

(4) The quorum of the Committee shall, subject to paragraph 3, be three.

(5) The validity of any proceedings of the Committee shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

(6) The Committee shall have power to regulate its proceedings.

SCHEDULE 6

[Section 38]

DISCIPLINARY PROCEEDINGS RULES

1. Short title

These Rules may be cited as the Legal Profession (Disciplinary Proceedings) Rules 2008.

2. Interpretation

For the purposes of these Rules “Secretary” means the secretary of the Disciplinary Committee who shall be the Secretary of the OECS Bar or the person deputed by him for the time being to perform all or any of the functions of the secretary.

3. Application and affidavits

(1) An application to the Committee to require an attorney-at-law to answer allegations shall be in writing under the hand of the applicant in Form 1 of the Appendix and shall be sent to the Secretary of the Bar Association together with an Affidavit by the applicant in Form 2 of the Appendix stating the facts on which he relies in support of his application.

(2) An application referred to subsection (1) and any other document or communications pertaining to that application shall be forwarded forthwith to the Secretary of the OECS Bar by the Secretary of the Bar Association.

4. No case to answer

The Committee, before fixing a date for the hearing of a matter, may require the applicant to supply further information and documents relating to all allegations as it thinks fit, and in any case where in the opinion of the Committee no *prima facie* case is shown, the Committee may, without requiring the attorney-at-law to answer the allegations, dismiss the application and notify the applicant and the attorney-at-law of the dismissal.

5. Notice of hearing

In any case in which, in the opinion of the Committee, a *prima facie* case is shown, the Committee shall fix a date for hearing and the Secretary shall serve notice of the date on the applicant and the attorney-at-law together with a copy of the application and affidavit. The notice shall be served not less than twenty one days before the date of hearing.

6. Lists of documents for hearing

The notice to the applicant shall be in Form 3 and the notice to the attorney-at-law shall be in Form 4 as set out in the Appendix and shall require the applicant and the attorney-at-law respectively to furnish to the Secretary of the Bar Association and to each other a list of all documents on which they respectively propose to rely. The lists shall, unless otherwise ordered by the Committee, be furnished by the applicant and by the attorney-at-law respectively at least ten days before the date of hearing.

7. Inspection of documents

Either party may inspect the documents included in the list furnished by the other party and a copy of any document mentioned in the list of either party shall, on the application of the requesting party, be furnished to that party by the other within three days after the receipt of the application.

8. Absence of parties

If either or both parties fail to appear at the hearing the Committee may, upon proof of service of the notice of hearing, proceed to hear and determine the application in his or their absence.

9. Affidavit evidence

The Committee may, either as to the whole case or as to any particular fact, proceed and act upon evidence given by affidavit, but a party to the proceedings may require a deponent to be summoned to appear before the Committee to be cross examined.

10. Summons

A summons issued by the Committee pursuant to section 38 may be in Form 5 as set out in the Appendix with variation as the case may require.

11. Privacy of hearings

The Committee shall hear all applications in camera but shall pronounce its findings in public.

12. Notes of Proceedings

Notes of proceedings shall be taken by the Secretary or other person appointed by the Committee, and any party who appeared at the proceedings shall be entitled to inspect the original or a copy thereof. Every person entitled to be heard on an appeal from the decision of the Committee shall be entitled to a copy of the notes on payment of the charges, if any, as prescribed by the Committee.

13. Power to extend time

Notwithstanding anything to the contrary, the Committee may extend or abridge the time for doing an act under these Rules.

14. Privileges and immunities

(1) Attorneys-at-law and witnesses shall have the same privileges and immunities in relation to hearings on applications pursuant to this Act as in a court of law.

(2) A party to an application is entitled to be represented by an attorney-at-law.

15. Exemption from stamp duty

No stamp duty shall be paid on any document and no fee shall be charged by the Secretary in respect of an application alleging professional misconduct by an attorney-at-law.

16. Dismissal of application after hearing

The Committee may, after hearing an application, dismiss it if it is satisfied that a case of professional misconduct has not been made out.

17. Powers of Committee

The Committee may, where a case of professional misconduct has been established, make an order as it thinks appropriate pursuant to section 39 (1) (b), (c), (d) or (3).

APPENDIX

FORM 1

APPLICATION AGAINST AN ATTORNEY

To the Disciplinary Committee Constituted under the Legal Profession Act, 2008

IN THE MATTER OF (ATTORNEY)

AND

.....(APPLICANT)

IN THE MATTER OF THE LEGAL PROFESSION ACT, 2008

I, the undersigned hereby make application that * of , attorney-at-law be required to answer the allegations contained in the affidavit which accompanies this application.

