THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 3.3.6

[Formerly PDR 1989, miscellaneous section, query 6]

QUERY: SOLICITORS' ACCOUNTS RULES – APPLICATION OF THE RULES ON CASH, CHEQUES AND DEPOSIT ACCOUNTS

1. Question: Cash or cheques received by a solicitor (as defined by the subsidiary legislation) but which is immediately endorsed or paid to a third party (payee) in the ordinary course of business.

As you will be aware, this is a very common practice particularly in conveyancing where such money may pass through a number of solicitors before it is paid into the payee's account.

Rule 9(1) of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ('SAR') does not require a solicitor who received such money to pay the same into a client account. In such a case, no entry would be made in the client cash book. Rule 11(2) of the SAR however requires, among other things, all dealings (referred in rule 11(1)(*a*) of the SAR) with client's money received, held or paid by a solicitor be recorded in a client's cash book or transfer records and in a client ledger.

In the application of these rules, is it correct to state that rule 11(2) of the SAR would apply to cash and cheque which is not restrictively crossed (*eg*, a bearer cheque) in favour of the third party because the solicitor has control over and can manipulate the money so received? If this is so and if the cash or cheque is not paid into a client account, entries should still be made in the transfer records and the client ledger?

However, if the cheque in question is restrictively crossed (*ie*, a 'non-negotiable') account payee only cheque, in favour of the third party, the solicitor will then have no control over and cannot manipulate the money included in such a cheque which cannot be banked into a client account. In fact, the solicitor cannot dispose of the cheque in any other way except to pass it on to the third party. In such a case, is the solicitor still required to make any entry in the transfer records and the client ledger if there are adequate records in the client's file relating to the transaction?

Answer: "Cheque" and "draft" in rule 9(1)(*b*) of the SAR can only mean a cheque or draft payable to bearer or to the solicitor himself/herself as otherwise it cannot be indorsed by the solicitor. A cheque or draft payable to the client or a third party is not covered by this rule and is not client's money because it is not money received or held by the solicitor. It is not covered by rule 11 of the SAR.

In the situations covered by rules 9(1)(*a*) and 9(1)(*b*) of the SAR, the money is not paid into a client account (*ie*, a bank account maintained for this purpose) but is dealt with and rule 11(2B) of the SAR requires that properly written up books must be kept to show such dealings.

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2. Question: Interest on stakeholder money placed on deposit account.

Stakeholder money is no doubt client's money which is normally placed by the solicitor on a specific deposit account. If the solicitor is entitled to retain the interest earned on stakeholder money in accordance with the ruling adopted by the Council of the Society, such interest is therefore not client's money.

In practice most solicitors treat interest on stakeholder money as their entitlement only when the matter has been completed. This is to allow them the flexibility of passing on the interest earned to their clients in certain cases. To preserve the principal and cumulative interest applicable to each matter, it is more convenient to roll over both principal and interest on each expiry date although this may have the implication of leaving non client's money in client account. Upon completion of the matter, the principal will be paid over to the relevant party and the interest transferred to the office account if the solicitor is to retain the interest in accordance with the Society's ruling.

In this case, would the treatment of principal and interest be in order and is it still necessary for the solicitor to advise his/her client when he/she is making a transfer of interest from the client (deposit) account to the office account although he/she is entitled to such interest earned?

Answer: Money received by the solicitor as a stakeholder (in connection with his/her practice as a solicitor) is client's money. It should however not be credited to the particular client for whom the solicitor is acting but to a separate stakeholder account. This is because the money does not belong to the client or to the other party until after the happening of the contingency. If the money is deposited at interest the interest belongs to the solicitor (in the absence of any agreement to the contrary) and when it has been earned it should be paid to the solicitor and not paid into the client account. If it has been inadvertently paid into the client account it must be transferred out without delay.

Where a deposit is 'rolled over' the interest earned is added to the original deposit and the aggregate amount is deposited at interest. The interest is money to which the only person entitled is the solicitor himself/herself and is therefore not 'client's money'. Rule 6 of the SAR will be breached by rolling over in cases where the solicitor is entitled to the interest earned by depositing client's money at interest. The Council considers the practice of maintaining 'flexibility' to be undesirable.

[Note: For the avoidance of doubt, this does not apply to conveyancing money. Members' attention is also drawn to the Law Society's Guide to Solicitors' Accounts, paragraph 7.4.]

Date: 31 January 2019

THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE