

WEST VIRGINIA

Lawyers' Fund for Client Protection of the West Virginia State Bar

(Procedural Rules for Lawyers' Fund for Client Protection of the West Virginia State Bar Rule 1, et seq.)

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Lawyers Fund for Client Protection –

Rules

PROCEDURAL RULES FOR LAWYERS' FUND FOR CLIENT PROTECTION OF THE WEST VIRGINIA STATE BAR

RULE 1. PURPOSE

The purpose of the Lawyers' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to practice law in the courts of this State occurring in the course of a lawyer-client or fiduciary relationship between the lawyer and the claimant.

RULE 2. ESTABLISHMENT

A. There is established the Lawyers' Fund for Client Protection to reimburse claimants for losses caused by dishonest conduct committed by lawyers admitted to practice in this State. This Fund shall replace the existing Client Security Fund of the West Virginia State Bar.

B. There is established, under the supervision of the Board of Governors of the West Virginia State Bar, hereinafter referred to the Lawyers' Fund for Client Protection Committee, hereinafter referred to as the Committee, which shall disburse upon approval by the Board of Governors such monies as may from time to time be allocated to the Fund.

C. These rules shall be effective for claims filed with the Committee after July 1, 1994, as amended from time to time (revised 04/09/09 and 10/05/09) and the Committee shall not pay claims for losses incurred as a result of dishonest conduct committed prior thereto.

RULE 3. FUNDING

A. The Board of Governors shall provide for funding by the lawyers of the State in amounts adequate for the proper payment of claims and the costs of administering the Fund.

B. A lawyer's failure to pay any fee assessed shall be a cause for suspension from practice until payment has been made.

C. A lawyer whose dishonest conduct has resulted in reimbursement to a claimant shall make restitution to the Fund including interest and the expense incurred by the Fund in processing the claim. A lawyer's failure to make satisfactory arrangements for restitution shall be cause for suspension, disbarment, or denial of an application for reinstatement.

RULE 4. FUNDS

Monies are allocated to the Fund by the Board of Governors and are to be disbursed upon the recommendation of the Committee with the approval of the Board of Governors.

RULE 5. COMPOSITION AND OFFICERS OF THE LAWYERS' FUND FOR CLIENT PROTECTION COMMITTEE

A. The Committee shall consist of five lawyers and two nonlawyers appointed by President, and confirmed by the Board of Governors, for initial terms as follows:

Two lawyers for one year;

(1) One nonlawyer for two years;

(2) Two lawyers for two years;

(3) One nonlawyer for three years; and one lawyer for three years.

Subsequent appointments shall be for a term of three years. The Board of Governors may limit the number of successive terms that Committee members may serve on the Board.

B. Committee members shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

C. Vacancies shall be filled by appointment by the President for any unexpired terms.

D. The Committee shall select a chairperson, and such other officers as the Committee deems appropriate.

RULE 6. COMMITTEE MEETINGS

A. The Committee shall meet as frequently as necessary to conduct the business of the Fund and to timely process claims.

B. The Chairperson shall call a meeting at any reasonable time or upon the request of at least two Committee members.

C. A quorum for any meeting of the Board shall be four Committee members.

D. Minutes of meetings shall be taken by a person appointed by the Chairperson and said minutes provided to and maintained by the Executive Director of the West Virginia State Bar.

RULE 7. DUTIES AND RESPONSIBILITIES OF THE COMMITTEE

The Committee shall have the following duties and responsibilities:

A. to receive, evaluate, make determination of whether a payment should be made and to recommend same to the Board of Governors, and to determine and pay claims;

B. to promulgate rules of procedure not inconsistent with Rules not inconsistent with the Constitution, By-Laws and Rules and Regulations of the West Virginia State Bar.;

C. The Committee may recommend payment of claims up to \$40,000 per attorney per year with a cap of \$20,000 per claim, subject to modification from time to time as made by the Board of Governors;

D. to provide a full report at least annually or as requested by the Board of Governors and to make other reports as necessary;

E. to publicize its activities to the public and the bar;

F. to perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the Fund;

RULE 8. CONFLICT OF INTEREST

A. A Committee member who has or has had a lawyer-client relationship or a financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.

