

# Part V – Uniform Trust Account Rules

## Definitions

### 5.01 In these Rules

“accountant” means a person within a class of persons designated by the Society from time to time that it considers qualified and is licenced by the Public Accountants Licensing Board of Newfoundland and Labrador, to carry out the functions of an accountant under these rules.

(Rule 5.01(a): Amended Fall Term Convocation, September 26, 2005)

“Act” means the *Law Society Act, 1999*;

“acting in a representative capacity” means acting as:

- (a) the personal representative, executor or administrator, or one of the personal representatives, executors or administrators, of the estate of a deceased person,
- (b) a trustee, or one of the trustees, of a trust under an appointment made pursuant to a trust instrument creating the trust,
- (c) a trustee that holds property in trust for third parties until the occurrence of a condition or event that is specified in an [escrow] agreement between the third parties,
- (d) a trustee, or one of the trustees, of the property of another person under an appointment by a court, or
- (e) an attorney, or one of the attorneys, of a person under a power of attorney, whether general or special, enduring or otherwise.

“client” means any person or body of persons, whether or not incorporated, from whom or on whose behalf a member, or professional law corporation, in connection with the member’s practice, receives money or other property;

(Rule 5.01(c): Amended Winter Term Convocation, February 6, 2012)

“credit union central” means a central cooperative credit society as defined in section 2 of the *Cooperative Credit Associations Act*, or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial or territorial Act other than one enacted by the legislature of Quebec.

“disbursements” means amounts paid or required to be paid to a third party by the lawyer or the lawyer’s firm on a client’s behalf in connection with the provision of legal services to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client.

“electronic funds transfer” means an electronic transmission of funds conducted by and received at a financial institution or a financial entity headquartered in and operating in a country that is a member of the Financial Action Task Force, where neither the sending nor the receiving account holders handle or transfer the funds, and where the transmission record contains a reference number, the date, transfer amount, currency and the names of the sending and receiving account holders and the conducting and receiving entities.

“expenses” means costs incurred by a member or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs.

“financial institution” means

(a) a bank that is regulated by the *Bank Act*,

(b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,

- (c) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
  - (d) an association that is regulated by the Cooperative Credit Associations Act (Canada),
  - (e) a financial services cooperative,
  - (f) a credit union central
- (g) a company that is regulated by the *Trust and Loan Companies Act* (Canada),
- (h) a trust company or loan company that regulated by a provincial or territorial Act,
- (i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public; or
- (j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

“financial services cooperative” means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c. 77, other than a caisse Populaire.

“firm” includes an individual member, a professional law corporation, a partnership of members or professional law corporations or any combination thereof, carrying on the practice of law where one set of books of account is maintained;

(Rule 5.01(e): Amended Summer Term Convocation, June 10, 2005)

“Foundation” includes one or other of the Law Foundations of New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island, as the context

requires;

(Rule 5.01(f): Adopted Winter Term Convocation, February 6, 2012)

“general account” means a deposit account in a financial institution authorized by law to receive money on deposit, maintained by a member in connection with the practice of law, other than a trust account;

(Rule 5.01(g): Amended Winter Term Convocation, February 6, 2012)

“general trust account” means a regular interest-bearing deposit account in a financial institution authorized by law to receive money on deposit, maintained by a member and designated as a trust account into which the member deposits money received in trust from or on account of more than one client, at interest that is remitted to the Foundation by the financial institution on instructions filed by the member in accordance with the by-laws of the Foundation;

(Rule 5.01(h): Amended Winter Term Convocation, February 6, 2012)

“member” includes an individual member of the Society, a firm and an association of members who carry on the practice of law together other than as a firm, and in Nova Scotia member means a barrister;

(Rule 5.01(i): Amended Winter Term Convocation, February 6, 2012)

“legal services” means the practice of law as defined in s. 2(2) of the *Law Society Act, 1999*.

“money” includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders, and electronic transfer of deposits at financial institutions.

