

LEGAL PRACTITIONERS REGULATION

No. 26 of 1980

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RESOLUTION No. OF 1980

To provide for the admission and registration of legal practitioners, their qualifications, discipline and other matters connected therewith.

The Representative Assembly of the New Hebrides at its sitting on the day of 1980 hereby resolves and decides in accordance with Article 23 of the Schedule to the Exchange of Notes of the 15th September 1977 to adopt the following measures :-

PART 1 - INTERPRETATION

Interpretation.

1. In this Regulation unless the context otherwise requires :-
"employee" shall mean a person employed by a legal practitioner in his professional practice in any capacity or a person serving a qualifying period of apprenticeship or training with a legal practitioner in accordance with any order made under Section 15.
"legal practitioner" means a person registered as a legal practitioner in accordance with any order made under Section 15.
"Secretary" means the Secretary of the Law Council appointed in accordance with Section 4.

PART 2 - LAW COUNCIL

Establishment
of Law Council.

2. (1) There is established a council to be known as the Law Council.
(2) The Law Council shall consist of :-
 - (a) The Chief Justice who shall be chairman;
 - (b) The Attorney General;
 - (c) One legal practitioner appointed for two years by the Minister responsible for Justice and who shall be eligible for re-appointment.

Disqualification
of member.

3. The office of the appointed member of the Council shall become vacant if he :-
 - (a) resigns by not less than 30 days notice in writing addressed to the Minister;
 - (b) ceases to be a registered legal practitioner;
 - (c) becomes bankrupt;
 - (d) is declared by notice in writing addressed to the Minister and signed by the other members to be incapable by

reason of physical or mental illness from carrying out the functions of his office;

- (o) becomes otherwise unable or unfit to carry out the duties of his office as a member.

Secretary to the Law Council.

4. (1) There shall be a secretary to the Law Council who shall be a public officer.
- (2) The Secretary may be the holder of another public office.
- (3) When there is a vacancy in the office of Secretary the Minister responsible for Justice may appoint a public officer as acting Secretary.

Functions of Law Council.

5. (1) The Law Council shall have general responsibility for the control and supervision of legal practitioners.
- (2) Without derogating from the generality of subsection (1) the Law Council shall :-
- (a) prescribe the qualifications for legal practitioners;
- (b) keep a Register of Legal Practitioners;
- (c) be responsible generally for the discipline of legal practitioners;
- (d) be responsible for the etiquette and conduct of legal practitioners;
- (e) provide for the legal education and training of legal practitioners;
- (f) control the registration of notaries public.

Meetings of the Law Council.

6. (1) Meetings of the Law Council shall be convened by the Chief Justice by not less than 7 days notice in writing to the other members.
- (2) Decisions of the Law Council shall be made by a majority of its members.
- (3) The quorum at meetings shall be all the members.
- (4) Subject to this Regulation the Law Council may regulate its own procedures.

PART 3 - DISCIPLINARY COMMITTEE

Disciplinary Committee.

7. (1) The Law Council shall by order appoint a Disciplinary Committee to hear complaints against legal practitioners and employees.
- (2) The Disciplinary Committee may be appointed for a fixed term, or from time to time to hear a particular complaint or number of complaints.

- (3) The Disciplinary Committee shall consist of not less than 5 persons who shall be :-
 - (a) a judicial officer within the meaning of the Criminal Procedure Code who shall be chairman;
 - (b) not less than 2 legal practitioners nominated by the Attorney General;
 - (c) not less than one person not qualified to be registered as a legal practitioner;
 - (d) such other person or persons as the Law Council shall consider suitable.
- (4) The quorum at meetings of the Disciplinary Committee shall be 3 members. The same three members shall constitute a quorum for the entire hearing of a disciplinary complaint.
- (5) The Secretary shall be the secretary of the Disciplinary Committee.

Complaints against legal practitioners and employees.

8. (1) Any person who wishes to complain concerning the conduct of a legal practitioner or an employee shall do so by lodging a complaint in writing to the Secretary containing specific allegations of misconduct which may consist of acts or omissions.
- (2) The manner in which the Disciplinary Committee shall hear complaints shall be prescribed and provision may be made for summary dismissal of complaints where the committee considers a complaint does not reveal a prima facie case of misconduct.

Powers of Disciplinary Committee.

9. (1) The Disciplinary Committee shall have the same powers as the Supreme Court to summon and examine witnesses and order the production of documents.
- (2) The Disciplinary Committee may require the Secretary to investigate and report on a complaint before it considers it further.
- (3) If the Disciplinary Committee finds a legal practitioner has committed misconduct it may -
 - (a) order that he be struck out of the Register of Legal Practitioners;
 - (b) suspend the legal practitioner from practice for such period as it shall consider fit;
 - (c) impose a fine of not more than FNH 150,000 on the legal practitioner which shall be payable into the Revenue Fund;
 - (d) order the legal practitioner in addition to any other penalty to pay compensation to a complainant of not more than FNH 150,000;

(e) reprimand the legal practitioner.

