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VICTORIA
GOVERNMENT GAZETTE

Published by Authority

[Registered at the General Post Office, Melbourne, for transmission by post as a newspaper.]

No. 201

WEDNESDAY, MARCH 24

[1965

LEGAL PROFESSION PRACTICE ACT

SOLICITORS

(Audit and Practising Certificates)

Rules

LEGAL PROFESSION PRACTICE ACT

SOLICITORS (Audit and Practising Certificates) RULES

PART 1.—PRELIMINARY.

Citation.

1. These rules may be cited as the "Solicitors (Audit and Practising Certificates) Rules 1965", and shall come into operation on the publication thereof in the *Victoria Government Gazette*.

1A. The Solicitors (Audit and Practising Certificates) Rules 1960 and all Rules amending the same are hereby repealed: provided that—

- (a) all persons things and circumstances appointed or created by or under any of the repealed Rules or existing or continuing under any of such Rules immediately before the commencement of these Rules shall under and subject to these Rules continue to have the same status operation and effect as they respectively would have had if such Rules had not been so repealed;
- (b) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuity of status operation or effect of any application decision appeal proceeding cancellation suspension notice certificate examination appointment fee contribution liability or right made effected issued granted given fixed accrued incurred or acquired or existing or continuing by or under any of such Rules before the commencement of these Rules.

Interpretation.

2. (1) In these rules unless inconsistent with the context or subject-matter:—

"Act."

"Act" means the *Legal Profession Practice Act 1958*.

"Approved accountant."

"Approved accountant" means a competent accountant or other competent person for the time being approved by the Council pursuant to section 81 of the Act for the examination or audit of a solicitor's trust accounts.

"Auditor."

"Auditor" means—

- (a) a practising public accountant; or
- (b) an approved accountant—

employed by a solicitor or appointed by the Council to make an examination or audit of a solicitor's trust accounts.

"Council."

"Council" means the Council of the Institute.

"Institute."

"Institute" means The Law Institute of Victoria.

"Secretary."

"Secretary" means secretary of the Institute.

"Solicitor."

"Solicitor"—

- (a) In Parts 7 and 8 of these rules has the same meaning as in Divisions 4 to 7 of Part V. of the Act; and
- (b) in the remainder of these rules has the same meaning as in Divisions 2 and 3 of Part V. of the Act—

except that in its application to any firm of solicitors the word "solicitor" shall apply to the firm and to the members of the firm both jointly and severally.

"Trust account money."

"Trust account money" means money received by a solicitor in the course of or in connexion with his practice for or on behalf of other persons.

"Trust bank account."

"Trust bank account" means an account at a bank into which moneys received by a solicitor for or on behalf of other persons are or are required by law to be paid.

Words and phrases have the meaning assigned thereto by the Act.

As to references to money received by a solicitor.

(2) In these rules any reference to moneys received by a solicitor shall be deemed to include a reference to moneys received in the course of or in connexion with the practice by any partner of that solicitor or by any of his or the firm's clerks or servants or by any practitioner with whom he or the firm shares remuneration for any business.

PART 2.—NOTIFICATIONS RELATING TO PRACTICE.

Notice of employment of practitioner by solicitor.

3. Every practitioner who becomes the employé of any solicitor in connexion with the practice of that solicitor shall within fourteen days after the beginning of that employment notify the Council of the name and address of that solicitor and shall further notify the Council of any change in that employment or the cessation of that employment within fourteen days after the change or cessation.

Notice of commencement, cessation, &c., of practice by solicitor.

4. Every solicitor—

- (a) who, whether by himself or in partnership with any other or others and whether or not he has previously been or remains in practice in any other place in Victoria, commences or recommences practice as a solicitor or establishes a branch of his practice as a solicitor;
- (b) who amalgamates his practice or a branch of his practice as a solicitor with the practice or a branch of the practice of any other solicitor;
- (c) who ceases to carry on his practice or a branch of his practice as a solicitor (whether or not he continues to carry on any other branch thereof);

- (d) on the dissolution of a partnership of which he is a member or on the death or retirement of any partner in such a partnership or on the addition of a new partner—

and the legal representative of every solicitor who dies whilst still engaged in practice on his own behalf and not in partnership with any other solicitor shall within fourteen days after that commencement recommencement establishment amalgamation cessation dissolution death retirement or addition (as the case may be) give notice thereof to the Council.

4A. Every solicitor who takes over or acquires the practice or a branch of the practice of any other solicitor shall within fourteen days of such taking over or acquisition give notice thereof to the Council.

4B. Every solicitor shall, within fourteen days after commencing practice or a branch of his practice and thereafter annually at the time of making application for a practising certificate, give to the Council notice of the address at which he carries on practice or a branch of his practice and shall notify the Council within fourteen days of any alteration of such address.

PART 3.—EMPLOYMENT OF AUDITORS.

5. Subject to the Act and these rules any solicitor may employ any practising public accountant to examine or audit his trust accounts. Employment of practising public accountant.

6. Any solicitor desirous of employing a person other than a practising public accountant to examine or audit his trust accounts shall apply to the Council for its approval and shall satisfy the Council by such evidence as the Council requires— Employment of other competent accountant.

- (a) that the person nominated by him is competent; and
- (b) that no practising public accountant is conveniently available.

7. Any approval given by the Council shall remain in force until withdrawn and may at any time be withdrawn by the Council by notice given as hereinafter provided. Approval of Council.