(Rule 5.01(j): Amended Winter Term Convocation, February 6, 2012)

“specific trust account” means a separate deposit account or instrument in a financial institution authorized by law to receive money on deposit, maintained by a member on behalf of a specific client, and designated as a trust account on behalf of that client, into which the member deposits money received in trust, at interest that is, and is intended to remain, the property of the client;

(Rule 5.01(k): Amended Winter Term Convocation, February 6, 2012)

“Society” includes one or other of the Law Societies of New Brunswick, Newfoundland and Labrador and Prince Edward Island, and the Nova Scotia Barristers’ Society, as the context requires;

(Rule 5.01(l): Amended Winter Term Convocation, February 6, 2012)

“trust account” means a general trust account or a specific trust account;

(Rule 5.01(m): Amended Winter Term Convocation, February 6, 2012)

“trust money” includes

(a) money entrusted to or received by a member in the member’s capacity as a barrister and solicitor in connection with the practice of law, and that belongs in whole or in part to a client; and

(b) money advanced to a member in the member’s capacity as a barrister and solicitor in connection with the practice of law for fees for services not yet rendered or for disbursements not yet made.

(Rule 5.01(n): Amended Winter Term Convocation, February 6, 2012)

“trust property” includes any property of value belonging to a client, other than trust money, received by a member in trust, or to be held on behalf of or at the direction or order of the client, and over which the member has sole signing authority or control in

any capacity with respect to the administration of an estate or a trust, as a guardian or under a power of attorney.

(Rule 5.01(o): Amended Winter Term Convocation, February 6, 2012)

## General Account

5.01.1 A member who maintains a trust account shall also maintain a general account.

(Adopted Rule 5.01.1, Summer Term Convocation, June 9, 2007)

## Maintenance of records

5.02 (1) Every member shall maintain, so as to be clearly distinguishable from the record of money received and disbursed in the member's general account, books, records and accounts to record all trust money and trust property received and disbursed in connection with the member's practice, and as a minimum requirement every member shall maintain

(a) a book of original entry or data source showing the date of receipt and source of trust money for each client and identifying the client on whose behalf the trust money is received,

(b) a book of original entry or data source showing all disbursements out of trust money for each client and showing each cheque number, the date of each disbursement, the name of each recipient, and identifying the client on whose behalf each disbursement is made out of trust money,

(c) a client's trust ledger showing separately for each person on whose behalf trust money has been received all such money received and disbursed and any unexpended balance,

(Rule 5.02(1):Amended Fall Term Convocation, October, 2004)

- (d) a record showing all transfers of money between client's trust ledger accounts and explaining the purpose for which each transfer is made,
- (e) a book of original entry or data source showing the date of receipt and source of all money received other than trust money,
- (f) a book of original entry or data source showing all disbursements of money other than trust money and showing each cheque or voucher number, the date of each disbursement and the name of each recipient,
- (g) a book, data source or chronological file of copies of billings showing all fees charged and other billings to clients, the dates such charges are made and identifying the clients so charged,
- (h) a record showing a comparison made monthly of the total of balances held in all trust accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the books and records together with the reasons for any differences between the totals and supported by
  - (i) a detailed listing made monthly showing the amount of trust money held for each client and identifying each client for whom trust money is held, and
  - (ii) a detailed reconciliation made monthly of each trust account in a financial institution, and such detailed listings and reconciliations shall be retained as records supporting the monthly trust comparisons,
- (i) a record showing all trust property held in trust from time to time for all clients, and identifying the client on whose behalf the property is held,
- (j) bank statements or pass books, cashed cheques and detailed deposit slips for all trust and general accounts, and

(k) a record of the instructions filed by the member with the financial institutions, in accordance with the by-laws of the Foundation, to remit to the Foundation the interest earned on the account numbers of all general trust accounts listed in Form 5.07A maintained at the branch addresses of the financial institution.