B. A Committee member with a past or present relationship, other than as provided in Section A, with a claimant or the lawyer whose alleged conduct is the subject of a claim, shall disclose such relationship to the Committee and, if the Committee deems appropriate, that Committee member shall not participate in any proceeding relating to such claim.

RULE 9. IMMUNITY

The Committee members shall be immune from civil liability for all acts in the course of their official duties as provided by the Constitution, By-Laws and Regulations of the West Virginia State Bar.

RULE 10. ELIGIBLE CLAIMS

A. The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of an by reason of a lawyer-client relationship or a fiduciary relationship between the lawyer and the claimant.

B. The claim shall have been filed no later than two years after the claimant knew or should have

known of the dishonest conduct of the lawyer and that a loss results.

C. As used in these Rules, “dishonest conduct” means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:

(1) Refusal to refund unearned fees received in advance as required by Rule 1.16 of the Model Rules for Professional Conduct; and

(2) The borrowing of money from a client without intention to repay it, or with disregard of the lawyer’s inability or reasonably anticipated inability to repay it.

D. Except as provided by Section E of this Rule, the following losses shall not be reimbursable:

(1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;

(2) Losses covered by any bond, surety agreement or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(3) Losses incurred by any financial institution which are recoverable under a “banker’s blanket bond” or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by the lawyer, any person or entity described in Section D (1), (2), or (3) hereof;

(5) Losses incurred by any governmental entity or agency.

E. In cases of extreme hardship or special and unusual circumstances, the Board of Governors may, in its discretion, recognize a claim which would otherwise be excluded under these Rules.

F. In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Committee may, in its discretion, deny the claim.

RULE 11. PROCEDURES AND RESPONSIBILITIES FOR CLAIMANTS

A. The Committee shall prepare and approve a form for claiming reimbursement.

B. The form shall include at least the following information provided by the claimant under penalty of perjury:

(1) the name and address of claimant, home and business telephone, occupation and employer;

(2) the name, address and telephone number of the lawyer alleged to have dishonestly taken the claimant’s money or property, and any family or business relationship of the claimant to the lawyer;

(3) the legal or other fiduciary services the lawyer was to perform for the claimant; the amount paid to the lawyer;

(4) the copy of any written agreement pertaining to the claim;

(6) the form of the claimant’s loss involved (e.g. money, securities or other property);

(7) the amount of loss and the date when the loss occurred;

(8) the date when the claimant discovered the loss, and how the claimant discovered the loss;

(9) the lawyer’s dishonest conduct and the names and address of any person who have knowledge of the loss;

(10) the name of the person, if any, to whom the loss has been reported (e.g.) district attorney, police, disciplinary agency, or other person or entity) and a copy of any complaint and description of any action that was taken;

(11) the source, if any, from which the loss can be reimbursed including any insurance, fidelity or surety agreement;

(12) the description of any steps taken to recover the loss directly from the lawyer, or any other source;

(13) the circumstances under which the claimant has been, or will be, reimbursed for any part of the claim (including the amount received, or to be received, and the source); along with a statement that the claimant agrees to notify the Committee of any reimbursements the claimant receives during the

pendency of the claim;

(14) the existence of facts believed to be important to the Committee's consideration of the claim;

(15) the manner in which the claimant learned about the Fund;

(16) the name, address and telephone number of the claimant's present lawyer;

(17) the claimant's agreement to cooperate with the Committee in reference to the claim or as required by Rule 15, in reference to civil actions which may be brought in the name of the Committee pursuant to a subrogation and assignment clause which shall also be contained within the claim;

(18) the name and address of any other source to which the claimant has applied or intends to apply for reimbursement, together with a copy of the application;

(19) a statement that the client agrees to the publication of appropriate information about the nature of the claim and the amount of reimbursement if reimbursement is made.

C. The claimant shall have the responsibility to complete the claim form and provide satisfactory evidence of a reimbursable loss.

D. The claim shall be filed with the office of the West Virginia State Bar on the claim form herein approved.

RULE 12. PROCESSING CLAIMS

A. Whenever it appears that a claim is not eligible for reimbursement pursuant to Rule 10, the claimant shall be advised of the reasons why the claim may not be eligible for reimbursement, and that unless additional facts to support eligibility are submitted to the Committee, the claim file shall be closed.

