



MONTSERRAT

CHAPTER 2.21

LEGAL PROFESSION ACT and Subsidiary Legislation

Revised Edition

showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

LEGAL PROFESSION ACT

Act 8 of 2014 .. in force 1 October 2014¹ (S.R.O. 59/2014)

Amended by Act 17 of 2015 .. in force 8 January 2016

LEGAL PROFESSION (LAW OFFICES) ORDER – Section 31

S.R.O 11/2015 .. in force 28 January 2015

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CHAPTER 2.21

LEGAL PROFESSION ACT

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CHAPTER 2.21**LEGAL PROFESSION ACT***(Acts 8 of 2014 and 17 of 2015)*

AN ACT TO PROVIDE FOR THE REGULATION OF THE LEGAL PROFESSION; FOR THE QUALIFICATION, ENROLMENT AND DISCIPLINE OF ITS MEMBERS AND FOR RELATED MATTERS.

Commencement*[1 October 2014]***PART 1****PRELIMINARY****Short title**

1. This Act may be cited as the Legal Profession Act.

Interpretation

2. (1) In this Act—

“**Agreement**” means the Agreement and the protocols to the Agreement providing for a system of legal education and training and establishing the Council of Legal Education;

“**annual subscription**” means the annual subscription payable under section 12;

“**Appeals Commission**” means the Appeals (Professional Misconduct) Commission established under section 42;

“**attorney-at-law**” means a person whose name is entered on the Roll under this Act;

“**Bar Association**” means the Bar Association of Montserrat under section 3;

“**certificate of enrolment**” means the certificate of enrolment issued under section 19;

“**client**” includes—

- (a) in relation to contentious business, any person who, as principal or on behalf of another person retains or employs any attorney-at-law and a person who is or may be liable to pay to an attorney-at-law costs for the business; and
- (b) in relation to non-contentious business, a person who, as a principal or on behalf of another or as a trustee or executor or

in any other capacity, has power to retain or employ and retains or employs an attorney-at-law for the business;

“client account” means an account established at a financial institution and expressly identified in the financial institution’s records as an account held by an attorney-at-law on behalf of a named client;

“Code of Ethics” means the Code of Ethics set out in Schedule 3;

“Committee” means the Disciplinary Committee established under section 38;

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

“Council” means the Council of the Bar Association constituted under Schedule 6;

“Council of Legal Education” means the Council of Legal Education established under the Agreement;

“Court” means the High Court;

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

“law officer” means a person who is certified as a law officer under section 31(3);

“practise law” means practise as a barrister or solicitor or an attorney-at-law, or the undertaking or performing of the functions of a barrister or solicitor or attorney-at-law as provided or recognised by any law before or after the coming into force of this Act;

“practising certificate” means a certificate issued under section 23;

“prescribed” means prescribed in the Regulations;

“public service” has the meaning assigned to it in the Constitution; (*Amended by Act 17 of 2015*)

“qualifications prescribed by law” means qualifications for admission to practise law as set out in this Act;

“Queen's Counsel” means an attorney-at-law who is a member of the Bar Association on whom the rank of Queen's Counsel has been bestowed by the Governor on the recommendation of the Chief Justice;

“Registrar” means the Registrar of the High Court;

“Regulations” means Regulations made under section 63;

“Roll” means the list of attorneys-at-law kept by the Registrar under section 13;

“unqualified person” means a person who is disqualified from practising law.

PART 2

BAR ASSOCIATION

The Montserrat Bar Association

3. (1) The Montserrat Bar Association is continued.

(2) The Bar Association consists of practitioner members, non-practitioner members and honorary members.

Management of Bar Association

4. The affairs of the Bar Association must be managed and its functions performed by the Council.

Purposes of Bar Association

5. The purposes of the Bar Association are—

- (a) to maintain and improve the standard of conduct and proficiency of the legal profession in Montserrat;
- (b) to represent and protect the interests of the legal profession in Montserrat;
- (c) to protect and assist the public in Montserrat in all matters relating to law;
- (d) to promote good relations within the legal profession, between the legal profession and persons concerned in the administration of justice in Montserrat and between the legal profession and the public generally;
- (e) to promote good relations between the legal profession and professional bodies of the legal profession in other countries and to participate in the activities of any international association of lawyers and to become a member of the international association;
- (f) to promote, maintain and support the administration of justice and the rule of law; and
- (g) to do any other thing incidental or conducive to the achievement of the purposes set out in paragraphs (a) to (f).

Practitioner members

6. An attorney-at-law who is a member of the Bar Association and who holds a valid practising certificate is a practitioner member of the Bar Association.

Non-practitioner members

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

Honorary members

8. The Bar Association may confer honorary membership of the Bar Association on distinguished lawyers as it may think fit and may in its discretion revoke the membership.

Privileges and prohibitions on members

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

(2) Only practitioner members who pay their annual subscription to the Bar Association or who are certified to be law officers under section 31 are eligible—

(a) to attend and vote at a general meeting or an election of members of the Council; or

(b) to be elected to the Council.

(3) Practitioner members may by a resolution exclude, from a general meeting of the Bar Association or any part of a general meeting, all other members.

Expulsion and suspension of rights and privileges

10. A practitioner member or a non-practitioner member of the Bar Association may in the prescribed manner, and on grounds as may be prescribed, after being given a 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.

Withdrawal and termination of membership

11. (1) A person may withdraw from membership of the Bar Association by notice in writing addressed to the President of the Association.

(2) A withdrawal under subsection (1) is effective on receipt of the notice by the President of the Association.

(3) A member of the Bar Association other than an honorary member, who ceases to be qualified for membership, ceases to be a member.

Annual subscription

12. (1) The amount of the annual subscription payable by members other than honorary members of the Bar Association, subject to subsection (5), is fixed by the Bar Association and must be paid to the Bar Association.

(2) The annual subscription is in respect of the period of twelve months commencing on 1 October in each year.

(3) In fixing the annual subscription, the Bar Association may—

(a) divide the members into classes and provide for different amounts to be paid by different classes of members and for different periods; and

(b) generally regulate and vary the subscription payable by members or different classes of members as the Bar Association may think fit.

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

(5) The annual subscription payable under subsection (1) and levies payable under subsection (4) must not exceed \$500 per practitioner member or a greater sum as may be prescribed by a resolution of a general meeting of the Bar Association.

(6) The Bar Association must on or immediately after 1 November in each year, publish in the *Gazette* and in one newspaper circulating in Montserrat—

(a) a list of its members who have paid the annual subscription for that year; and

(b) a list of members who are exempt from paying the annual subscription.

PART 3

MEMBERSHIP OF THE LEGAL PROFESSION

Division 1 – Enrolment, Admission and Status

Roll of attorneys-at-law

13. (1) The Registrar must keep, under this Act and any rules of court made under section 56, a chronological list (referred to as “**the Roll**”) of the following particulars in respect of each attorney-at-law admitted to practice in Montserrat—

(a) full name and address;

(b) the date of admission to practise law; and

(c) a description and date of the qualifications to practise law.

(2) The Registrar has custody of the Roll and of all documents relating to it and must allow a person to inspect the Roll during office hours free of charge.

Registration of persons entitled to practise before commencement

14. The Registrar must, as soon as practicable after the commencement of this Act, cause to be registered on the Roll the name of a person who, immediately before the commencement of this Act, appeared on the Court Roll of attorneys-at-law kept under the Supreme Court Act, according to the dates on which they were respectively admitted to practise law.