(Rule 5.02(1)(k): Adopted Winter Term Convocation, February 6, 2012)

(2) The entries in the books, records, data sources and accounts required to comply with subsection 5.02(1)

(a) shall be entered and posted forthwith, and the trust comparison required by subsection 5.02(1)(h) shall be made monthly within thirty days from the effective date of each comparison,

(b) shall be entered and posted in ink or a duplication thereof, or electronically, and shall be preserved for at least seven years from the most recent fiscal year end of the member.

(3) This section applies, with necessary modifications, to members acting in a representative capacity in accordance with sections 5.01 and 5.14.

## Deposits and Withdrawals from the Trust Account

5.03 (1) A member must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account, only money that is directly related to legal services that the lawyer or the lawyer's law firm is providing.

(2) A member must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.

## *Deposits in trust accounts*

- 5.04 (1) Subject to subsection 5.03(6), a member who receives trust money shall forthwith, but no later than the first banking day following receipt, pay it into an account which
- (a) is designated as a trust account,
  - (b) is kept in the name of the member,
  - (c) is kept at a financial institution, and
  - (d) bears interest which is remitted to the Law Foundation of Newfoundland and Labrador by the financial institution on instructions filed by the member, computed and payable in accordance with the requirements applicable to the Society and the by-laws of the Foundation, except as payable to the client on money deposited in a specific trust account.

(Rule 5.03(1)(d): Amended Winter Term Convocation, February 6, 2012)

- (2) Notwithstanding subsection 5.03(1), trust money received by means of an electronic funds transfer is deemed to be deposited in a trust account when the member receives written confirmation from the financial institution providing details of the electronic funds transfer. On-line confirmation may be accepted by the member provided a copy of the confirmation with the amount highlighted is printed and place in the respective client file.

(Rule 5.03(2): Amended Summer Term Convocation, June, 2006)(Rule 5.04(2): Amended Winter Term Convocation, February 6, 2012)

- (3) A member shall seek the written confirmation referred to in subsection 5.04(2) no later than the close of the banking day immediately following the day on which the member was notified of the electronic funds transfer into the member's trust account.

(4) A member may keep more than one trust account.

(5) A member shall pay into a trust account only

(a) trust money,

(b) money which has been drawn inadvertently from the trust account in contravention of this section, and

(c) money received by the member representing in part money belonging to a client and in part money belonging to the member if it is not practicable to divide the payment, provided that money belonging to the member shall be drawn from the trust account without delay.

(Rule 5.03(5): Amended Winter Term Convocation, February 6, 2012)

(6) A member need not pay trust money into a trust account if

(a) in the ordinary course of business, upon its receipt, it is paid forthwith in the form in which it is received to or on behalf of the client,

(b) the client in writing requests the member to pay the trust money into a specific trust account opened in the name of the client, a person named by the client, or the authorized agent of the client, provided the member shall keep a record of the receipt and disbursement of such money, or

(c) the money is received by a member under escrow conditions whereby the money is required to be held without deposit.

(7) A member shall not pay into a trust account

(a) money which belongs to the member unless intended for payment to a third party for the purpose of completing a personal transaction being handled by the firm on behalf of the member, or

(b) money received by the member

(i) for fees for which a billing has been delivered,

(ii) for services already performed for which a billing is delivered forthwith thereafter, or

(iii) to reimburse the member for disbursements made or expenses incurred on behalf of a client.

(8) Money held in trust for or on account of a client with respect to the practice of law in a specific province shall be maintained in compliance with the National Mobility Agreement or such other mobility agreements as apply to the Society, unless instructed otherwise by the client in writing.

### *Withdrawals and transfers from trust accounts*

5.05 (1) Subject to subsection 5.05(2), a member who becomes entitled to money in a trust account shall withdraw it as soon as reasonably possible after becoming entitled.