8. Notice of the withdrawal of any such approval shall be given by the Council to every solicitor for the audit or examination of whose trust accounts the auditor was approved, and shall also be given to the auditor. Notice of withdrawal of approval.

9. Every solicitor employing an auditor to examine or audit his trust accounts shall within fourteen days after the beginning of that employment give notice thereof to the Council and shall deposit with the Council the written consent of the auditor to that employment. Notice of employment of auditor.

10. Any auditor who for any reason ceases to be employed or to be qualified to examine or audit the trust accounts of a solicitor shall within fourteen days after he so ceases to be employed or qualified give notice thereof to the Council. Notice of cessation of employment.

11. (1) A solicitor shall not terminate the employment of or cease to employ an auditor with a view to engaging another auditor or employ any auditor other than the auditor last employed by him unless he first satisfies the Council, by such evidence as the Council requires in any particular case, that it is reasonable in the circumstances to do so. Auditor's employment not to be terminated except on reasonable grounds.

(1A) The provisions of the last preceding sub-rule shall not apply where the auditor dies or retires from practice or ceases to be qualified to audit the solicitor's trust account.

(2) When an auditor dies or retires from practice or ceases to be qualified to audit the trust accounts of a solicitor or where the employment of an auditor by a solicitor is otherwise terminated, the solicitor shall within one month after the death-retirement cessation or termination (as the case may be), or within such further time as the Council allows in a special case, employ another auditor in his place. Time for employment of new auditor.

PART 4.—REQUIREMENTS OF AUDIT.

12. Every solicitor who does not lodge within the prescribed time a statutory declaration pursuant to rule 22 shall procure his trust accounts to be examined or audited by an auditor in the manner prescribed by the Act and these rules. Procuring of audit, &c.

13. Every auditor employed or appointed to examine or audit the trust accounts of a solicitor shall conduct the examination or audit in the manner prescribed by the Act and these rules. Conduct of audit, &c.

* * * * *

16. (1) In carrying out any other audit under the Act (excluding audits or examinations pursuant to section 74 of the Act) the auditor shall in the first place be required only— Requirements in respect of subsequent audits.

- (a) to make a general test examination of the trust accounts of the solicitor within the period covered by the audit;
- (b) to ascertain whether a trust bank account or trust bank accounts are and were during the said period kept by the solicitor;
- (c) to make a general test examination of the trust bank accounts and of the pass-books and statements relating to the trust bank accounts of the solicitor during the said period;
- (d) to make a comparison as at not fewer than two dates (one to be the thirty-first day of March being the last day of the period of audit, and the other or others to be a date or dates within the said period selected by the auditor)

between—
the liabilities of the solicitor to his clients and to other persons in connexion with his practice as a solicitor as shown by his trust accounts; and

the balances standing to the credit of his trust bank accounts; and

(e) to ask for such information and explanations as he may require for the purposes of sub-paragraphs (a) to (d) of this sub-rule.

(1A) For the purpose of making the general test examination referred to in paragraphs (a) and (c) of the last preceding sub-rule, the auditor shall be entitled to examine such number of dealings representative of every phase of the solicitor's practice as the auditor shall in the circumstances consider reasonable.

Further investigation where deficiency, &c., discovered.

(2) If in making those examinations and comparisons the auditor becomes aware of or suspects any deficiency in the trust bank accounts or any substantial illegality or irregularity in relation to the trust accounts he shall carry out such further investigations as will enable him to report fully to the Council upon such deficiency illegality or irregularity.

(2A) The auditor shall report to the Council any deficiency in the trust bank accounts of the solicitor or any substantial illegality or irregularity in relation to his trust accounts as soon as is practicable after the auditor becomes aware of or has reasonable ground for suspecting the existence thereof.

Personal visit of auditor on or after selected day or days.

(3) On or within one week after the date or dates selected by the auditor for the making of the comparison aforesaid the auditor or a member of his staff acting under his instructions shall without previous notice to the solicitor visit the solicitor's place of business and there examine the trust accounts and the books and papers relating thereto.

Report on annual audit.
Schedule, Form 2.

17. (1) Upon completion of the audit for a period ending on the thirty-first day of March in any year, the auditor shall lodge with the secretary a signed report in or to the effect of Form 2 of the Schedule to these rules on or before the thirty-first day of July in that year and the lodging of that report by the auditor shall be deemed a lodging thereof by the solicitor to whose trust accounts it relates.

(2) The auditor shall on the same day deliver a signed copy of his report to the solicitor to whose trust accounts it relates.

(3) Where a solicitor engages in practice in partnership with one or more other solicitors the auditor shall lodge with the secretary a separate report in respect of each member of the partnership, which report shall cover not merely the trust accounts of the partnership but all the trust accounts within the definition contained in section 51 of the Act of the solicitor concerned.

Report to be available to subsequent auditor.

18. The report of an auditor upon the audit of the trust accounts of any solicitor for any year shall, at all times at which that office is open for business, be available in the office of the Institute for inspection by the auditor employed or appointed to audit the trust accounts of the solicitor for the next succeeding year.

19. Upon making any audit of the trust accounts of any solicitor the auditor shall certify under his hand in the register of negotiable securities referred to in rule twenty-eight of these rules that he has examined such of the securities listed in that register as appear from the register as not having prior to the time of his audit passed out of the solicitor's possession and control.