Admission to practise

15. (1) Subject to this Act, the Court must admit a person to practise law in Montserrat if the person applies to the Court and satisfies the Court that—

- (a) he is a Montserratian or resident of Montserrat or a citizen or resident of a country listed in subsection (4);
- (b) he is of good character;
- (c) he holds the qualifications prescribed by law to be eligible to be admitted by the Court to practise as an attorney-at-law in Montserrat;
- (d) he has not been disbarred or removed from the Roll of attorneys-at-law of any court of a country or territory listed in subsection (4), England, Scotland or Northern Ireland;
- (e) he has not done any act or thing which would render him liable to be disbarred or removed from the Roll of attorneys-at-law of a country or territory listed in subsection (4), England, Scotland or Northern Ireland; and
- (f) he has paid the prescribed enrolment fee.

(2) A person applying to be admitted to practise must—

- (a) pay into the Treasury the prescribed enrolment fee;
- (b) file in the Registrar's Office an affidavit of his identity and that he has paid the enrolment fee;
- (c) deposit with the Registrar for inspection by the Court—
 - (i) the receipt for the enrolment fee;
 - (ii) his degree certificate from a recognised University and his certificate of Competence from the Council of Legal Education of the West Indies.

(3) The Attorney General may by Order waive the requirements of subsections (1) and (2) in respect of a law officer under section 31(1) and the law officer is taken to have been duly admitted to practise in Montserrat.

(4) The countries referred to in subsection (1) are—

- (a) Anguilla;
- (b) Antigua and Barbuda;
- (c) Bahamas;
- (d) Barbados;
- (e) Belize;
- (f) British Virgin Islands;
- (g) Cayman Islands;
- (h) Dominica;
- (i) Grenada;
- (j) Guyana;
- (k) Jamaica;
- (l) Montserrat;
- (m) St. Kitts and Nevis;
- (n) St. Lucia;
- (o) Saint Vincent and the Grenadines;
- (p) Trinidad and Tobago;
- (q) Turks and Caicos Islands.

(5) Subject to subsection (3), the Court may by order refuse to admit a person who fails to satisfy the requirements of subsection (1).

Eligibility and admission of persons other than in section 15

16. (1) Subject to subsection (2), the Governor acting on the advice of Cabinet may by order published in the *Gazette* provide that, subject to any conditions that the Governor acting on the advice of Cabinet may specify, a person who is a citizen or a national of a country (other than those listed in section 15(4)) and who has obtained the qualifications prescribed by law is eligible to be admitted by the Court to practise law in Montserrat.

(2) The Governor acting on the advice of Cabinet must not make an order under subsection (1) unless the Governor acting on the advice of Cabinet is satisfied after consultation with the President of the Council of Legal Education and the Chief Justice that the person is a citizen or a national of a country, the laws of which gives reciprocal treatment to a Montserratian in relation to admission to practise law in that country.

(3) A person who is eligible to be admitted to practise law under subsection (1) may make an application to the Court to be admitted to practise law in Montserrat and the Court must admit the person to practise law in Montserrat, if the Court is satisfied that the person—

- (a) has the qualifications prescribed by law;
- (b) is of good character; and
- (c) has paid the prescribed fee.

(4) A person admitted by the Court under the authority of an order made under subsection (1) is deemed to have been duly admitted to practise law under this Act and his name must be registered on the Roll by the Registrar.

(5) For the purposes of this section “**national**” means, in the case of a country where there is no law in force conferring citizenship of that country, a person who is regarded as belonging to that country under any law in force in that country.

Appeal

17. An appeal lies to the Court of Appeal from an order of the Court refusing an application made under section 15 or 16.

Oath

18. A person, on being admitted to practise law, must take the oath as prescribed in Schedule 1.

Certificate of enrolment

19. (1) The Registrar must, on request, issue to an attorney-at-law duly registered on the Roll, a certificate of enrolment of that attorney-at-law as prescribed in Form 1 of Schedule 2.

(2) The production of a certificate of enrolment is *prima facie* evidence that the person named in it is duly enrolled as an attorney-at-law, and the certificate of enrolment is admissible in evidence without further proof of the sealing and signing of it by the Registrar.

Status of attorney-at-law

20. A person whose name is entered on the Roll under this Act is known as an attorney-at-law and—

- (a) subject to section 21(1), is entitled to practise law and to sue for and recover his fees for services rendered in that respect;
- (b) subject to section 21(1)(b), has the right of audience before any court;
- (c) is an officer of the Court except when he appears in the presentation of a case in any other court or before any tribunal.

Prohibition on practice

21. (1) A person may practise law if—

- (a) his name is entered on the Roll under this Act; and
- (b) he holds or is deemed to hold a valid practising certificate.

(2) A person who practises law in contravention of subsection (1) 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 the practice.

(3) An attorney-at-law employed in the public service must not act as conveyancer or accept any remuneration for the performance of any act as attorney-at-law, agent or adviser, to any claimant, defendant, suitor or other party other than the Government in any contentious or non-contentious matter in Montserrat.

Liability for negligence and lack of skill

22. (1) Subject to subsection (2), an attorney-at-law does not enjoy immunity from action for any loss or damage caused by his negligence or lack of skill in the course of the practice.

(2) An attorney-at-law is immune from suit in negligence in respect of his conduct of civil or criminal proceedings only.

(3) The immunity referred to in subsection (2) is not confined to proceedings in court but extends to pre-trial work as is so intimately connected with the conduct of the case in court that it could be said to be a preliminary decision affecting the way the case is to be conducted at the hearing.

Practising certificate

23. (1) An attorney-at-law who intends to practise law must—

- (a) in respect of a first application, apply; or
- (b) in the case of a renewal of his practising certificate, apply in January of each year,

to the Registrar for a practising certificate and must serve a copy of the application on the Council and the Attorney General.

²**(2)** Subject to subsection (3), the Registrar must issue a practising certificate to an attorney-at-law if he is satisfied that the attorney-at-law—

- (a) has secured insurance or made other provision as required under section 57; and
- (b) is not disqualified from obtaining a practising certificate.

² Section 23(2)(a) is not in force (*S.R.O. 59/2014*)

(3) The Registrar must issue a practising certificate in Form 2 of Schedule 2.

(4) The Registrar must cause to be published in the *Gazette* and in a newspaper in circulation in Montserrat—

- (a) in February of each year, an alphabetical list of persons who have as at 31 January in that year obtained a practising certificate;
- (b) the name of a person who obtains a practising certificate after 31 January in that year, as soon as practicable after the certificate is obtained.

(5) A copy of the *Gazette* and a newspaper in circulation in Montserrat containing the name of a person published under 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.

Issue or refusal of practising certificate

24. (1) An attorney-at-law who applies for a practising certificate and falls within subsection (2) must give to the Registrar at least four weeks' notice, any shorter period that the Court may permit, of his intention to make the application to the Court and the Court may in its discretion order the Registrar to—

- (a) issue or refuse the application; or
- (b) issue a practising certificate to the applicant subject to terms and conditions as it may think fit.

(2) Subsection (1) applies to an attorney-at-law who makes an application for a practising certificate if—

- (a) he has ceased to hold a valid practising certificate for twelve months or more;
- (b) he is an undischarged bankrupt or there is in force against him a receiving order in bankruptcy;
- (c) he has been suspended from practice or has had his name removed from the Roll and the period of his suspension has expired or his name has been restored to the Roll;
- (d) he has not held a valid practising certificate within the twelve months next following the date of his registration on the Roll;
- (e) he has been declared a person of unsound mind by a qualified medical practitioner;
- (f) he has not paid any penalty, compensation or reimbursement or costs ordered by the Committee to be paid by him, or has not otherwise complied with an order of the Committee;

- (g) he has had an order made against him for the issue of a writ of attachment;
- (h) he has been declared a bankrupt and obtained his discharge or he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors;
- (i) there is a judgment against him that involves the payment of moneys other than costs (excluding a judgment whose whole effect is that he is entitled to indemnity or relief from any other person), and he has not produced evidence that the judgment has been satisfied; or
- (j) he has been convicted of an indictable offence. (*Inserted by Act 17 of 2015*)

(3) If an appeal is made against a receiving order referred to in subsection (2)(b), the Court must 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 are unlikely to be successful.