(2) A member shall not withdraw or transfer money from a trust account except

(a) money properly required for payment on behalf of a client,

(b) money required to reimburse the member for money properly expended or for expenses properly incurred on behalf of a client,

(c) money properly required for or toward payment of the members fees for which a billing or other written notification has been delivered to the client,

(d) money that is directly transferred into another trust account and held on behalf of a client, or

(e) money that has been deposited inadvertently into a trust account in contravention of this Rule,

but in no case shall withdrawals or transfers exceed the balance of the money held in trust for the client

(3) Other than allowed by subsection 5.04(2), money shall not be withdrawn or transferred from a trust account unless a person designated by the Society specifically authorizes its withdrawal or transfer in writing.

(4) A member shall only withdraw money from a trust account

(a) by a cheque made in compliance with subsection 5.05(5), or

(b) by means of an electronic funds transfer completed in accordance with subsection 5.05(6).

(5) A cheque drawn on a trust account shall

(a) be marked as a trust cheque,

(b) be payable to a named payee,

(c) not be payable to cash or to bearer,

(d) not be released from the member's office or law firm until there are funds on deposit to the credit of the client on whose behalf the cheque is drawn,

(Rule 5.04(5)(d): Amended Summer Term Convocation, June 10, 2005)

(e) to be signed by a member, and

(Rule 5.04(5)(e): Adopted Summer Term Convocation, June 9, 2006)

(f) include the date, the payee and the amount prior to the signing of the cheque. A member shall not sign a blank trust cheque.

(Rule 5.04(5)(f): Amended Summer Term Convocation, June 9, 2006)

(5.1) Where a member practices alone and without any partners or associates, arrangements must be made for another member to sign the trust cheque during periods of absence from the firm.

(Rule 5.1: Adopted Summer Term Convocation, June 9, 2006)

(6) A member shall only withdraw money from a trust account by means of electronic funds transfer if the following conditions are met:

(a) the electronic transfer system used by the member does not permit an electronic transfer of funds without a password or access code to authorize a financial institution to carry out the transfer;

(b) the member maintains the password or access code referred to in subsection 5.05(6)(a);

(c) the electronic funds transfer system will produce, no later than the close of the banking day immediately following the day on which the electronic transfer of funds was authorized, a written confirmation from the financial

institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer was received;

(Rule 5.04(6)(c): Amended Summer Term Convocation, June 10, 2005)

(d) the confirmation referred to in subsection 5.05(6)(c) contains

(i) the number of the trust account from which the trust money is drawn,

(ii) the name, branch name and address of the financial institution where the account to which the money is transferred is kept,

(iii) the name of the person or entity in whose name the account to which money is transferred is kept,

(iv) the number of the account to which money is transferred or such other identifying reference as may be required to confirm the payment on account of the client as requested,

(v) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and

(vi) the time and date that the confirmation from the financial institution was sent to the member;

(e) before any data describing the details of the electronic funds transfer or authorizing the financial institution to carry out the transfer is entered into the electronic funds transfer system, an electronic trust transfer requisition in a form approved by the Society and signed by the member; and

(f) the data entered into the electronic funds transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer is specified in the electronic funds transfer requisition.

(7) No later than the close of the banking day immediately following the day on which the confirmation referred to in subsection 5.05(6)(c) is sent to a member, the member shall

- (a) produce a printed copy of the confirmation,
- (b) compare the printed copy and the signed electronic funds transfer requisition relating to the transfer to verify whether the money was withdrawn from the trust account as specified in the signed requisition,
- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which trust money was withdrawn from the trust account, and
- (d) after complying with subsections 5.05(7)(a) to (c), sign and date the printed copy of the confirmation.

(8) For greater certainty, a member shall not make cash withdrawals from a trust account by means of a debit card.

(9) At all times a member shall maintain sufficient balances on deposit in trust to meet the member=s obligations with respect to money held in trust for clients, and all shortages shall be restored immediately by the member.

## Reporting overdrafts

5.06 (1) Subject to subsection 5.06(2), the member shall report immediately to the Executive Director any overdrafts in the member's trust account, which report shall include a full explanation for how the overdraft occurred.