- (4) If the Disciplinary Committee finds an employee has committed misconduct it may order that no legal practitioner may employ that employee either without defining a period or during a defined period from the date of the order.
- (5) The Disciplinary Committee may order a complainant or person against whom a complaint has been made to pay the costs or part of the costs of any person appearing before it.

Appeals.

10. (1) A person found guilty of misconduct by the Disciplinary Committee may appeal against such finding to the Supreme Court within 15 days of the notification to him by the Secretary of such finding.
- (2) The Chief Justice shall make rules for appeals to the Supreme Court under this section.
- (3) The Supreme Court may dismiss such appeal or set aside or vary the decision of the Disciplinary Committee.
- (4) The Attorney General may appoint counsel to represent the Disciplinary Committee as respondent before the court.

Applications for restoration to register and for cancellation of orders of Disciplinary Committee.

11. (1) A person against whom an order has been made under Section 9 (3) (a) may apply to the Disciplinary Committee at any time or times after 6 months has elapsed after the making of the order to have his name restored to the register of legal practitioners.
- (2) A person against whom an order has been made under Section 9 (3) (b) or Section 9 (4) may if the order is indefinite or for 12 months or more apply to the Disciplinary Committee at any time or times after 6 months has elapsed after the making of the order to have the order cancelled or the period of suspension made shorter.
- (3) The Disciplinary Committee shall have absolute discretion to restore the name of the applicant to the register of legal practitioners, cancel the order, shorten the period of suspension or refuse the application.

PART 4 - PRACTICE BY PERSONS NOT REGISTERED AS LEGAL PRACTITIONERS

Penalty for illegally practising as a legal practitioner.

12. Subject to Section 13 any person, not being a legal practitioner or being a legal practitioner but suspended from practice and whether or not such person has at any time before the coming into operation of this Regulation practised as

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a legal practitioner in Vanuatu who holds himself out to be entitled to practice or practices as a legal practitioner in Vanuatu shall be guilty of an offence and liable on conviction to imprisonment for 2 years or to a fine of FNH 40,000 or to both such fine and imprisonment.

Temporary
Practising
Certificate.

13. (1) Notwithstanding the other provisions of this Regulation the Chief Justice may on his own motion or on an application by the Attorney General or a legal practitioner grant a person who is not registered as a legal practitioner under this Regulation a temporary practising certificate.
- (2) A temporary practising certificate shall be granted under subsection (1) either :-
- (a) for the person named in the certificate to act as counsel in a case to be heard or being heard by a court in Vanuatu provided that the person named in the certificate is acting under the instructions of the Attorney General or a registered legal practitioner; or
 - (b) if the Chief Justice considers that it would be in the public interest to grant a certificate.

Penalty for
employing persons
suspended from
employment.

14. A legal practitioner who knowingly employs a person in respect of whom an order has been made under section 9 (4) shall be guilty of an offence and liable on conviction to a fine not exceeding FNH 50,000.

PART 5 - ORDERS AND TRANSITIONAL

Orders.

15. (1) The Law Council may make orders not inconsistent with the provisions of this Regulation and for the better carrying out of its provisions.
- (2) Without derogating from the generality of subsection (1) orders made pursuant to this section may provide for -
- (a) the qualifications required for applicants for registration as legal practitioners;
 - (b) the name by which legal practitioners shall be called;
 - (c) the post graduate training of persons desiring to become legal practitioners;
 - (d) forms and fees that persons making applications pursuant to this Regulation or orders made hereunder may be required to complete and pay;
 - (e) the form of the register of legal practitioners and certificates of registration therein;

- (f) the procedures to be followed for the making, of complaints and for hearings of the Disciplinary Committee;
- (g) the procedure to be followed on applications for cancellation of orders by the Disciplinary Committee;
- (h) rules of etiquette and conduct of legal practitioners;
- (i) scales of fees chargeable by legal practitioners in contentious and non contentious matters;
- (j) the regulation of the manner in which legal practitioners shall deal with money held by them on behalf of other persons and the accounts to be kept in respect thereof;
- (k) the auditing of the accounts of legal practitioners and the qualifications of the auditors who audit those accounts;
- (l) the conduct of employees;
- (m) any other matter that shall or may be proscribed under this Regulation.

Transitional
and Saving.

16. (1) Notwithstanding any other provision of this Regulation any person resident in Vanuatu on the coming into operation of this Regulation and who within 6 months of such coming into operation produces to the Secretary a certificate signed by :-
- (a) the Co-Presidents of the Pre-Independence Supreme Court; or
 - (b) by the Chief Justice or the Attorney General; and
 - (c) to the effect that he has for not less than 6 months prior to the date of the certificate practised as a legal practitioner before the District or Supreme Court or has been employed as a legal officer by the Government as the case may be shall be entitled to be entered in the Register of Legal Practitioners.
- (2) The first person to be appointed as a member of the Law Council under Section 2 (c) shall be a person who the Minister considers is resident in Vanuatu and practising as a legal practitioner.