(4) A person may make an application to the Court for a recommendation for the issuance of a practising certificate on the basis that the matters referred to in subsection (2) are no longer applicable and the period of notice stipulated under this section is not required.

Suspension of practising certificate

25. (1) A person may make an application to the Court to suspend the practising certificate of an attorney-at-law, where section 24(2)(b), (e) or (j) applies to the attorney-at-law and the Court must, on being satisfied that section 24(2)(b), (e) or (j) applies to the attorney-at-law, suspend the practising certificate of the attorney-at-law. (*Amended by Act 17 of 2015*)

(2) The Court, under section 43, may suspend the practising certificate of an attorney-at-law.

Division 2 – Removal from Roll and suspension

Voluntary removal from the Roll

26. An attorney-at-law who intends to procure the removal of his name from the Roll must make an application to the Court and the Court must make any order as it thinks fit.

Removal from Roll and suspension from practice

27. (1) The Registrar must make the appropriate alteration in the Roll and publish the appropriate notice in the *Gazette* and in a newspaper in circulation in Montserrat where—

- (a) 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; or
- (b) by virtue of any law, the name of an attorney-at-law is removed from the Roll or an attorney-at-law is suspended from practising law,

but where there is an appeal against an order from which the suspension or removal results, the Registrar must not take any action under this section until the order has been confirmed on appeal.

(2) Despite any other enactment, an appeal must be made within twenty-eight days of notification to the attorney-at-law of the decision to remove him from the Roll or suspend him from practice.

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

(4) During the period of suspension of an attorney-at-law from practising law, despite the retention of his name on the Roll—

- (a) no practising certificate must be issued to him; and
- (b) any practising certificate issued to him before the suspension ceases to be valid for the period of that suspension.

Expiration of suspension to be noted on Roll

28. On the expiration of the suspension of an attorney-at-law from practising law, the Registrar must, on payment by the attorney-at-law of the fee prescribed for notation of expiration of suspension, cause a notice of the expiration of the suspension to be entered on the Roll against the name of the attorney-at-law, and cause a notice of it to be published in the *Gazette* and in a newspaper in circulation in Montserrat.

Division 3 – Restoration of name to Roll and termination of suspension

Application to Court of Appeal

29. An attorney-at-law whose name has been removed from the Roll or who has been suspended from practice under section 27 may apply to the Court of Appeal to have his name restored to the Roll or the order of his suspension set aside or terminated.

Procedure on application

30. (1) On the hearing of an application made under section 29, the Court of Appeal 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 set aside or terminated.

(2) Any order made by the Court of Appeal under this section restoring the name of an attorney-at-law or setting aside or terminating the suspension of an attorney-at-law must be published in the *Gazette* by the Registrar.

(3) On the publication in the *Gazette* of an order made under subsection (2) and on the payment by the attorney-at-law of the fee prescribed for the restoration of his name to the Roll or notation of setting aside or termination of suspension, the Registrar must make an appropriate entry on the Roll of the date and effect of the order, and where appropriate restore the name of the attorney-at-law to the Roll.

Division 4 – Law Officers

Law officer as attorney-at-law

31. (1) For the purposes of this Act, a law officer is—

- (a) an attorney-at-law who holds office in the public service and is appointed by the Governor after consultation with the Chief Justice under section 85 of the Constitution, and which office is declared by order of the Attorney General to be a law office; or (*Amended by Act 17 of 2015*)
- (b) a person who is qualified to practise as an attorney-at-law and is employed to assist or is attached to the public service.

(2) A law officer, so long as he remains a law officer is deemed to be the holder of a valid practising certificate and to be a practitioner member of the Bar Association.

(3) A certificate in the form set out as Form 3 in Schedule 2 signed by the Attorney General to the effect that a particular person is a law officer is *prima facie* evidence of that fact.

Exemption of law officers

32. A law officer is exempt from securing any insurance or making any other provision required under section 57.

PART 4

PROFESSIONAL PRACTICE AND CONDUCT

*Division 1 – Accounts***Rules as to accounts**

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

- (a) held on trust for that client; and
- (b) paid to the client or as the client may direct.

(2) The Council shall make rules with respect to the keeping and operating of accounts of client money by attorneys-at-law and without prejudice to the generality of the rules may—

- (a) provide for attorneys-at-law to open and keep client accounts at financial institutions for clients' moneys;
- (b) provide for attorneys-at-law to keep accounts containing particulars and information as to money received, held or paid by them for or on account of their clients; and
- (c) empower the Council generally to take any action as may be necessary to enable it to ascertain whether the rules are being complied with.

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

- (a) keep on deposit in a separate client account at a financial institution for the benefit of a client, money received for or on account of a client; or
- (b) make good to a 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.

(4) Under subsection (3), an attorney-at-law may 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.

(5) Nothing in rules under subsection (3) or under subsection (4)—

- (a) affects 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) applies to money received by an attorney-at-law being money subject to a trust of which the attorney-at-law is a trustee.

Relief to financial institutions

34. (1) Subject to subsection (2)—

- (a) a financial institution is not 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 beneficiary; and
- (b) a financial institution is under no obligation to make any enquiry or is deemed to have no knowledge of any right of any person to money paid or credited to that account.

(2) Despite subsection (1) a financial institution or other financial institution at which an attorney-at-law keeps client accounts for clients' moneys must not, in respect of any liability of the attorney-at-law to the financial institution, 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.

Council's control of accounts in certain circumstances

35. (1) In order to protect a client against loss of money or property held on his behalf by an attorney-at-law, the Council has the power, on an order of the Court, to control the keeping and distribution of money held by a financial institution in an attorney-at-law's client account.

(2) Subject to rules of court, the Court, if it thinks it necessary or expedient in the interests of a client to do so, may make an order under subsection (1)—

- (a) where the judge after due inquiry is satisfied that an attorney-at-law or his employee or agent has committed fraud or improper conduct with respect to a client's money or property; or
- (b) after the death of the attorney-at-law concerned if the attorney-at-law immediately before his death was practising as an attorney-at-law on his own account and not in partnership with another attorney-at-law.

Dealings with client accounts where improper conduct alleged

36. (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 must order the Registrar to immediately—

- (i) inform the attorney-at-law of the application and the grounds on which it is based; and
- (ii) summon him to appear in Chambers before a judge on a date and at a time stated in the order to be examined concerning the matter.

(2) The judge must order the Registrar to summon the person who made the application to appear before the same judge on the date and at the time referred to in subsection (1)(ii).

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

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

(4) Where on an application made under subsection (1) the Court in any proceedings brought under this Part finds the attorney-at-law guilty of professional misconduct, it may make an order as to the keeping or distribution of the money standing to the credit of the account as it thinks proper in the circumstances of the case.

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

Division 2 – Discipline

Rules to govern professional practice

37. (1) The rules contained in the Code of Ethics set out in Schedule 3 regulate the professional practice, etiquette, conduct and discipline of attorneys-at-law.

(2) A breach of the rules in—

- (a) Part A of the Code of Ethics may constitute professional misconduct;
- (b) Part B of the Code of Ethics constitutes professional misconduct.

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

(4) The Council, in consultation with the Attorney General and with the approval of the Chief Justice, may amend Schedule 3.