19A. The auditor shall sign the certificate on the statements produced to him by the solicitor pursuant to Rule 27 of these Rules and shall lodge one copy of that statement duly signed by the solicitor and the auditor with the Secretary not later than the thirty-first day of July next following the end of the period to which the statement relates and the lodging of that copy of the statement by the auditor shall be deemed to be a lodging thereof by the solicitor or solicitors to whose trust accounts it relates. The auditor shall retain the other copy of the statement until he has completed his audit of the trust accounts of the solicitor for the next succeeding year.

As to drawings from trust bank account.

20. An auditor shall not, in connexion with any audit or examination of a solicitor's trust accounts, take any objection to the solicitor's having drawn from his trust bank account and having applied to his own use—

- (a) money properly required for or towards payment of a debt due to the solicitor by the client or in reimbursement of money expended by the solicitor on behalf of the client; or
- (b) money properly required for or towards payment of the solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred is delivered to the client.

Evidence of payments.

21. In any audit or examination under these rules, in vouching any payment the auditor shall accept such evidence as ought reasonably to satisfy him that the payment has been duly made, including the production of cancelled cheques.

22. The statutory declaration to be delivered to the Secretary pursuant to section 81 of the Act by a solicitor to whom sub-section (3) of that section applies shall be in or to the effect of Form 2A of the Schedule to these rules.

22A. Within two months after the dissolution of any partnership or such further time as the Council shall allow the solicitors who were the partners at the time of dissolution shall cause their trust accounts to be audited and reported upon pursuant to the Act and these Rules for the period from the first day of July 1964 or the first day of April immediately preceding the dissolution (whichever is the later) up to the date of such dissolution and in such case all the relevant provisions of the Act and these Rules shall, as far as possible, apply to such audit and report except that the date of the dissolution shall be substituted for the thirty-first day of March.

22B. (a) The statutory declaration to be made pursuant to section 81A of the Act by a solicitor who has ceased to practise shall be in or to the effect of Form 9A of the Schedule to these rules.

(b) The statutory declaration to be made pursuant to section 81A of the Act by the legal representative of a deceased solicitor shall be in or to the effect of Form 9B of the Schedule to these rules.

PART 5.—SPECIAL DUTIES OF SOLICITORS.

24. (1) A solicitor may, in respect of any trust account money which is received by him and which is not paid into a trust bank account—

As to payments made direct to client, &c.

- (a) If he receives the money in the form of cash, pay the money in cash to the client or other person due to receive the same; or
- (b) if he receives the money in the form of a cheque or draft—
 - (i) endorse the cheque or draft in the ordinary course of business over to the client or other person due to receive the same; or
 - (ii) transmit or hand over the cheque or draft to the client or other person due to receive the same—

and shall in every case forthwith make appropriate entries in his trust accounts.

(2) Where a solicitor receives trust account moneys and forthwith pays them to the credit of a non-trust account or forthwith transmits or hands over to the person due to receive the same any cheque drawn on a non-trust account and in every such case duly makes proper records of such receipts and disbursements in separate books of account kept in respect of such account, the auditor shall for the purposes of this rule accept the entries in those books as if they were entries in the trust accounts of the solicitor and no entries in respect thereof in the solicitor's trust accounts shall be necessary.

(3) In this rule "non-trust account" means an account in a bank, the moneys to the credit of which are not solely or exclusively under the control of a solicitor or solicitors.

25. Every solicitor shall keep trust accounts in such a manner as to disclose to the auditor the true position of the funds recorded therein and to enable the trust accounts to be conveniently and properly audited.

Keeping of trust accounts.

26. (1) Every solicitor (except where in respect of any year he has delivered to the Secretary the statutory declaration referred to in Rule 22 of these Rules) shall within twenty-eight days after the thirty-first day of March in each year prepare, certify and sign a statement in duplicate in or to the effect of form 1 of the Schedule to these Rules setting forth in detail as at the thirty-first day of March the following particulars, namely—

Statement in respect of trust accounts.

- (a) The amount of all trust monies held on that day by the solicitor including the amount on that day standing on deposit by the solicitor with the Law Institute of Victoria in accordance with section 40 of the Act;
- (b) The names of the trust bank accounts in which the balance of such monies are lodged and the balances on that day of those bank accounts and, where the bank balances are not in agreement with the cash book balances of the solicitor, a statement reconciling those balances;
- (c) The names of all persons on whose behalf the solicitor is holding trust monies on that day or some identification of those several persons by reference to the relevant number of the account in the trust ledger or by some other easily identifiable symbol and the amount to the credit of each such person;
- (d) All securities for money the title to which is transferable by delivery (excluding such securities as were received for immediate collection and conversion into money and were the subject of a trust account receipt and were entered on receipt thereof in a trust account cash book) held on that day by the solicitor for or on behalf of or in trust for other persons;
- (e) All securities and documents of title held on that day by the solicitor in his own name for or on behalf of or in trust for other persons,

and shall lodge one copy of that statement duly signed by the solicitor and the auditor with the Secretary not later than the thirty-first day of July in the same year.

(2) In this Rule the term "bank account" includes any account in the Commonwealth Savings Bank or the State Savings Bank of Victoria or any other Savings Bank as well as accounts in Trading Banks.