(2) A transaction which creates an overdraft in a trust account below an amount sufficient to meet all of the member's obligations shall not be a violation of these

Rules and does not have to be reported if the transaction which caused the overdraft resulted from:

- (a) a debit memo for financial institution charges or services charges,
  - (b) an error on the part of the financial institution,
  - (c) a delay by the financial institution in posting a cheque deposited to the account, or
  - (d) a cheque deposited to the account being returned by the financial institution it was drawn upon, provided the member, within three banking days of notification of the error, deposits sufficient money in the trust account to offset the shortage.
- (3) An accountant shall not be required to report an incident referred to in subsection 5.06(2) if the overdraft in the trust account was less than one hundred dollars.

## Reporting

- 5.07 (1) Upon the opening or closing of a general trust account every member shall forthwith give written notice to the Executive Director of the Society in which jurisdiction the member is engaged in practice.
- (2) Where a member gives notice under subsection 5.07(1) of opening a trust account, the member shall also file with the executive director a letter and a Form 5.07C from an accountant as defined in Rule 5.01, certifying that the member has in place a trust accounting system that will enable the member to comply with the trust account Rules and that the member has been instructed in the procedures to be followed in order to operate the trust accounting system.

(Rule 5.06(2): Amended Fall Term Convocation, September 26, 2005)

(3) Every member shall complete and file with the executive director not later than a date fixed by the Society a Member's Annual Report in Form 5.07A or a Declaration in Form 5.07B.

(Rule 5.06(3): Amended Fall Term Convocation, September 26, 2005)

(4) The Member's Annual Report filed under subsection 5.07(3) shall be signed only by the member, or in the case of a firm, by the managing partner or other member in authority designated by the firm, and the bookkeeper of the firm.

(Rule 5.06(4): Amended Fall Term Convocation, September 26, 2005)

(5) If, in the opinion of the Executive Director, a member fails to provide sufficient information in the Member's Annual Report to confirm that the member is complying with these Rules, the Executive Director may request the member in writing to provide additional information by such time and to such extent as the Executive Director considers necessary, including filing a further Report on a fixed or periodic basis.

## Reporting

(6) Every member who is subject to exemption under subsection 5.09(1), shall complete and file with the Executive Director not later than a date fixed by the Society a Declaration in Form 5.06B confirming the exemption.

(Rule 5.06(6): Amended Special Term Convocation, December 5, 2005)

## Suspension for failure to file

5.08 If a member fails to file a report in Form 5.07A or 5.07B within the time required under section 5.07, or fails to provide additional information in compliance with a request under subsection 5.07(5), the Executive Director shall send a notice in writing to the member and/or firm informing the member and/or firm that if Form 5.07A or 5.07B is

not filed within fifteen (15) days from the date of delivery of the notice to the member and/or firm, the membership or enrollment in the society shall be suspended until such time as the member and/or firm is in compliance.

(Rule 5.07: Amended Special Term Convocation, December 5, 2005)

## Exemptions

### Exemptions

5.09 (1) These Rules do not apply to a member who,

(a) does not engage in the private practice of law or,

(b) practices exclusively as an employee of government, an agency of government, a local government authority, corporation or other non-member of the Society, or

(c) by reason of the nature of the member's practice it is not necessary to maintain a trust account.

(2) A member who is registered as a non-practising member is exempt from the filing of a Declaration in Form 5.07B.

(Rule 5.08: Amended Special Term Convocation, December 5, 2005)

## Investigations and audits

5.10 (1) The Executive Director may initiate an investigation or audit of the books, records, accounts and transactions of a member or former member to determine compliance with these Rules.

(2) The Executive Director shall select the investigator or auditor to conduct an investigation or audit under subsection 5.10(1) from a list of auditors approved by the Society or designated for the particular investigation or audit.

(3) For the purpose of ensuring that all members comply with these Rules, the Executive Director may implement and direct a continuing program of unannounced investigations or audits of the books, records, accounts and transactions of members

(4) The Executive Director may conduct a program referred to in subsection 5.10(3) by randomly selecting members whose accounts are to be investigated or audited or by dividing the members into categories and, within each category, randomly selecting members for investigation or audit.