(5) An attorney-at-law whose name is entered on the Roll is deemed to have notice of the Code of Ethics.

Division 3 – Disciplinary Committee and proceedings

Disciplinary Committee

38. (1) A Disciplinary Committee is established for the purpose of dealing with complaints against attorneys-at-law.

(2) The Registrar, or the Deputy Registrar, must perform the duties of Secretary to the Committee, including—

- (a) recording the minutes of meetings and proceedings in proper form;
- (b) issuing notices or documents as may be required; and
- (c) performing any other task as the Committee may require.

(3) Schedule 4 governs the constitution of the Committee and other matters relating to it.

(4) Expenses incurred by the Committee in the discharge of its functions must be met from subscriptions paid to the Bar Association.

(5) The Committee has the power to discipline, under this Act, all attorneys-at-law registered on the Roll.

Complaints to Committee

39. (1) A client or, by leave of the Committee, any other person alleging to be aggrieved by an act of professional misconduct, including any default, committed by an attorney-at-law, other than the Attorney General or a law officer, may apply to the Committee to require the attorney-at-law to answer allegations.

(2) The Registrar or any member of the Committee, in consultation with the Attorney General and with the approval of the Chief Justice, or the Attorney General with the approval of the Chief Justice, may make a like application to the Committee in respect of allegations concerning any professional misconduct or any criminal offence that may for the purposes of this section be prescribed by the Council.

(3) In any matter or hearing before any court, where the court considers that an act of professional misconduct or a criminal offence prescribed under subsection (2) has been committed by an attorney-at-law other than the Attorney General or a law officer, the court may refer the matter to the Committee.

(4) Nothing in this section prevents a person complaining against an attorney-at-law from appearing before the court by himself or with legal representation.

Disciplinary proceedings

40. (1) Schedule 5 governs disciplinary proceedings against an attorney-at-law other than the Attorney General or a law officer.

(2) For the purposes of an application made to it under this Act, the Committee has 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 that attorney-at-law, be accepted by the Committee as proof of the attorney-at-law having committed the offence.

Powers of Committee

41. (1) On the hearing of an application under this Part, the Committee may do any of the following—

- (a) dismiss the application;
- (b) impose on the attorney-at-law to whom the application relates, a fine of \$1,000;
- (c) reprimand the attorney-at-law to whom the application relates;
- (d) make an order as to costs as it thinks fit;
- (e) except where the application is dismissed, order the attorney-at-law to pay the applicant or person aggrieved a sum by way of compensation and reimbursement and a further sum in respect of expenses incidental to the hearing of the application and the consideration of the report as it thinks fit.

(2) If the name of an attorney-at-law is removed from the Roll under section 43, the removal of his name is not 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, such as suspension from practice or removal from the Roll, the Committee must refer to the Court a copy of the proceedings before it and a report of its findings for determination by a single judge in Chambers.

(4) A decision or an order made under this section must be drawn up, settled and signed by the Registrar who must keep a written record of the decision or order.

(5) 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 must 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 of default which was the subject matter of the application which gave rise to the order by the Committee.

Appeal from Committee

42. (1) A commission to be known as the Appeals (Professional Misconduct) Commission is established.

(2) The Appeals Commission consists of the following members—

- (a) one member nominated by the Attorney General;
- (b) one member nominated by the Bar Association;
- (c) two members nominated by the Governor who—
 - (i) are not attorneys-at-law;
 - (ii) represent the public interest; and
 - (iii) are of good standing in the community; and

(d) one member nominated by the Chief Justice to be the Chairperson of the Committee, who must be an attorney-at-law of at least fifteen years standing.

(3) The Secretary to the Disciplinary Committee is the Secretary to the Appeals Commission and shall perform the following duties—

- (a) record the minutes of proceedings in proper form;
- (b) issue notices or documents as may be required; and
- (c) perform any other task as the Commission may require.

(4) The Appeals Commission must regulate its own procedure.

(5) The remuneration of the members of the Appeals Commission is as prescribed in Regulations.

(6) The quorum for a sitting of the Appeals Commission is three members, including the Chairperson and the Commission must sit at a time as is necessary for the settlement of the dispute or complaint.

(7) An attorney-at-law or any other person aggrieved by a decision given or penalty imposed by the Committee may appeal to the Appeals Commission against that decision or penalty within twenty-eight days.

(8) On hearing an appeal under this section, the Appeals Commission 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 remit the matter to the Committee for a rehearing.

(9) An appeal from a decision of the Appeals Commission under this Act lies to the Court of Appeal.

Disciplinary proceedings by High Court

43. (1) In considering a report referred to it under section 41(3) and without prejudice to any other rule of law or to any rule of practice which empowers the Court to take disciplinary action against a person admitted to practise as an attorney-at-law, the Court has the power to take disciplinary action under rules of court made for the purpose under section 17 of the Supreme Court Order (S.I. 223/1967 U.K.), with respect to professional misconduct against an attorney-at-law and in particular the Court may make any of the following orders—

- (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 thinks fit;
- (c) an order as to costs, as regards both the proceedings before it and the proceedings before the Committee, that the Court thinks fit;
- (d) any further or other order that the circumstances of the case may require.

(2) An attorney-at-law whose professional conduct is the subject of any disciplinary proceedings before the Court is entitled as of right to appeal to the Court of Appeal from any decision or other determination of the Court in the proceedings.

(3) If an attorney-at-law is convicted of an indictable offence, the Court may, on sentencing the attorney-at-law for committing the indictable offence, make an order suspending the attorney-at-law from practice for a period the Court thinks fit. (*Inserted by Act 17 of 2015*)

Saving of jurisdiction of courts

44. Despite anything in this Act, the jurisdiction, power and authority vested in any court immediately before the commencement of this Act—

- (a) by the common law with respect to the discipline of; or
- (b) by any written law to deal with contempt of court committed by,

barristers, solicitors or attorneys-at-law continues to be exercisable after the commencement in relation to attorneys-at-law.

*Division 4 – Other disciplinary offences***Attorneys-at-law not to act as agent for unqualified person**

45. (1) An attorney-at-law must not—

- (a) act for an unqualified person as an agent—
 - (i) in any action or in any matter in bankruptcy; or
 - (ii) in relation to any business which can only be transacted by a person with legal qualifications;
- (b) permit his name to be made use of in any action, or matter on the account or for the profit of an unqualified person;
- (c) send any process to an unqualified person in his former capacity as an attorney-at-law; or
- (d) do any other act enabling an unqualified person to appear, act or practise in any respect as an attorney-at-law in any action or matter.

(2) Where it appears to the Committee that an attorney-at-law has acted in contravention of this section the Committee must make an application to the Court for his name to be removed from the Roll and the Court, may grant the application, if it is satisfied that the attorney-at-law has acted in contravention of this section

Attorney-at-law not to commence or defend actions while in prison

46. (1) An attorney-at-law while a prisoner in any prison must not act as an attorney-at-law, in his own name or in the name of any other attorney-at-law, issue any writ or process, or commence, prosecute or defend any action or any matter in bankruptcy.

(2) An attorney-at-law commencing, prosecuting or defending any action, or matter in contravention of this section is incapable of maintaining any action for the recovery of any costs in respect of any business done by him while confined as described in subsection (1).

(3) The attorney-at-law and any attorney-at-law permitting him to commence, prosecute or defend any action or matter in his name commits professional misconduct and on being found guilty in disciplinary proceedings by the Committee is liable to any punishment which the Committee may impose under section 41.