I make this application on the ground that the matters of fact stated in the accompanying affidavit constitute conduct unbecoming to his profession on the part of the said.....in his capacity of as attorney-at-law.

In witness whereof I have hereunto set my hand thisday of 20 .

.....
Signature

.....
Address

.....
Profession business or occupation

*insert full name and last know place or places of business.

FORM 2

AFFIDAVIT BY APPLICANT

IN THE MATTER OF(a)..... (ATTORNEY-AT-LAW)

AND

.....(b)..... (APPLICANT)

IN THE MATTER OF THE LEGAL PROFESSION ACT, 2008

AFFIDAVIT

I,(b)..... Make Oath and say as follows—

1. I reside at(c) in the country of(d).....
2. I am a(e)..... and my postal address is.....(f).....
3. The above-named attorney-at-law(g).....
4. The complaint I make against the attorney-at-law is that he(h).....

Sworn at)

This day of 20)

Signature or mark of applicant

[the same having been first read over and explained to the deponent and he appeared fully to understand the same]

Before me:)

)

(If the person making the affidavit can read and write strike out the words in square brackets).

(a) Name of the attorney-at-law

(b) Name of applicant

(c) Place of residence

(d) Country

(e) Occupation

(f) Postal Address

(g) Set out facts complained of

(h) Set out shortly the ground of complaint

FORM 3

NOTICE BY COMMITTEE TO APPLICANT

Complaint No. of 20

IN THE MATTER OF(a)..... (ATTORNEY-AT-LAW)

AND

.....(b)..... (APPLICANT)

IN THE MATTER OF THE LEGAL PROFESSION ACT, 2008

To

of

The day of 20.... is the day fixed for the hearing of your application in the matter of, attorney-at-law, by the Committee constituted under the Legal Profession Act, 2008.

The Committee will sit atato'clock in the forenoon.

If you fail to appear the Committee may in accordance with the rules made under the Legal Profession Act, 2008 proceed in your absence.

You are requested by the rules under the Legal Profession Act, 2008 to furnish to the said and the Secretary of the Committee at at least 14 days before the said day of20..... a list of all documents on which you propose to rely.

Either party may inspect the documents included in the list furnished by the other party and a copy of any document mentioned in the list of either party must, on the application of a party requiring it, be furnished to him by the other party within three days after receipt of the application.

You are requested to acknowledge the receipt of this Notice without delay.

Dated theday of 20.....

.....
Secretary, Disciplinary Committee

FORM 4

NOTICE BY COMMITTEE TO ATTORNEY-AT-LAW

Complaint No. of 20
IN THE MATTER OF (ATTORNEY-AT-LAW)

AND

..... (APPLICANT)

IN THE MATTER OF LEGAL PROFESSION ACT, 2008

Toof, attorney-at-law.

Application has been made by of to the Disciplinary Committee constituted under the Legal Profession Act, 2008 that you be required to answer the allegation contained in the affidavit a copy of which accompanies this Notice.

The day of 20..... is the day fixed for the hearing of the application by the Council. The Council will sit at at o'clock in the forenoon.

If you fail to appear the Committee may in accordance with the Rules made under the Legal Profession Act, 2008 proceed in your absence.

You are required by the Rules made under the Legal Profession Act 2008 to furnish to the applicant and to the Secretary of the Disciplinary Committee at at least 14 days before the day fixed for hearing a list of all the documents on which you propose to rely.

Either party may inspect the documents included in the list furnished by the other party and a copy of any documents mentioned in that list shall on application of the party requiring it, be furnished to him by the other party within 3 days after the receipt of at the application.

You are requested to acknowledge receipt of this Notice without delay.

Dated the day of 20.....

.....
Secretary, Disciplinary Committee

FORM 5

SUMMONS BY COMMITTEE TO WITNESS

Complaint No. of 20

IN THE MATTER OF(ATTORNEY-AT-LAW)

AND

..... (APPLICANT)

IN THE MATTER OF THE LEGAL PROFESSION ACT, 2008.

To

You are hereby summoned to appear before the Disciplinary Committee constituted under the Legal Profession Act, 2008 at on the day of at the hour ofo'clock in the noon, and so from day to day until the application in the above matter is heard, to give evidence on behalf of (if the person summoned is to produce books or documents add) and you are required to bring with you(specify the books or documents required).

Dated this day of 20.....

.....
Secretary, Disciplinary Committee.

Passed by the House of Representatives on this 7th day of July, 2008.

Passed by the Senate on this 21st day of August, 2008.

D. Gisele Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

L. Thomas,
Acting Clerk to the House of Representatives.

L. Thomas,
Acting Clerk to the Senate.