(3) Where two or more solicitors practise in partnership it shall be a sufficient compliance with this Rule in respect of each of those solicitors if one statement containing particulars of the whole of the trust accounts of the firm of which the solicitors are members and also separate particulars of any trust monies of which any of the solicitors is a trustee apart from his partner or partners is lodged with the Institute and if the certificate in the statement is signed by each solicitor individually and by the auditor in respect of each solicitor.

27. Every solicitor shall on demand produce to the auditor making an audit of his trust accounts—

Production to auditor of statements and register.

- (a) the signed copy of the report of the last preceding examination or audit relating to such trust accounts;
- (b) both copies of the statement prepared in respect of the period of audit pursuant to the last preceding rule;
- (c) the register of negotiable securities.

28. Every solicitor shall keep a register, to be known as the register of negotiable securities, in which he shall cause to be entered in respect of all securities for money the title to which is transferable by delivery (hereinafter referred to as "negotiable securities") held by the solicitor for or on behalf of or in trust for other persons (excluding such negotiable securities as are received for immediate collection and conversion into money and are the subject of a trust account receipt and are entered on receipt thereof in a trust account cash-book) the following particulars, namely:—

Register of negotiable securities.

- (a) The date of receipt of the negotiable security by the solicitor;
- (b) the description of the negotiable security, including the principal sum purporting to be secured thereby;
- (c) the name of the person for whom or on whose behalf or in trust for whom the negotiable security is held;

- (d) the name of the person, if any, in whose favour the negotiable security is expressed to be made;
- (e) the date when the negotiable security is delivered out of the solicitor's possession and control; and
- (f) a short narration of the disposal of the negotiable security on leaving the solicitor's possession and control.
- Time of making entries.** 29. In entries referred to in paragraphs (a) to (d) of the last preceding rule shall be made forthwith upon the receipt by the solicitor of the negotiable security and the entries referred to in paragraphs (e) and (f) of the said rule shall be made forthwith upon the delivery of the negotiable security out of the solicitor's possession and control.
- 29A. The register of negotiable securities shall form part of the solicitor's trust accounts within the meaning of Rule 16 hereof and shall be subject to audit accordingly.
- Keeping volumes of register.** 30. Every solicitor shall retain every volume of his register of negotiable securities for at least two years after the date of the last entry made therein.
- New trust bank accounts.** 31. Every solicitor shall within fourteen days after the opening of any new trust bank account notify the auditor thereof.
- Reconciliation of trust account and cash-book balances.** 32. Every solicitor shall at the end of every calendar month prepare a statement reconciling the balances of his trust bank accounts with the balances of his cash-books relating thereto and shall keep the reconciliation statement for each month in the cash-book or other appropriate book.
- 32A. (1) Every solicitor shall at the end of each period of three months ending on the 30th day of September, the 31st day of December, the 31st day of March and the 30th day of June respectively prepare a statement reconciling the balances in his trust ledgers with the balances of his trust bank accounts and shall keep the reconciliation statement for each quarter in some appropriate book.
- (2) It shall be a sufficient compliance with this rule if the list of ledger balances in the statement comprises merely the separate amounts standing to the credit of each ledger account in the same sequence as they appear in the ledger and the total of such balances without setting forth the names of the respective clients on whose behalf such moneys are held.

PART 6.—SPECIAL RECEIPT FORMS.

33. This Part of these rules (so far as it relates to the giving of receipts) shall come into operation on the first day of July, 1948.
- Special receipt forms to be given.** 34. A solicitor shall not give a receipt for trust account money received by him except on a form supplied to the solicitor by the Institute or some person authorized by the Council in that behalf.
- Books of forms.** 35. The said forms shall be printed in bound books of not less than one hundred forms in each book arranged so that a carbon duplicate of each receipt issued may be retained in the book, and the said books shall be supplied by the Institute or by the person so authorized to any solicitor at his request and upon payment of such sum for each book as the Council from time to time determines.
- Forms to be numbered, &c.** 36. Such forms shall before being so supplied as aforesaid be numbered and/or lettered consecutively so that each form and each book of forms may be identified and so that each form and its duplicate shall bear the same identification mark.
- Record of forms supplied to solicitors.** 37. The Institute or the person so authorized to supply forms shall keep a record of the identification marks of all forms supplied to each solicitor.
- Solicitors to give receipts in special form for trust account moneys.** 38. (1) Subject to the next succeeding rule, every solicitor shall for each sum of trust account money received by him forthwith give to the person paying the same a receipt on one of the forms supplied to him as aforesaid specifying briefly the subject-matter or purpose in respect of which such sum is received, and shall make a legible carbon duplicate of such receipt and retain such duplicate in the book of forms into which it is bound.
- (2) Upon the coming into operation of this rule, rule twenty-three of these rules shall be superseded and shall have no further force or operation.
- Exceptions.** 39. A solicitor shall not be bound to comply with the requirements of the last preceding rule when any of the following payments is received:—
- (a) Bearer-bond interest or inscribed-stock interest or company dividends lodged by the Government, a local authority or a company direct to the credit of the trust bank account of the solicitor;
 - (b) collection of interest, dividends, and the like made by a bank on behalf of the solicitor and credited by the bank direct to the trust bank account of the solicitor;
 - (c) interest payments on Government inscribed stock where a special form of receipt is required to be endorsed and is endorsed on the dividend warrant itself;
 - (d) moneys received from any Government Department where a receipt is required to be given and is given on the Department's own form of receipt;
 - (e) moneys paid out of any savings bank;
 - (f) a draft, postal note, money order or not negotiable crossed cheque payable to any person or persons other than the solicitor (either in his own name or any business name under which he is registered pursuant to the *Business Names Act 1958* as carrying on business) or any firm of which the solicitor is a member where the draft, postal note, money order or cheque is properly dealt with by the solicitor otherwise than by payment to his trust bank account or the trust bank account of the firm of which he is a member;

