

JAMAICAN BAR ASSOCIATION

INTERIM REPORT AND DISCUSSION PAPER INTERVENTION IN THE PRACTICE OF AN ATTORNEY AT LAW

INTRODUCTION

1. The Association at its Extra-Ordinary Meeting of December 3, 2005 established a Committee on the intervention of the GLC in the practice of an attorney at law and on continuing legal education. The Committee was charged with the task of formulated draft proposals and legislation on both matters and to report to the Association's Extra-Ordinary Meeting scheduled for February 4, 2006.
2. Needless to say the time period was patently too short with holidays in between to complete the task. However the Committee took the early position that it will take its task as far as it practically could given the importance of both subject matter especially the matter of intervention.
3. The Committee has sought to distill the principles upon which intervention should be triggered and guidelines for its operation. The Report is to be treated as a discussion paper at this stage as it was not able to obtain and canvass a sufficiently wide cross-section of the profession to obtain their views and input on the work in progress of the Committee on intervention. The Report only covers the subject on intervention. The matter of the continuous legal education is still pending before the Committee.
4. Members are urged to discuss the matter of intervention and continuing legal education with other attorneys and E-mail or fax to the Committee questions, comments and proposals thereon. The E-mail address is rslkgn@cwjamaica.com: and the Fax No. is 948 6915.

WHAT IS INTERVENTION?

5. It is very important from the outset to clearly define what intervention is so that the issues relating to intervention may be identified and fully ventilated with a view to ensuring that the relevant regulatory framework is developed.
6. **Definition** - where any of the prescribed reasons apply, intervention means the taking over by the GLC of the management and control of the files, money and or property of the clients of the attorney in the best interest of both the

clients and attorney for such period of time as the Court may specify.

PRINCIPLES OF INTERVENTION

7. Intervention should only be done as a last resort.
8. Intervention should only be done in absolutely necessary and specified circumstances.
9. There must be no intervention without a judicial order of the Supreme Court. The Court must specify the time period of the intervention and the terms of the intervention.
10. Intervention must be carried out within the confines of the orders and directions of the Court. Anything to be done by the intervenor which falls outside any existing order of Court will require a further Court order to be obtained by an application with notice to the attorney or his agent (if any).
11. The GLC must give notice of the application to the attorney in question.
12. At least seven(7) days notice of the hearing of the application must be given to the attorney or his agent (if any) provided that in the case of an emergency, duly established by affidavit evidence, at least three (3) days notice must be given.
13. Service of the application must be done personally on the attorney or his agent or by substituted service pursuant to an ex parte Court order.
14. The application for substituted service must show that all reasonable means were adopted and exhausted to personally serve the attorney or his agent (if any) and such means were unsuccessful.
15. Where the attorney appoints an agent then the order for substituted service should be in terms to ensure that the application for intervention by the GLC is likely to come to the attention of the attorney and his agent (if any).
16. An appeal from an order of intervention should be to a Judge of the Court of Appeal in Chambers and should be heard within seven days of the order of intervention. The appellant will be responsible for filing with the Registry of the Court of Appeal the record of appeal consisting of all the documents relied on at the hearing in the Court below, the order for

intervention and the notice and grounds of appeal. The Rules Committee of the Supreme Court would be required to sit and consider and make appropriate provisions for the amendment of the Court of Appeal Rules accordingly to facilitate such an appeal.

17. The application for intervention must consist of admissible evidence setting out a list of particular facts without which the application will fail.

18. Before the Court can make an order for intervention on terms, the Court must consider the following:

(1) whether the applicant has provided sufficient evidence to support one of the prescribed reasons for intervention (see Reasons for Intervention below).

(2) the reason proffered for intervention.

(3) what measures were taken by the applicant to deal with the matter giving rise to the application for intervention.

(4) what was the response of the attorney in question, his agent or staff to such measures.

(5) what is the status of the client's file, money or property at the time of the hearing of the application for intervention.

(6) what are the immediate consequences of non-intervention.

(7) what are the consequences to the attorney if there is intervention.

(8) the balancing of the consequences of intervention to the attorney and client to determine whether the order of intervention should be made.

(9) whether any other suitable remedy is available other than intervention.

(10) any other relevant circumstance.