(5) Where an investigation or audit is to be conducted under this section, the member shall produce to the person conducting the investigation or audit all evidence, books, records, papers, accounts, vouchers, files, clients' files and explanations which may be required for the investigation or audit, and failure of the member to co-operate constitutes professional misconduct.

(6) The Executive Director shall provide a copy of the report of an investigator or auditor to the member whose accounts have been investigated or audited.

(7) An accountant conducting an investigation or audit under this section shall, before doing so, complete and file with the Executive Director an undertaking to maintain strict confidentiality with respect to all matters connected with the investigation or audit.

(8) If the investigator or auditor reports that these Rules have not been complied with, the Executive Director

(a) may order the member in writing to take all necessary steps to comply with these Rules as specified in the order and within the time fixed for doing so, and

(b) may initiate whatever disciplinary action is appropriate, in which case the investigator's or auditor's report may be used as the basis for disciplinary proceedings, including being used as evidence.

(9) Whenever an investigation is carried out under this Rule the member whose books and records are being investigated shall pay the Society costs, or part of the costs, of the investigation and the member shall pay the amount in full within the terms and dates fixed or extended by the Executive Director.

(10) If a member fails to comply with an order under subsection 5.09(8)(a) or fails to pay the amount determined under subsection 5.09(9) within the terms and date fixed or extended, the Executive Director shall suspend the member until the member is in compliance.

(11) This section applies, with necessary modifications, to members acting in a representative capacity in accordance with sections 5.01 and 5.14.

## Preservation of rights

5.11 Nothing in these Rules deprives a member of any recourse or right, whether by way of lien, set-off, counter-claim, charge or otherwise, against money standing to the credit of a client in the member's trust account or with respect to trust property.

## Borrowing and Lending

### Borrowing

5.12 (1) A member shall not borrow money from a client during the existence of a solicitor and client relationship unless:

- (a) the client is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, or
- (b) the client is a related person as defined by the *Income Tax Act* (Canada) and the member is able to discharge the onus of proving that the client's interests were fully protected by the nature of the matter and by independent legal advice or independent legal representation, or
- (c) the Benchers, because of other circumstances, authorize the transaction.

#### Lending

- (2) Before lending money to a client during the existence of a solicitor and client relationship a member must, before agreeing to make the loan:
  - (a) disclose and explain the nature of the conflicting interest to the client;
  - (b) require that the client receive independent legal representation;
  - (c) obtain the client's consent; and
  - (d) obtain the authorization of the Benchers as required by the Law Society.
- (3) When seeking the authorization of Benchers under rule 5.12(1)(c) or rule 5.12(2)(d), a member must comply with the following conditions:
  - (a) all requests for financial assistance must be submitted in writing and include
    - (i) an explanation of the circumstances identified in paragraph (b),
    - (ii) written confirmation, signed by the member and the client, that the conflicting interest has been disclosed to and explained to the client, and

(iii) written confirmation signed by the member and the client, that no interest or administration fee will be charged,

(b) the financial assistance may be provided only in the following circumstances:

(i) if the client is in urgent financial need that impacts the matter for which the member is retained, and

(ii) the provision of financial assistance is a compassionate gesture to relieve personal or financial distress and not for commercial transactions,

(c) the financial assistance must not exceed \$10,000.00 in total value;

(d) the provision of financial assistance will not impair the member's objectivity with regard to the matter for which the member is retained,

(e) where the client is an infant or a person under disability, these rules apply to financial assistance made through the client's guardian or representative who has the appropriate legal authority to obtain the financial assistance,

(f) the member shall not advertise the availability of financial assistance, and

(g) all requests for financial assistance must be approved by Benchers before payment is made to the client.

(4) Prior to providing the financial assistance, the member must require that the client obtain independent legal representation from another member who is fully informed of the circumstances surrounding the proposed financial assistance including the terms of repayment.