- (g) a cheque or warrant payable to the solicitor or his client where the drawer requests that the payee acknowledge receipt on the cheque or warrant or on some special form of receipt sent by the drawer with the cheque;
- (h) moneys received by the solicitor by way of interest, dividends or the like from any company whose shares, stock, notes or debentures are listed on any Stock Exchange in Australia.

40. Immediately on receipt by a solicitor of a payment of any of the classes referred to in paragraphs (c), (d), (e), (g) and (h) of the last preceding rule, the solicitor shall cause to be made out on one of the forms supplied to him as aforesaid a receipt showing sufficiently the source and the subject-matter or purpose in respect of which such payment is received, and shall retain the receipt, together with the carbon duplicate thereof, in the book of forms.

Receipt to be made and retained in certain cases.

41. Whenever at any audit or examination of a solicitor's trust accounts the auditor so requires, the solicitor shall produce to the auditor all books of receipts used and unused supplied to the solicitor under this Part of these rules, including the retained duplicates of receipts issued by the solicitor and including receipts and duplicates prepared pursuant to the last preceding rule.

Production of receipt books to auditor.

Provided that nothing in this rule shall require a solicitor to retain or produce used books of receipts no one of which relates to accounts of the year to which the audit or examination relates or to the year immediately preceding that year.

42. Any solicitor who ceases to carry on his practice shall forthwith deliver to the secretary any unused trust account receipt forms in his possession, and the said forms shall be disposed of as the Council thinks fit.

Disposal of receipt books on retirement of solicitor.

43. Upon the death of any solicitor practising by himself and not in partnership, his auditor shall as soon as possible take charge of any unused trust account receipt forms, and shall forthwith deliver the said forms to the secretary, and the said forms shall be disposed of as the Council thinks fit.

Disposal of receipt book on death of solicitor.

43A. Notwithstanding anything to the contrary herein contained, the Council may, on the advice of a practising public accountant and subject to such conditions as the Council may impose, permit a solicitor to adopt a system of bookkeeping which does not comply with all or any of the provisions of this Part. The Council may, at any time, vary any such conditions and may, at any time, revoke any permission so granted.

PART 7.—ANNUAL PRACTISING CERTIFICATES.

44. Each application for a practising certificate shall be in or to the effect of Form 3 or Form 4 (as the case requires) of the Schedule to these rules.

Form of application for practising certificate.

45. The fee payable on such an application shall be equivalent to the fee in respect of membership of the Institute for the time being payable under any by-law made pursuant to section 24 of the Act by any member of the Institute of a like class (as defined by the Council) to that of the applicant: Provided that a member of the Institute who has paid his subscription to the Institute for the year to which or any part of which the certificate if issued would relate shall not be required to pay any practising fee on lodging any such application.

Schedule, Forms 3, 4. Fee on application for practising certificate.

46. Except where the proviso to subsection (1) of Section 59 of the Act is applicable, if the applicant is a solicitor to whom Division 2 of Part V. of the Act applies there shall also be payable on such application as a contribution to the Solicitors' Guarantee Fund—

Amount of contribution to the Act solicitors' guarantee fund.

(a) if paragraph (a) of sub-section (1) of section 59 of the Act is applicable—the sum of Five pounds;

(b) in any other case—the sum of Ten pounds:

Provided further that a solicitor who engages in practice in the State of Victoria and in some adjoining State (which latter State is hereinafter referred to as the home State) and whose place or principal place of practice is situated in the home State shall not in respect of any year be required to pay as contribution to the Solicitors' Guarantee Fund a sum in excess of Five pounds if he satisfies the secretary that he has already paid his contribution to the corresponding fund in the home State for the same or substantially the same period.

48. The declaration to be lodged with the secretary pursuant to section 82 of the Act by a practitioner who has not previously practised as a solicitor or who having previously so practised is not so practising at the time of the application shall be in or to the effect of Form 6 of the Schedule to these rules.

Form of declarations by practitioner commencing practice.

49. (1) Every practising certificate issued pursuant to the Act to a solicitor who intends to engage in practice as a solicitor on his own account or in partnership with another solicitor or upon terms of sharing with another practitioner remuneration for any business shall be in or to the effect of Form 7A of the Schedule to these rules.

Schedule, Form 6.

(2) Every practising certificate issued pursuant to the Act to a solicitor who intends to practise as an employee and not otherwise shall be in or to the effect of Form 7B of the Schedule to these rules.

49A. The notice to be lodged with the Court by a practitioner who intends to appeal to the Court pursuant to section 87 of the Act shall be in or to the effect of Form 8 of the Schedule to these rules.

PART 8.—NOTICES AND FORMS.

50 (1) Notices for the purposes of these rules shall be in writing and signed by the secretary, solicitor or other person required to give the same.

Form of notices.