REASONS FOR INTERVENTION

19. Extreme care must be taken to ensure that good reasons exist for intervention. Intervention should only be allowed where the prescribed

reasons exist. Intervention should not be allowed for cases involving professional misconduct or malpractice e.g. poor or improper handling of a client's matter, files, money or property for which there are adequate existing remedies via the GLC disciplinary proceedings or the Courts.

20. Subject to the points mentioned below, intervention should only be allowed if an attorney is unable or ceases to practice in circumstances where the attorney:

- (1) is suspended from practice or his name struck from the roll, or
- (2) has died or is suffering from such mental or physical incapacity that he is rendered incapable of performing his duties as an attorney at law, or
- (3) has abandoned or terminated his practice

AND no satisfactory arrangements are made for the handling, winding up and disposal of the legal matters of the specific client in question or his clients and no agent for the attorney has been appointed or, if appointed, the appointment has expired.

APPOINTMENT OF AGENT BY ATTORNEY

21. Each attorney at his option may appoint an agent by a prescribed form lodged with the GLC to act on his behalf where the prescribed reasons (abovementioned) apply in order to ensure that there are satisfactory arrangements for the handling, winding up and disposal of the legal matters of the specific client in question or the attorney's clients in general.

22. The GLC will be able to intervene directly in an attorney's practice in a case of an attorney who did not appoint an agent or whose appointment has expired at the time of the intervention order issued by the Court. The agent will be authorised by the attorney to have access to the attorney's files and books but not his client accounts unless specifically provided in the appointment form and certified by the financial institution that the agent is a signatory to the account. The appointment form will set out the authority of the agent.

23. In the case of access to the attorney's client accounts where the attorney's agent has no access, then an appropriate Court order will have to be obtained by the GLC upon an inter partes application with seven (7) days

notification of the application.

24. The appointment of the agent by the attorney will last for two years and is renewable. An attorney may appoint more than one person as his agent.

UNDERTAKINGS BY THE GLC

25. The GLC must be required to give undertakings in order to obtain an order for intervention:

(a) to pay damages for any loss, damage or injury suffered by the attorney as a result of unjustified intervention or any intervention that is conducted inappropriately or contrary to the terms of the order of intervention

(b) to indemnify the attorney against claims by other clients and third parties who are adversely affected by the intervention or the conduct of same.

CODE OF CONDUCT OF THE INTERVENTION

26. There should be a binding Code of Conduct regarding intervention to include the following:

(a) full cooperation by the attorney, his agent and staff with the GLC during intervention.

(b) intervention should be discreetly conducted with mutual respect and decorum and with the minimum disruption in any the other business or activities of the attorney,

(c) the attorney-client professional privilege in respect of the clients, their files and property must be maintained at all times.

(d) intervention must concluded in the shortest possible time.

(e) any dispute between the attorney, his agent or staff and the GLC must be referred to the Court to be resolved by a Court Order or directions of the Court.

(f) any information obtained by the GLC during intervention must be kept strictly confidential and must not be disclosed to any other person nor be utilised in any other proceedings of whatever nature involving the attorney.

(g) any file, books, bank accounts operated by the attorney or property in the possession of the attorney that is examined or detained by the GLC must be disclosed by the GLC to the attorney by a written report to the attorney or his agent. The report must show the date and time of the examination or detention, a full description of the file, books, client account and property examined or detained by the GLC with reasons given for such examination or detention.

(h) a receipt must be given by the GLC to the attorney or his agent or staff of the files, books or property detained and or removed by the GLC.

(i) a receipt must be issued by the attorney, his agent or staff of the files, books or property detained and or removed by the GLC that have been returned. In the absence of the issue of a such a receipt, then the GLC will prepare and keep a report of such files, books or property for subsequent examination.

(j) the GLC must properly preserve and protect any file, books or property detained by it to ensure their integrity and must return them to the place from which they were detained as soon as their detention is no longer necessary or on completion of the intervention whichever is sooner.

(k) the GLC's access to the client account of the attorney should be conducted without interference with the other client transactions involving the bank account.

(l) the GLC must delivery a written report to the attorney or his agent or staff at the end of the intervention of the findings and action or intended action of the GLC arising from the intervention.

(m) the attorney or the GLC may apply to the Court for remedies or sanctions if there is any breach of the Code of Conduct.

**THE JAMAICAN BAR ASSOCIATION COMMITTEE ON
INTERVENTION IN THE PRACTICE OF AN ATTORNEY AT LAW
AND ON CONTINUING LEGAL EDUCATION**

JANUARY 30, 2006