Employment of person suspended from practice

47. (1) An attorney-at-law must not in connection with his practice, employ or remunerate any person who to his knowledge—

- (a) is suspended from practice, during the period of the suspension; or

(b) has been removed from the Roll otherwise than at his own request.

(2) An attorney-at-law who contravenes subsection (1) commits professional misconduct and on being found guilty in disciplinary proceedings by the Committee is liable to any punishment which the Committee may impose under section 41.

Division 5 – General offences

Unqualified person acting through attorney-at-law

48. Where the Court orders the name of an attorney-at-law to be removed from the Roll under section 43, an unqualified person who was enabled by the conduct of the attorney at law to act or practise as an attorney-at-law commits a summary offence and is liable to a fine of \$5,000 or to imprisonment for one year.

Unlawful practice and similar offences

49. (1) Subject to this Act, 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;
- (c) makes use of any name, title or description implying that the person is entitled to be recognised or to act as an attorney-at-law;
- (d) either directly or indirectly for or in expectation of a fee, gain or reward, draws or prepares any legal document; or
- (e) either directly or indirectly receives a fee, gain or reward for drawing or preparing any legal document,

he commits a summary offence and is liable to a fine of \$5,000 and to imprisonment for one year.

(2) A person who, not being entitled to act as an attorney-at-law, acts in any respect as an attorney-at-law in any action or matter or in any court in the name or through the agency of an attorney-at-law entitled so to act commits a summary offence and is liable to a fine of \$5,000 or to imprisonment for one year.

(3) This section does not apply to—

- (a) a public officer or an officer of a statutory board—
 - (i) drawing up or preparing instruments; or
 - (ii) appearing for an informant, complainant or claimant in a court,

in the course of his duty;

- (b) a person employed merely to engross any instrument or proceeding; or
- (c) a person drawing or preparing—
 - (i) a will or other testamentary instrument;
 - (ii) an agreement under hand only;
 - (iii) a letter or power of attorney; or
 - (iv) a transfer of stock containing no trust or limitation.

(4) A complaint or charge for an offence under this section may be laid at any time within two years after the commission of the offence or within six months after the first discovery of it by the informant.

Unauthorised person seeking employment

50. If a person while suspended from practising law, or whose name has been removed from the Roll otherwise than at his own request seeks or accepts employment from an attorney-at-law in connection with the practice of that attorney-at-law, without previously informing the attorney-at-law in writing of the suspension or removal from the Roll, that person commits a summary offence and is liable to a fine of \$5,000 and to imprisonment for one year.

PART 5

REMUNERATION AND COSTS

Division 1 – General

Interpretation of this Part

51. 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 any 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; and

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

Payments in advance and accountability

52. (1) An attorney-at-law who receives in advance from or on behalf of a client any money to cover prospective costs (other than a retainer) or as

security for future costs must, 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 so received up to the date of the statement;
- (b) the dates when they were so received; and
- (c) the purposes for which they or so much of them as has been expended have been applied.

(2) If an attorney-at-law fails to provide to the client a statement as mentioned in subsection (1) after having received a demand under that subsection, the client may apply to the Committee or a judge in chambers for an order requiring the attorney-at-law to deliver the statement, and the Committee or the judge may on the making of the order give any other direction that the Committee or the judge thinks fit.

Division 2 – Recovery of costs

No action on bills of costs without taxation

53. (1) Subject to this section, an attorney-at-law must not commence any suit for the recovery from his client of the amount of any bill of costs for any legal work conducted by the attorney-at-law on behalf of the client unless the bill of costs is taxed and a copy of the taxed bill of costs is served on the client with a demand in writing for payment fifteen 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—

- (a) to leave Montserrat;
- (b) to become bankrupt; or
- (c) to 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—

- (a) the amount set out in a bill of costs is—
 - (i) sought to be recovered; or
 - (ii) disputed; and

- (b) the bill or part of it relates to matters in respect of which no scale of fees is prescribed,

the court must decide whether the fees set out in respect of those matters are fair and reasonable having regard to the work done or whether they are excessive and may allow or reduce them accordingly.

(4) It is not necessary in the first instance for an attorney-at-law in proving compliance with this section to prove the contents of the bill served, and it is 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.

Rules as to costs for non-contentious business

54. (1) The Bar 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 with reference to—
- (i) the position of the person for whom the attorney-at-law is concerned in the business, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee or the like;
 - (ii) the place where and the circumstances in which the business or any part of it is transacted;
 - (iii) the amount of the capital money or rent to which the business relates;
 - (iv) the skill, labour and responsibility involved in the business on the part of the attorney-at-law; and
 - (v) the number and importance of documents prepared or perused without regard to length; and
- (b) authorise and regulate—
- (i) the taking by an attorney-at-law from his client of security for payment of any remuneration to be ascertained by taxation or otherwise, which may become due to him; and
 - (ii) the allowance of interest.

Agreement for remuneration for non-contentious business

55. (1) Despite section 54, an attorney-at-law and his client may either before or after or in the course of the transaction of any non-contentious business by the attorney-at-law, make an agreement as to the remuneration of the attorney-at-law in respect of the transaction.

(2) An agreement referred to in subsection (1) may provide for the remuneration of the attorney-at-law by a gross sum, by commission, by percentage, or by salary, or otherwise, and it may be made on the terms that the amount of the remuneration stipulated in the agreement does 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 referred to in subsection (1) must be in writing and signed by the person to be bound or by that person's agent.

(4) An agreement referred to in 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.

(5) 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.

(6) If on the certificate in subsection (5) 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 the Court thinks fit.

(7) Despite subsection (5), the taxation of costs is subject to rules of Court and is subject to review by a Master in Chambers.

PART 6

MISCELLANEOUS

Power to make rules of court

56. The Chief Justice and any other two judges of the Court selected by him may make rules prescribing—

- (a)* the practice and procedure to be followed in relation to applications for admission to practise in Montserrat and to appeals under sections 17 and 30;
- (b)* the mode of exercise of the power conferred by section 35(1) on the Council to control the keeping and distribution of money held by a financial institution in a client's account of an attorney-at-law;

- (c) the circumstances and manner in which the Court may make an order under section 35(1);
- (d) the practice and procedure to be followed in relation to applications to the Court of Appeal under this Act.

Insurance or other provision for professional negligence

357. An attorney-at-law, except a law officer, must not practise as an attorney-at-law unless that attorney-at-law has—

- (a) secured insurance in an amount specified by the Council with an insurance company approved by the Council; or
- (b) otherwise made provision satisfactory to the Council,

for professional negligence.

Pending applications for admission

58. Any application pending on the date of commencement of this Act for admission to practise must be dealt with as if it were an application under section 15 or 16 for admission as an attorney-at-law and for this purpose must be read with all necessary adaptations.

Pending disciplinary proceedings

59. Any disciplinary proceedings pending at the date of commencement of this Act, must be dealt with as if they were proceedings under section 40, and for this purpose all documents forming part of the record of the proceedings must be read with all necessary adaptations.

References to “barristers” or to “solicitors”

60. A reference to a barrister or to a solicitor in any enactment or in any document having legal effect must be construed in its application after the commencement of this Act, to include a reference to an attorney-at-law.

Period of qualifications as an attorney-at-law

61. For the purposes of any law where the qualifications of a person, whether for an office or otherwise, depends on that person having been an attorney-at-law for a specified period, the number of years during which that person was previously a barrister or a solicitor must be treated as part of the period.

Saving of enactments restricting non-Montserratians

62. Nothing in this Act affects any enactment relating to the placing of restrictions on a person, not being a Montserratian, entering, leaving, residing, or working in Montserrat.