(2) A notice to be given by a firm of solicitors shall if signed on behalf of the firm by any member or members thereof be deemed a sufficient notice by all the members of the firm.

Notices by firms of solicitors.

Mode of service of notices.

- (3) Any such notice may be given—
 - (a) by personally serving it on the secretary or the solicitor or any member of the firm of solicitors to whom it is addressed (as the case requires);
 - (b) by sending it by post to the secretary addressed to him at the office of the Institute or to the said solicitor or firm of solicitors addressed to him or them at his or their place of business; or
 - (c) by leaving it at the office of the Institute or the place of business of the said solicitor or firm of solicitors with any person apparently of or over the age of sixteen years.

Schedule.

51. Any document required to be in a form set out in the Schedule to these rules shall be in that form or as near thereto as circumstances permit.

SCHEDULE.

FORM 1.

Rule 26.

STATEMENT OF TRUST MONIES.

Rule 26

Name of firm of solicitors

1. The total of all trust monies held by
 on the 31st March 19.....was £

or *

The total of all trust monies held by the firm
 of on the 31st March 19.... was £

The total of all separate trust monies held by
on 31st March 19.....was £ _____

Total £ _____

2. Details of those monies are:—
 Deposited with the Law Institute of Victoria
 Deposited with †.....
 as per bank statement
 less unrepresented cheques _____
 add monies not deposited _____

Total £ _____

3. The names or identifications of the persons on whose behalf those monies were held and the amount to the credit of each such person were:—

Total £ _____

4. Particulars of all securities for money the title to which is transferable by delivery (excluding such securities as were received for immediate collection and conversion into money and were the subject of a trust account receipt and were entered on receipt thereof in a trust account cash book) held on 31st March, 19..... by.....for or on behalf of or in trust for other persons were:—

5. Particulars of all securities and documents of title held by..... on the 31st March 19.....in his own name for or on behalf of or in trust for other persons were—

I.....of.....solicitor certify that the above statement is true and complete in every particular and relates to all trust monies as defined by section 51 of the Legal Profession Practice Act 1958 held by me on the 31st day of March 19.....(whether as a member of the firm of..... or separately).††

Date this..... day of April 19.....

I.....of.....the auditor appointed by.....to audit his trust accounts pursuant to section 81 of the Legal Profession Practice Act certify that the above statements are in accordance with the books of account of the said solicitor as produced to me and are so far as disclosed by my audit of his trust accounts correct in every particular.

Date this..... day of.....19.....

* The alternative form is to be used where there are separate trust accounts of one or more of the partners in addition to the trust accounts of the firm.

† Name and address of the Bank or Banks.

‡ Omit words in brackets if not practising in partnership.

N.B. Where the statement refers to trust accounts of a firm a separate certificate must be signed by each partner and by the auditor in relation to each partner.

FORM 2.

Rule 17

AUDITOR'S REPORT IN SUPPORT OF APPLICATION FOR PRACTISING CERTIFICATE
FOR ANY YEAR SUBSEQUENT TO 1948.

I, of hereby certify:—

1. That I am a member in public practice of the and a practising public accountant within the meaning of the *Legal Profession Practice Act 1958*.

or

1. That pursuant to the Solicitors (Audit and Practising Certificates) Rules made under the *Legal Profession Practice Act 1958* I was on the day of 19..... approved by the Council of the Law Institute of Victoria for the audit of the trust accounts hereinafter referred to.

2. That in accordance with the said Act and the rules made thereunder I have made an audit of the whole of the trust accounts as defined by section 51 of the *Legal Profession Practice Act 1958* of* a solicitor of the Supreme Court (who is a member of the firm of) practising at (including the trust accounts of the said firm and the separate trust accounts of the said solicitor) for the period of twelve months ending on the thirty first day of March, 19.....

3. That I was not at any time during which I was conducting the said audit nor at any time within two years before the last day of the period in respect of which the audit was made a clerk servant or partner of the said solicitor (or the said firm of solicitors or any member thereof).

4. That in carrying out the audit above referred to I have—

(a) made a general test examination of the trust accounts of the said within the period covered by the audit;

(b) ascertained that a trust bank account (or trust bank accounts) was (or was not) were (or were not) kept by the said* during the said period;

(c) made a general test examination of the trust bank accounts and of the pass books and statements relating to the trust bank accounts during the said period;

(d) made a comparison as at—

(i) the day of 19..... on (or within one week after) which day I (or a member of my staff acting under my instructions) visited the offices of the said* without previous notice and examined the afore-mentioned trust accounts and the books and papers relating thereto; and

(ii) the 31st day of March, 19....., being the last day of the period of audit—

between—

the liabilities of the said* to his clients and to other persons in connexion with his practice as shown by his trust accounts and the balances standing to the credit of his trust bank accounts.

5. That the said* has not supplied me with all such information and explanations as were required by me to enable me to carry out the said audit.

6. That there was not so far as shown by the said audit at any time during the period of the audit any deficiency in the trust bank accounts of the said*

or

6. That there was on (or about) the day of 19..... a deficiency of £, more or less, in the trust bank account of the said*

or

6. That there was on (or about) the day of 19..... a deficiency of £, more or less, in the trust bank accounts of the said* and the amount of the deficiency was restored before the date of this report. Such deficiency arose in the following circumstances:—

7. That the trust accounts of the said* have regularly kept and properly written up. have not been

8. That the said* has produced to me when so required all books of receipts used and unused supplied to the said* (or his firm).