B. A certified copy of an order disciplining a lawyer for the same dishonest act of conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefore, shall be evidence that the lawyer committed such dishonest act or conduct.

C. The Lawyer Disciplinary agency shall be promptly notified of the claim. The Committee shall request information that may be permitted to be disclosed by the Lawyer's Disciplinary Agency as to whether claims have been made against the lawyer that is the subject of the claim made to the Committee. The Committee shall determine what investigation it deems is necessary to investigate the conduct alleged in the claim, as more fully described below, and conduct an investigation or refer for investigation to a local Grievance Committee.

D. When a claim is filed, the lawyer will be notified by mail sent to the address of record with the West Virginia State Bar of the claim and given an opportunity to respond. The lawyer, or the lawyer's representative, shall have twenty (20) days from the date of the notice in which to respond.

E. The Committee may request that testimony be presented to complete the record. Upon request, the claimant or lawyer, or their representative, will be given an opportunity to be heard.

F. The Committee may make a finding of dishonest conduct for purposes of adjudicating a claim. Such recommendation is not a finding of dishonest conduct for purposes of professional discipline.

G. When the record is complete, notice of the recommendation as to payment, if any, of the claim shall be given to the claimant, the lawyer and the Lawyer Disciplinary Agency of the Committee's recommendation and the reasons therefore. Either the claimant or the lawyer may request reconsideration of the recommendation within thirty (30) days of the date of the recommendation. After the thirty (30) day period has run the recommendation will be final and will be sent to the Board of Governors for approval. The approval or denial of a claim shall require the affirmative votes of at least four (4) Committee Members.

H. Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witness. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such

evidence over objection in court proceedings. The claimant shall have the duty to supply relevant evidence to support the claim.

I. The Committee shall determine the order and manner of payment and recommend payment of all approved claims, but unless the Committee directs otherwise, no claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct that is alleged in the claim.

RULE 13. PAYMENT OF REIMBURSEMENT

A. The Board of Governors of The West Virginia State Bar may from time to time fix a maximum amount on reimbursement that is payable by the Fund.

B. Claimants shall be reimbursed for losses in amounts to be determined by the Committee and approved by the Board of Governors. Reimbursement shall not include interest and other incidental and out-of-pocket expenses.

C. Recommendations for payments, if any, made by the Committee to the Board of Governors will be made at the earliest practical time following the end of a calendar year so that determination if proration of payments can be made.

RULE 14. REIMBURSEMENT FROM FUND IS A MATTER OF GRACE

No person shall have the legal right to reimbursement from the Fund whether as claimant, third-party beneficiary, or otherwise.

RULE 15. RESTITUTION AND SUBROGATION

A. A lawyer whose dishonest conduct results in reimbursement to a claimant shall be liable to the Fund for restitution; and the Committee may bring such action as it deems advisable to enforce such obligation.

B. As a condition of reimbursement, a claimant shall be required to provide the Fund with a pro tanto transfer of the claimant's rights against the lawyer, the lawyer's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the claimant's loss.

C. Upon commencement of an action by the Committee as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

D. The claimant shall be required to agree to cooperate in all efforts that the Committee undertakes to achieve restitution for the Fund.

RULE 16. JUDICIAL RELIEF

A. The Committee may make application to the appropriate court for relief to protect the interests of claimant of the Fund where:

(1) the assets of the claimant appear to be in danger or misappropriation or loss, or to secure the claimant's or Fund's rights to restitution or subrogation; or

(2) the disciplinary agency has failed to exercise jurisdiction.

11

B. A court's jurisdiction in such proceedings shall include the authority to appoint and compensate custodial receivers to conserve the assets and practices of missing, incapacitated and deceased lawyers.

RULE 17. CONFIDENTIALITY

A. Claims, proceedings and reports involving claims for reimbursement are confidential until the Committee recommends and the Board of Governors authorizes reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Committee shall publicize the

amount of reimbursement, and the name of the lawyer. The name and the address of the claimant shall not be publicized by the Committee unless specific permission has been granted by the claimant.

B. This Rule shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Committee shall authorize, or the release of statistical information which does not disclose the identity of the lawyer or the parties.