³ This section is not in force (*S.R.O. 59/2014*)

Regulations

63. The Council, after consultation with the Chief Justice may make regulations to give effect to this Act.

SCHEDULE 1

(Section 18)

OATH/AFFIRMATION

I do *swear/*sincerely 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 Montserrat.

[So Help Me God!]

SWORN/AFFIRMED)
before me at)
 , Montserrat)
this day) *(Name of Attorney-at-Law)*
of , 20)

Before me:

.....
(Name of public officer)

SCHEDULE 2**FORMS***(Section 19(1))***FORM 1****LEGAL PROFESSION ACT****CERTIFICATE OF ENROLMENT**

It is hereby certified that is registered on the Roll of attorneys-at-law under section 19 of the Legal Profession Act his name having been entered on the Roll.

Dated this day of ,

Registrar of the High Court

**Delete as appropriate.*

FORM 2*(Section 23(3))***LEGAL PROFESSION ACT****PRACTISING CERTIFICATE**

Under the Legal Profession Act, it is hereby certified that whose name is registered on the Roll of attorneys-at-law is entitled to practise as an attorney-at-law for the period, 20.... to 31 December 20....

Dated this day of ,

Registrar of the High Court

FORM 3

(Section 31(3))

LEGAL PROFESSION ACT

LAW OFFICERS CERTIFICATE

It is hereby certified that is a law officer holding the office of in the public service and appointed by the [*the appropriate authority*].

Dated this day of ,

Attorney General

SCHEDULE 3*(Section 37)***CODE OF ETHICS****PART A*****General Guidelines****I. In relation to the profession and himself*

1. An attorney-at-law must 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 must refrain from conduct which is detrimental to the profession or which may tend to discredit it both in the practice of his profession and in his private life.

2. An attorney-at-law must in the discharge of his professional duties expose without fear or favour before the proper tribunal's unprofessional or dishonest conduct by any other attorney-at-law and must 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 must scrupulously preserve his independence in the discharge of his professional duties.

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

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

5. An attorney-at-law must not endeavour by direct or indirect means to attract the client 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 must 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 as it is not likely to be regarded as being concerned with the giving of individual advice.

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

(2) An attorney-at-law must not seek retainers through agents of any kind.

8. An attorney-at-law must 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 facilitating—

- (a) disrespect for a judicial office;
- (b) the corruption of any person exercising a public or private trust; or
- (c) the deception or betrayal of the public.

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

II. In relation to the territory and the public

12. An attorney-at-law owes a duty to the territory 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 must not withhold facts tending to prove either guilt or innocence of the accused.

14. An attorney-at-law must 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 must 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 must seek to obtain reasonable settlement of disputes.

16. An attorney-at-law must not except for good reason refuse his services in respect of the offences of murder and treason.

17. An attorney-at-law must 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 competent authority to undertake the representation of a person who is unable to afford legal representation or to obtain legal aid, the attorney-at-law must 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 must use all fair and reasonable means to present every defence available at law.

III. In relation to clients

20. (1) An attorney-at-law must 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 the boundary of the law.

(2) The first concern of an attorney-at-law must 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 must, 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 must 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 must advise his client to avoid or settle the dispute.

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

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

26. (1) An attorney-at-law must deal with the business of his client with all due expedition and must 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 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 must lead the conduct of the case must, subject to the instructions of the client, be settled by the attorney-at-law representing that party before they appear in court and must not be altered during the course of the proceedings and the leader has all authority over the conduct of the case.

(3) An attorney-at-law, including a Queen's 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 must 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 must 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 must 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 co-operate 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 must 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 must maintain a respectful attitude towards the court and must not engage in undignified or discourteous conduct which is degrading to the court.

(2) An attorney-at-law must encourage respect for the courts and the judges.

(3) An attorney-at-law must 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 must be protected.

35. An attorney-at-law must endeavour always to maintain his status as an advocate and must 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 must never seek privately to influence directly or indirectly the judges of the court in his favour or in the favour of his client, nor must he attempt to influence juries by fawning, flattery or pretended solicitude for their personal comfort.

37. An attorney-at-law must 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 must 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 must be characterised by courtesy, fairness and good faith and he must not permit ill-feelings between clients to affect his relationship with his colleagues.

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

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

(2) An attorney-at-law must 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 must not give a professional undertaking that he cannot fulfil.

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

(2) An attorney-at-law must in the course of his professional duties expose without fear an attorney-at-law who is alleged to have wronged a client and must 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 immediately return the money, document or other things.

44. An attorney-at-law must 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 must 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 must avoid all sharp practices and must 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 be illiberal or do anything repugnant to his own sense of honour and propriety.

46. An attorney-at-law must 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 must 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 must 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 must, 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 must 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 must 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 must not appear as an attorney-at-law in any of the courts of Montserrat for a period of five years commencing on the date of his retirement, resignation or other termination of appointment.

(2) This rule does 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 must not practise as an attorney-at-law unless he has been enrolled on the Roll under this Act.

2. (1) An attorney-at-law must never knowingly mislead the court.

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

3. An attorney-at-law must 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 must 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 another attorney-at-law or an association of attorneys-at-law for which he is engaged in any other manner not inconsistent with this Code.

5. An attorney-at-law must 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 must 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 must not permit, authorise or encourage anyone to do so or reward anyone for doing so on his behalf.

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

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

(a) an attorney-at-law or law firm may have a website or publish professional newsletters, the contents which must —

(i) be in accordance with the good practice of the legal profession, and may inform of the firm, its members and staff and current legal issues; and

- (ii) must 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; or
 - (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 is of a nature likely to bring the profession into disrepute, the commission of the offence constitutes professional misconduct if—

- (a) he has been convicted by a court, including a foreign court of competent jurisdiction, of 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 must 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 must not enter into partnership or fee sharing arrangements concerning the practice of law with a non-qualified body or person.

(2) An attorney-at-law must 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 must 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; and
- (h) any scale of fees or recommended charges prescribed by law.

(2) An attorney-at-law must 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 must 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 must 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 must 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 must 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 must 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 must withdraw immediately 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;
- (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, the rules of law or professional ethics; or
- (f) where for any good and compelling reason it is difficult for him to carry out his employment effectively.

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

15. An attorney-at-law must 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 must 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 must not delegate to a person not legally qualified and not in his employ or under his control any functions which by the laws of Montserrat should only be performed by a qualified attorney-at-law.

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

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

20. An attorney-at-law must not wilfully make false accusations against a judge or magistrate.

21. An attorney-at-law who holds a public office must 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 must not accept private employment in a matter on 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 must not give, lend or promise anything 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 must 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 must 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 must 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 must 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 must 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 must 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 on a person or tribunal, he must promptly call on the client to rectify the act.

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

30. (1) An attorney-at-law must 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 must 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 must be most punctual and diligent and must never mingle funds of others with his own and must at all times be able to refund money he holds for others.

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

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

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 applies in so far as is practicable.

SCHEDULE 4*(Section 38(3))***THE DISCIPLINARY COMMITTEE****1. Constitution and membership**

- (1) The Committee consists of five members appointed by the Chief Justice after consultation with the Council.
- (2) The appointed members of the Committee include one member of the Council.
- (3) Subject to subparagraph (4) the other appointed members of the Committee are members of the OECS Bar Association of not less than fifteen years standing.
- (4) The Chairperson of the Committee is appointed by the Chief Justice after consultation with the Council and must be a member who has held high judicial office or, is an attorney-at-law of not less than fifteen years standing.

2. Term of office

Subject to this Schedule the members of the Committee hold office for a period not exceeding two years, and are eligible for re-appointment.

3. Resignation

- (1) A member of the Committee may at any time resign his office by letter addressed to the Chief Justice and to the Chairperson of the Committee.
- (2) The Chairperson of the Committee may at any time resign his office by letter addressed to the Chief Justice.