9. That the lowest aggregate of the balances in the trust bank accounts as disclosed the lowest balance in the trust bank account by the bank statement(s) of the said.....(or his firm) on any day during the period of the audit or the period of twelve months ending on the thirty-first day of March, immediately preceding the period of the audit (excluding any accounts that were maintained for the exclusive benefit of a specific person or persons) was £.....

I desire to bring to the notice of the Council the following additional matters:—
(Here set out such additional matters as the auditor considers should be brought to the notice of the Council.)

Dated the.....day of.....19.....,

(Sgd.).....

Omit clauses and words not applicable.

* Full name of solicitor.

† Set out all the places of practice covered by the audit.

‡ Set out the approved body of accountants.

(The report to be lodged in 1965 will be for a period of nine months ending on 31st March, 1965, and Clause 9 of that report will relate only to the lowest bank balance during the year ending on 31st March, 1965.)

Rule 22.

FORM 2A.

STATUTORY DECLARATION BY A SOLICITOR WHO DID NOT HOLD TRUST MONEYS DURING THE RELEVANT YEAR.

I.....of.....solicitor do solemnly and sincerely declare that at the commencement of the period of twelve months which ended on the 31st day of March 19... I did not hold any trust money within the meaning of section 51 of the *Legal Profession Practice Act 1958* and I did not during the course of that period receive any such money.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

Declared at..... this..... day of.....19.....

Before me—

.....
Justice of the Peace
A Commissioner for taking Declarations
and Affidavits.

Rule 44.

FORM 3.

APPLICATION FOR PRACTISING CERTIFICATE BY A SOLICITOR IN PRACTICE.

I.....of.....solicitor, hereby make application for a practising certificate for the year 19..... and certify:—

1. That I am a barrister and solicitor of the Supreme Court of Victoria having been admitted to practice on the..... day.....19..... and I have paid the total fees (or all the fees due and payable) in respect of my admission.

2. I practise on my own behalf under my own name,
or

2. I practise on my own behalf under the firm name of.....
or

2. I am a member of the firm of solicitors practising under the name of.....
of which firm.....are also partners,
or

2. I am an employee of....., solicitors, and I am not practising as a solicitor except as such employee and I do not as such employee share with any other practitioner remuneration for any business.

3. My place of business (or the place of business of my firm or firm employing me) is*.....

4. I commenced practice as a solicitor on the..... day of.....19.....

5. I am not a member of the Law Institute of Victoria.

6. of.....(hereinafter called "the said auditor") was appointed to audit and report on my trust accounts (including the trust accounts of the firm of..... of which I am a member) for the period of twelve months ending the thirty-first day of March 19...

7. All accounts books and papers necessary to enable him to make for the purposes of that report a complete audit in accordance with the Solicitors' (Audit and Practising Certificates) Rules of my trust accounts as defined in section 51 of the *Legal Profession Practice Act 1958* (including the trust accounts of the said firm) have been produced to the said auditor.

8. On the date of this application there is in a bank or banks to the credit of a trust bank account or trust bank accounts kept in accordance with the provisions of section 40 of the Legal Profession Practice Act 1958 and on deposit with the Law Institute of Victoria a sum or sums sufficient to pay all moneys received by me (or the said firm) for or on behalf of any person or persons and not previously paid by me or the said firm to those persons or in accordance with directions given by them.

or

6. On the first day of April 19..... I did not hold any trust money within the meaning of section 51 of the Legal Profession Practice Act 1958 and I did not between that date and the date of this application receive any such money.

or

8. On the date of this application I do not hold any trust money within the meaning of section 51 of the Legal Profession Practice Act 1958, all such moneys previously held by me having been paid by me to the persons entitled thereto or in accordance with their directions.

9. In relation to my application I forward herewith my cheque for £..... being £.....the practising fee payable upon this application and £..... my contribution to the Solicitors Guarantee Fund for the year 19.....

Dated theday of.....19.....

(Sgd.).....

Omit clauses and words not applicable.

* Applicable only in respect of solicitor who is not an employee.

† Set out principal place of business and all branches.

Rule 44.

FORM 4.

APPLICATION FOR PRACTISING CERTIFICATE BY A PRACTITIONER DESIROUS OF COMMENCING OR RECOMMENCING PRACTICE.

I.....of.....hereby make application for a practising certificate for the year 19..... (or as the case requires):—

1. I am a barrister and solicitor of the Supreme Court of Victoria having been admitted to practice on the.....day of.....19..... and I have paid the total fees (or all the fees so far due and payable) in respect of my admission.

2. I am not now and have never (or and have not at any time since the..... day of.....19.....) been practising as a solicitor within the meaning of Divisions 2 and 3 of Part V. of the Legal Profession Practice Act 1958.

3. I intend to practise on my own behalf under my own name.

or

3. I intend to practise on my own behalf under the firm name of.....

or

3. I intend to practise as a partner of..... under the firm name of.....

or

3. I intend to practise as an employee of.....solicitors, and not otherwise and I shall not as such employee share with any other practitioner remuneration for any business.

4. My place of business (or the place of business of my firm or the firm employing me) is (or will be) situated at.....

5. I am am not a member of the Law Institute of Victoria.

6. In relation to my application I forward herewith—

(a) my declaration in compliance with section 82 of the Legal Profession Practice Act 1958; and

(b) my cheque for £....., being £.....the practising fee payable upon this application and £....., my contribution to the Solicitors Guarantee Fund for the year 19.....

