

**Certified True Copy of Amendments
to the Rules of the Law Society of Saskatchewan
November 27, 2015**

It was moved, seconded and carried that the *Rules* of The Law Society of Saskatchewan be amended. Please note that deletions have a “line through” for identification purposes.

Part 18 – Contingent Fee Agreements

The concepts of retainer agreements and general retainer agreements are not clearly differentiated in the Rules. The Law Society no longer supports the use of general retainers, so the Benchers approved removal of that concept from the Rules and amended the definition of retainer agreements. Language that exempts funds received under a retainer agreement from compliance with the trust accounting Rules was removed. Finally, the title was amended to include “retainer agreements” as well as contingent fee agreements.

Contingent Fee and Retainer Agreements

Definitions

1500. In this Part

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“**retainer agreement**” means an agreement which provides that a member is retained by a client to act on the client’s behalf for one or more matters or generally for a specified period of time for a fee sum of money paid by the client in advance of any services performed by the lawyer, ~~but does not apply to money paid to a member in trust which is intended to be drawn upon to pay fees and disbursements in accordance with Part 13 of these Rules.~~

Retainer Agreements

The proposed amendment would make it clear that funds received under any retainer agreement are to be treated as trust funds, which require an accounting to be provided for legal work completed pursuant to the retainer.

Retainer Agreements

1504. (1) Every retainer agreement entered into by a member shall be in writing.

(2) A member who enters into a retainer agreement shall ensure that the agreement:

- (a) specifies in clear and unequivocal language the term of the agreement, whether or not any further fees or disbursements will be charged, what specific matters ~~if any~~ are covered by the agreement; and
- (b) does not mislead clients in any way with respect to the services covered by the agreement;

~~(c) subject to subsection (3) below, specifies that money received by the member under the terms of the retainer agreement becomes the property of the member immediately upon receipt.~~

~~(3) A member may agree with the client as part of a retainer agreement that money paid to the member pursuant to the agreement will be repaid under specified circumstances.~~ Funds received pursuant to a retainer agreement are considered trust funds as defined in Rule 900 and must be treated as such, in accordance with Part 13 of these Rules.

PART 13 - Accounting

An amendment to the definition of “trust fund” is recommended to make clear that money received for services already performed does not constitute trust funds. While this may generally be understood, it is not clear. Eliminating general retainers also requires an amendment to Rule 921, which contains the only explicit reference to general retainers in the Rules.

A. Definitions

Definitions

900. In this Part,

...

“**trust funds**” means any monies received by a lawyer, in his/her capacity as a lawyer, which are not intended to immediately become property of the lawyer and include:

- (a) funds from a client for services to be performed or for disbursements to be made on behalf of the client; ~~or~~
- (b) funds which belong in part to a client and in part to the member, and it is not practicable to split the funds; ~~or~~
- (c) funds received from or held on behalf of a third party which relate to a transaction in which a client is involved, but does not include funds which are to be remitted to any government by way of taxes or employee payroll deductions;:-

but does not include:

- (d) money received on account of the member's fees or disbursements respecting services already performed and for which a written billing has been rendered and delivered or for which a written billing is rendered and forwarded forthwith after receipt of the money.

Types of Transactions which must be Recorded in Non-Trust Books, Records and Accounts

921. (1) A member shall record in the member's non-trust books, records and accounts:

- (a) funds received from the practice of law which belong entirely to the member or to other persons associated with the member in the practice of law;
- ~~(b) funds which are a general retainer for which the member is not obligated either to account or to render legal services;~~
- ~~(eb)~~ funds received by the member on account of fees for services already performed; and
- ~~(ec)~~ funds received to reimburse the member for disbursements already made or expenses already incurred on behalf of a client.

(2) A member who receives funds under subrule (1) shall forthwith deliver a bill for the funds received, containing sufficient particulars to identify the services performed and disbursements incurred.



CERTIFIED to be a true copy of the resolutions passed by the Benchers of the Law Society of Saskatchewan at their meeting held November 27, 2015.

THOMAS J. SCHONHOFFER, Q.C.
Executive Director