4. Revocation of appointment

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.

5. Filling of vacancies

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

6. Publication of membership

The names of all members of the Committee as first constituted and a notification of change in membership of the Committee must be published in the *Gazette*.

7. Liability for default of committee

A member of the Committee is not 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 under this Act.

8. Proceedings at meetings

- (1) The Committee must meet in private at a time expedient for the transaction of business and the meeting must be held in a place and at a time and on a day that the Committee determines.
 - (2) The Chairperson must preside at meetings of the Committee.
 - (3) The quorum for a meeting of the Committee is three members.
 - (4) The validity of any proceedings of the Committee is not affected by any defect in the appointment of a member.
 - (5) Subject to this Schedule and Schedule 5, the Committee has power to regulate its own proceedings.
-

SCHEDULE 5*(Section 40(1))***DISCIPLINARY PROCEEDINGS****1. Secretary of the Committee**

For the purposes of this Schedule, “**Secretary**” means the Registrar or the person deputed by him to perform all or any of the functions of the Secretary.

2. Application and affidavits—Form 1 and Form 2

An application to the Committee to require an attorney-at-law to answer allegations contained in an affidavit must be—

- (a) in writing under the hand or mark of the applicant in Form 1 of the Appendix;
- (b) accompanied by an affidavit by the applicant in Form 2 of the Appendix stating the matters of fact on which he relies in support of his application; and
- (c) sent to the Secretary.

3. Further information and document, no case to answer

- (1) Before fixing a date for the hearing, the Committee may, within seven days of the application being made under paragraph 2, serve on the applicant a notice in writing requesting the applicant to supply any further information and document relating to the allegations as it thinks fit.
- (2) Where an application is made under paragraph 2 and the Committee is of the opinion that no *prima facie* case is shown, the Committee may, within seven days of the application being made, without requiring the attorney-at-law to answer the allegations—
 - (a) dismiss the application; and
 - (b) serve notice in writing on the applicant and the attorney-at-law of the dismissal.

4. Notice of hearing

- (1) Where an application is made under paragraph 2 and in the opinion of the Committee a *prima facie* case is shown, the Committee must fix a day for hearing and the Secretary must—
 - (a) serve notice of the hearing on the applicant and on the attorney-at-law; and
 - (b) serve on the attorney-at-law a copy of the application and affidavit, within seven days of the application being made.

- (2) The date fixed for the hearing under subparagraph (1) must not be less than twenty-one days or more than twenty-eight days from the date of service of the notice.

5. List of documents for hearing—Form 3 and Form 4

- (1) The notices under paragraph 4 must be in Form 3 or Form 4 of the Appendix and must require the applicant and the attorney-at-law respectively to give to the Secretary and to each other a list of all documents on which they respectively propose to rely.
- (2) A list under subparagraph (1) must, unless otherwise ordered by the Committee, be given by the applicant and by the attorney-at-law respectively at least seven days before the date of hearing.

6. Inspection of document

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

7. Proceedings in absence of parties

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

8. Affidavit evidence

The Committee may in its discretion, either as to the whole case or as to any particular facts, proceed and act on evidence given by affidavits.

9. Committee may summon deponent to give oral evidence

Where the Committee proceeds to act on evidence given by affidavit under paragraph 8, any party to the proceedings may require any deponent to the affidavit to be summoned to appear before the Committee, unless the Committee is satisfied that the affidavit is purely formal and the requirement of the appearance of the deponent is made with the sole object of causing delay.

10. Subpoena form

A summons issued by the Committee under section 40 of this Act must be as prescribed in Form 5 of the Appendix, with variations as the case may require.

11. Notice to parties of date of findings

If the findings and order of the Committee are not pronounced on the date of hearing, notice must, within fourteen days of the hearing, be given to the parties of the date when the findings and order will be pronounced.

12. Applications to be heard in private

The Committee must hear all applications in private.

13. Adjournment of hearing

The Committee may of their own motion, or on the application of either party, adjourn the hearing on terms that appear just to the Committee.

14. Notes of proceedings

- (1) Notes of proceedings must be taken by the Secretary or other person appointed by the Committee, and any party who appeared at the proceedings is entitled to inspect the original or a copy of the notes.
- (2) A person entitled to be heard on an appeal against an order of the Committee is entitled to a copy of the notes on the payment of the charges determined by the Committee.

15. Service of notice of document

- (1) Service of any notice or document required by this Schedule may be effected—
 - (a) by registered letter addressed to the last known place of abode or business of the person to be served; or
 - (b) personally on the person to be served, by a process server approved by the Committee,and proof that the letter was so addressed and posted or personally served is proof of service.
- (2) Any notice or document required to be given or signed by the Secretary may be given or signed by him or by any person duly authorised by the Committee in that behalf.

16. Secretary to retain documents

Any document produced or used at a hearing must be retained by the Secretary for a period of two years.

17. Privileges and immunities

- (1) Attorneys-at-law and witnesses have the same privileges and immunities in relation to hearings on applications under this Act as in any court of law.
- (2) A party to an application is entitled to be represented by an attorney-at-law.

18. Dismissal of application after hearing

If after hearing an application the Committee is satisfied that no case of professional misconduct has been made out, it may dismiss the application.

19. Appeal against failure to act

Where the Committee fails to act within the time limit specified under this Schedule the applicant may apply to the Appeals Commission for the determination of the application which was made under paragraph 2.

APPENDIX TO SCHEDULE 5

FORM 1

(Paragraph 2)

APPLICATION AGAINST AN ATTORNEY-AT-LAW

To the Disciplinary Committee constituted under the Legal Profession Act.

IN THE MATTER OF..... ATTORNEY-AT-LAW

AND

..... APPLICANT

IN THE MATTER OF THE LEGAL PROFESSION ACT

I, the undersigned [name],
[occupation] of [address] hereby make application
that [name] of[address],
attorney-at-law, may 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 said
affidavit constitute conduct unbecoming of his profession on the part of the
said in his capacity as an attorney-at-law.

In witness whereof I have hereto set my hand this day of,
20.....

.....
Signature

FORM 2

(Paragraph 2)

AFFIDAVIT BY APPLICANT

IN THE MATTER OF ¹..... **ATTORNEY-AT-LAW**

AND

²..... **APPLICANT**

IN THE MATTER OF THE LEGAL PROFESSION ACT

AFFIDAVIT

I, ³..... being duly sworn make oath and say as follows:

- (1) That I reside at⁴..... in the country of⁵.....
- (2) I am a ⁶..... and my postal address is ⁷.....
- (3) The above named attorney at law ⁸.....
- (4) The complaint I made against the attorney-at-law is that he ⁹
.....
.....

The facts stated in this affidavit are true to the best of my knowledge, information and belief.

¹ *Name of the attorney-at-law*

² *Name of applicant*

³ *Name of applicant*

⁴ *Place of residence*

⁵ *Country*

⁶ *Occupation*

⁷ *Postal Address*

⁸ *Set out facts complained of*

⁹ *Set out shortly the ground of complaint*

*SWORN/*AFFIRMED)
 before me at)
 , Montserrat)
 this day) (*Name of Deponent*)
 of , 20)

Before me:

.....
(*Name of public officer*)

[The affidavit has been read over and explained to the deponent and he/she appears fully to understand the affidavit.]

.....
(*Name of public officer*)

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

FORM 3

(Paragraph 5)

NOTICE BY COMMITTEE TO APPLICANT

Complaint No. of 20.....