(5) If the client waives independent legal representation, the client must obtain independent legal advice and the member providing same must provide to the client a certificate of independent legal advice in a form acceptable to the Society. If a client elects to waive independent legal representation and to rely on independent legal advice only, the retained member has a responsibility that should not be lightly assumed or perfunctorily discharged.

(6) The cost of the independent legal advice may be paid by the member providing the financial assistance, in which event the cost shall be included as a disbursement and the member must confirm that the client has been advised of the disbursement.

(7) Within ten (10) days of the provision of the financial assistance, the member must provide to the Executive Director evidence to demonstrate compliance with these guidelines, including

- (a) a copy of the lending agreement signed by the member and the client, and
- (b) a copy of the certificate of independent legal advice, if applicable.

5.12.1 For the purposes of this rule,

- (a) guaranteeing or co-signing a loan for a client is considered the same as lending money to a client;
- (b) member includes a company controlled primarily by a member;
- (c) "independent legal representation" means a retainer in which
  - (I) the retained lawyer, who may be a lawyer employed as in-house counsel for the client, has no conflicting interest with respect to the client's transaction, and

- (II) the retained lawyer will act as the client's lawyer in relation to the matter;
- (d) "independent legal advice" means a retainer in which:
- (I) the retained lawyer, who may be a lawyer employed as in-house counsel for the client, has no conflicting interest with respect to the client's transaction,
- (II) the client's transaction involves doing business with:  
(i) another lawyer, or (ii) a corporation or other entity in which the other lawyer has an interest other than a corporation or other entity, whose securities are publicly traded,
- (III) the retained lawyer has advised the client that the client has the right to independent legal representation,
- (IV) the client has expressly waived the right to independent legal representation and has elected to receive no legal representation or legal representation from another lawyer,
- (V) the retained lawyer has explained the legal aspects of the transaction to the client, who appeared to understand the advice given, and
- (VI) the retained lawyer informed the client of the availability of qualified advisers in other fields who would be in a position to give an opinion to the client as to the desirability or otherwise of a proposed investment from a business point of view;
- (Amended Rule 5.11, Special Term Convocation, December 7, 2009; Amended, Benchers' Convocation, 11 February 2013)

## Bankruptcy and insolvency

5.13 (1) Every member admitted as such by the Society shall immediately notify the Executive Director upon

(a) receipt of a petition under the Bankruptcy and Insolvency Act (R.S. 1985, C. B-3) in which the court is asked to make a receiving order with respect to the property of the member,

(b) the making by the member of an assignment under the *Bankruptcy and Insolvency Act*,

(c) the making by the member of a proposal under the *Bankruptcy and Insolvency Act*.

(2) From the date of the event set out in Rule 5.12(1), until the petition, assignment, proposal or receiving order has been satisfied, withdrawn, discharged or is otherwise of no further force or effect, the member and the trustee of the estate of the member in bankruptcy shall not, without written permission of the Executive Director, accept from or on behalf of clients any money or other property, except in payment of costs and fees of the member, and then only on such conditions imposed by the Executive Director.

(Amended Part V, Summer Term Convocation, June, 2004 to come into force October 1, 2004; Amended Rule 5.12, Winter Term Convocation, February 22, 2005)

## Acting in a Representative Capacity

5.14 (1) When a member receives money in a representative capacity, the money must not be paid into the member's trust account but must be paid into a separate trustee account that has been established by the member for that purpose.

(2) Sections 5.02 and 5.05 of this Rule apply to all trustee accounts operated by a member.

(3) Members are required to notify the auditor, selected by the Executive Director, of all trustee accounts over which the member has control and must submit, on demand, the books, records, accounts and documentation thereof in a form sufficient to accommodate an examination, review, audit or investigation ordered by the Executive Director and co-operate with the auditor selected in the conduct of any examination, review, audit or investigation that may be ordered.

## Failure to Comply

### Failure to Comply

5.15 Failure to comply with these Rules shall constitute an allegation of conduct deserving of sanction.

(Adopted Rule 5.13, Special Term Convocation, December 5, 2005)