Dated the.....day of.....19.....

(Sgd.).....

Omit clauses and words not applicable.

Rule 48

FORM 6.

DECLARATION BY PRACTITIONER DESIROUS OF COMMENCING OR RECOMMENCING PRACTICE.

I.....of.....do solemnly and sincerely declare:—

1. That I am a barrister and solicitor of the Supreme Court of Victoria having been admitted to practice on the.....day of.....19.....

2. That I have not previously practised as a solicitor within the meaning of Divisions 2 and 3 of Part V. of the Legal Profession Practice Act 1958.

or

2. That I have previously practised as a solicitor within the meaning of Divisions 2 and 3 of Part V. of the *Legal Profession Practise Act 1958* and full particulars of my former practice are as follows:—

- Date (or dates) of commencement.....
- Date (or dates) of cessation.....
- Place (or places) at which I have practised.....
- Name (or names) under which I have practised.....

* 3. Prior to the date on which I ceased to practise as aforesaid I paid to the persons entitled thereto or in accordance with their directions all moneys received by me for or on behalf of any other person or persons in the course of or in connexion with my practice and I did not on that date hold nor have I since received any trust account money within the meaning of the Solicitors (Audit and Practising Certificates) Rules.

4. I am desirous of commencing (or recommending) practice.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

Declared at.....this.....day of.....19.....

Before me—

Justice of the Peace
A Commissioner for taking Declarations
and Affidavits.

* Omit this clause and re-number paragraph 4 if never previously practised.

Rule 49

FORM 7A.

PRACTISING CERTIFICATE.

Pursuant to the powers conferred by the *Legal Profession Practise Act 1958* I hereby certify that.....of.....is authorized to practise as a solicitor from the.....day of.....19.....to the 31st day of December, 19.....

Dated the.....day of.....19.....

Secretary for the Law Institute of Victoria

Rule 49

FORM 7B.

PRACTISING CERTIFICATE.

Pursuant to the powers conferred by the *Legal Profession Practise Act 1958* I hereby certify that.....of.....is authorized to practise as an employee from the.....day of.....19.....to the 31st day of December, 19..... This certificate does not entitle the holder to engage in practice as a solicitor either on his own behalf or in partnership with any other solicitor or upon terms of sharing with any other practitioner remuneration for any business.

Dated the.....day of.....19.....

Secretary of the Law Institute of Victoria.

Rule 49A

FORM 8.

NOTICE BY PRACTITIONER INTENDING TO APPEAL TO THE COURT IN THE SUPREME COURT OF VICTORIA.

In the matter of the *Legal Profession Practice Act 1958*

and

In the matter of an appeal by a barrister and solicitor against the

refusal
cancellation } *of his practising certificate.
suspension }

* Omit the words which are not applicable.

Take notice that I will appeal to this Honorable Court on.....the
.....day of19.....ato'clock
in the..... noon or as soon thereafter as counsel can be heard, pursuant
to section 87 of the Legal Profession Practice Act 1958 against the refusal of my
application for a practising certificate for 19.....*

cancellation of my } practising certificate issued to me for the year 19.....
suspension of my }

Dated this..... day of19.....

To the Prothonotary

and

To the Law Institute of Victoria

* Omit words which are not applicable

Rule 22b

FORM 9A.

STATUTORY DECLARATION BY A SOLICITOR WHO HAS CEASED TO PRACTISE.

I..... ofdo solemnly and sincerely
declare:—

1. I am a barrister and solicitor of the Supreme Court of Victoria and I ceased to
practise as a solicitor on the..... day of19.....

2. I do not now hold any moneys which were received by me in the course of
or in connexion with my practice for or on behalf of any other person or persons, all
moneys so received by me having been paid by me to the persons entitled thereto or
in accordance with their directions.

And I make this solemn declaration conscientiously believing the same to be true
and by virtue of the provisions of an Act of the Parliament of Victoria rendering
persons making a false declaration punishable for wilful and corrupt perjury.

Declared at.....this.....day of.....19.....,

Before me—

Justice of the Peace.
A Commissioner for taking Declarations
and Affidavits.

FORM 9B.

Rule 22b

STATUTORY DECLARATION BY THE LEGAL REPRESENTATIVE OF A DECEASED
SOLICITOR.

I..... ofdo solemnly and sincerely declare:—

1. I am the legal representative of.....(hereinafter called
"the said solicitor") who formerly practised as a solicitor and who died on
the..... day of..... 19.....

2. I do not now hold any trust money within the meaning of section 81A of the
Legal Profession Practice Act 1958.

And I make this solemn declaration conscientiously believing the same to be true
and by virtue of the provisions of an Act of the Parliament of Victoria rendering
persons making a false declaration punishable for wilful and corrupt perjury.

Declared at.....this.....day of.....19.....

Before me—

Justice of the Peace.
A Commissioner for taking Declarations
and Affidavits.

Signed for and on behalf of the Council of the Law Institute of Victoria this
eleventh day of February, 1965.

DAVID MURRAY, President.

ARTHUR HEYMANSON, Secretary.

I approve the above Rules.

Dated this 24th day of February, 1965.

H. A. WINNEKE, Chief Justice.