IN THE MATTER OF..... ATTORNEY-AT-LAW

AND

..... **APPLICANT**

IN THE MATTER OF THE LEGAL PROFESSION ACT

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 Disciplinary Committee constituted under the Legal Profession Act.

The Committee will sit at, Montserrat at a.m./p.m.

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

You are requested by the Rules under the Legal Profession Act, to give to the said and the Secretary of the Committee, at least fourteen days before the said day of, 20....., a list of all documents on which you propose to rely.

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

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

Dated the day of, 20.....

.....
Secretary, Disciplinary Committee

FORM 4

(Paragraph 5)

NOTICE BY COMMITTEE TO ATTORNEY-AT-LAW

Complaint No. of 20.....

IN THE MATTER OF..... ATTORNEY-AT-LAW

AND

..... **APPLICANT**

IN THE MATTER OF THE LEGAL PROFESSION ACT

To of, attorney-at-law.

Application has been made by of to the Disciplinary Committee constituted under the Legal Profession Act that you may be required to answer the allegations 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 Committee. The Committee will sit at a.m./p.m.

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

You are required by the Rules made under the Legal Profession Act to give to the applicant and to the Secretary of the Committee, at least fourteen 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 given by the other and a copy of any document mentioned in the list of either party must, on application of the party requiring it, be given to that party by the other within three days after receipt of the application.

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

Dated the day of, 20.....

.....
Secretary, Disciplinary Committee

FORM 5

(Paragraph 10)

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

To

You are hereby summoned to appear before the Disciplinary Committee constituted under the Legal Profession Act at, Montserrat on the day of, 20..... at..... a.m./p.m., 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 the day of, 20.....

.....

Chairperson, Disciplinary Committee

SCHEDULE 6*(Section 4)***COUNCIL OF THE BAR ASSOCIATION****1. Council to be executive of Bar Association**

The Council is the governing and executive body of the Bar Association and must exercise and perform the functions, duties and powers as are imposed or conferred on it by this Act or any other enactment.

2. Constitution of Council

The Council consists of—

- (a) the immediate past President of the Bar Association if he is resident in Montserrat; and
- (b) elected members comprising—
 - (i) officers of the Bar Association; and
 - (ii) ordinary members.

3. Officers of the Bar Association

(1) The officers of the Bar Association are—

- (a) the President;
- (b) the Vice President;
- (c) the Treasurer, who must be elected at the same time as the ordinary members under paragraph 5; and
- (d) the Secretary who must be appointed from among the ordinary members, by the Council as soon as it is constituted and must perform any functions as the Council may require.

(2) Subject to paragraph 2, a practitioner member of the Bar Association of more than two years standing is eligible for election as President, Vice-President or Treasurer.

4. Ordinary members

The ordinary members of the Council comprise of—

- (a) three practitioner members, each of whom must be of more than one year standing on the day of his nomination for election to the Council; and
- (b) all Queen's Counsel.

5. Elections to be held every two years

Elections must be held every two years in accordance with this Schedule and any rules made under it for the election of President, Vice President

and Treasurer of the Bar Association and the ordinary members of the Council.

6. Closing date for nomination

In January, in the year of an election, the Council must publish in the *Gazette* and in any other manner which it deems expedient, the closing date for nomination of candidates for election to the Council.

7. Candidate's consent to be obtained

A nomination of a candidate for election to the Council must—

- (a) be in writing signed by not less than three practitioner members;
- (b) name only one candidate; and
- (c) be endorsed by the candidate, through his consent to his nomination.

8. Date of election and the publication

Election of members to the Council must be held as soon as practicable after March in the year of an election, but the names of the candidates nominated must not be published before 1 April in that year.

9. Ballot voting

Voting is by ballot.

10. Election to offices

- (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 must be determined in the order in which the offices are mentioned in subparagraph (1).

11. Equality of votes

If an equality of votes between candidates, the one to be declared elected must be determined by lot in a manner as may be prescribed.

12. Names of members of new Council to be published in *Gazette*

- (1) The names of the members of the new Council must be published in the *Gazette*.
- (2) On the date of the publication, the new Council is deemed to have been constituted and its members to have taken office.
- (3) On that date, the terms of office of the members of the previous Council expire.

13. New Council

Subject to this Act, all members of the Council hold office until the coming into office of a new Council under paragraph 12.

14. Filling of vacancies

If a vacancy arises in the office of an elected member it must 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. Presiding at meetings of Council and Association

- (1) The President of the Bar Association or, in his absence the Vice President of the Bar Association is the Chairperson of the Council and the Bar Association, and must preside at all meetings of the Council or the Bar Association.
- (2) In the absence from a meeting of both the President and the Vice President of the Bar Association, the members present must select one of their members to preside at that meeting.

16. Appointment of officer due to illness, etc

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

17. Vacation of office of members of the Council

- (1) A member of the Council must vacate his office if—
 - (a) his name is removed from the Roll or he 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.
- (2) Where a member other than the President resigns his seat, the member must send a notice of his resignation, in writing, to the President.
- (3) Where the President resigns his seat, he must send a notice of his resignation, in writing, to the Secretary.

18. Vacation of office of elected members

An elected member must vacate his office in any of the circumstances specified in paragraph 17 and must 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.

19. Quorum of Council

Three members present at a meeting of the Council constitute a quorum for the transaction of any business.

20. Out-of-pocket expenses to be paid to members

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

21. Annual general meeting

- (1) The Council must convene an annual general meeting which must be held on or before 31 March in each year and must cause to be prepared and presented to the annual general meeting—
 - (a) a report on the activities of the Bar Association; and
 - (b) proper accounts, duly audited, of all funds, property and assets of the Bar Association,for the year terminating on 31 January preceding the annual general meeting.
- (2) The Auditor for the upcoming year must be appointed at each annual general meeting.

22. General meeting

The Council may convene a general meeting of the Bar Association at a time as the Council deems expedient.

23. Five practitioner members can requisition special general meeting

- (1) Any five practitioner members of the Bar 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, Vice President or Secretary of the Bar Association.
- (2) The Council must convene a special general meeting to be held within 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 special general meeting within sixty days of the service of the Notice.

24. Chairperson to have casting vote at general meeting

At a general meeting, a practitioner member present has one vote and the person presiding at that meeting has a casting as well as an original vote.

25. Management of association to be vested in Council

- (1) All powers, acts, or things which are not expressly authorised, directed or required to be exercised or done by the Bar Association at a General Meeting under this Act may, subject to this Act or any rules made under this Act or any resolution passed by the Bar Association in General Meeting, be exercised or done by the Council.
- (2) No resolution of the Bar Association passed under subparagraph (1) invalidates the previous exercise of any power or the previous doing of any act or thing by the Council which would have been valid if the resolution had not been passed.

26. Council to have power to make rules

- (1) The Council has power to make rules to provide for all matters not expressly reserved for the Bar Association in General Meeting, whether the same be expressed to be among its powers or not, and for all things as may appear to it to be necessary or desirable for carrying out its functions under this Act or any other enactment.
 - (2) Despite the power conferred under 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 five, to constitute a quorum at a general meeting.
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LEGAL PROFESSION (LAW OFFICES) ORDER – SECTION 31

(S.R.O. 11/2015)

Commencement

[28 January 2015]

Short title

1. This Order may be cited as the Legal Profession (Law Offices) Order.

Law offices

2. For the purposes of the Legal Profession Act the following offices are law offices—

- (a) Attorney General;
 - (b) Director of Public Prosecutions;
 - (c) Principal Crown Counsel;
 - (d) Parliamentary Counsel;
 - (e) Registrar of the High Court;
 - (f) Deputy Registrar of the High Court;
 - (g) Senior Crown Counsel; and
 - (h) Crown Counsel.
-