

ALABAMA

Alabama State Bar Client Security Fund Rules

(Rule 2 and Rule 3)

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Alabama State Bar Client Security Fund Rules

Rule 2.

Definitions.

For purposes of these Rules, the following definitions shall apply:

- A. The "Committee" shall mean the Client Security Fund Committee.
- B. The "Fund" shall mean the Client Security Fund of the Alabama State Bar.
- C. "Lawyer" shall include a person:
 - (a) licensed to practice law in this jurisdiction;
 - (b) registered as in-house counsel;
 - (c) admitted pro hac vice;
 - (d) recently suspended, disbarred, or transferred to disability inactive status whom clients reasonably believed to be licensed to practice law when the conduct forming the basis of the suspension, disbarment, or transfer occurred; or
 - (e) otherwise authorized to practice law in this jurisdiction.

The conduct that formed the basis of the lawyer's suspension, disbarment, or transfer must have occurred while the lawyer was engaged in the practice of law in Alabama and bear a rational relationship to the lawyer's practice of law in Alabama. The fact that the act complained of took place outside the State of Alabama does not necessarily mean that the lawyer was not engaged in the practice of law in Alabama.

D. "Reimbursable losses" are only those losses of money or other property of clients of lawyers that meet the following tests:

- (a) The dishonest conduct that occasioned the loss occurred on or after the effective date of these Rules; and
- (b) The loss was caused by the dishonest conduct of a lawyer acting either as an attorney or as a fiduciary in the matter in which the loss arose; and

- (c) The lawyer shall have died; been adjudicated a bankrupt; been adjudicated an incompetent; been disbarred or suspended from the practice of law; voluntarily resigned from the practice of law; left the jurisdiction or cannot be found; become a judgment debtor of the applicant, or shall have been adjudged guilty of a crime, which judgment or judgments shall have been predicated upon the dishonest conduct of the lawyer; or the Committee shall have determined that the claim is an appropriate case for consideration for reimbursement because the loss was caused by the dishonest conduct of a member of the Alabama State Bar.

E. "Non-reimbursable losses" are as follows:

- (a) Losses of a spouse, child, parent, grandparent, sibling, partner, associate, or employee of the attorney(s) causing the losses.
- (b) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bondsman or surety or insurer is subrogated to the extent of that subrogation interest.
- (c) Losses of any financial institution that could only be recoverable under a "banker's blanket bond" or similar insurance or surety contract, whether or not the institution had such bond or contract in force.
- (d) Losses incurred by any business entity controlled by the lawyer(s), or any person or entity described in subsection E(a), (b), or (c) of this Rule.
- (e) Losses incurred by any governmental entity or agency.
- (f) Losses arising from business or personal investments not arising in the course of the client-lawyer relationship.
- (g) Consequential or incidental damages, such as lost interest or lawyer's fees or other costs incurred in seeking recovery of a loss.
- (h) Losses that are recoverable from some other source.
- (i) Losses barred under any applicable statute of limitations.

F. "Dishonest conduct" shall mean wrongful acts committed by a lawyer against a person in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value, including but not limited to

failure to refund unearned fees received in advance as required by Rule 1.16 of the Alabama Rules of Professional Conduct.

G. "Applicant" means a person who has applied to the fund for reimbursement.

H. "Client" means a person engaging the professional legal services of a lawyer or for whose benefit the lawyer is acting in a fiduciary capacity.

[Amended eff. 1-14-2011.]

Note from the reporter of decisions: The order amending the Alabama State Bar Client Security Fund Rules, effective January 14, 2011, is published in that volume of the *Alabama Reporter* that contains Alabama cases from ___ So. 3d.

Alabama State Bar Client Security Fund Rules

Rule 3.

Applications for reimbursement.

The Committee shall prepare a form of application for reimbursement.

A. The form shall be sworn to and executed under penalty of perjury and shall require, as minimum information:

- (a) The name and address of the lawyer.
- (b) The amount of the alleged loss.
- (c) The date or period of time during which the alleged loss was incurred.
- (d) The date upon which the alleged loss was discovered.
- (e) The name and address of the applicant.
- (f) A general statement of facts relative to the application.
- (g) A statement that the applicant has read these Rules and agrees to be bound by them.
- (h) A statement that the loss was not covered by any insurance, indemnity or bond, or if so covered, the name and address of the insurance or bonding company, if known, and the extent of such coverage and the amount of payment, if any, made.
- (i) A statement that the applicant agrees that the result of the investigation together with all evidence in connection therewith shall remain confidential except as otherwise provided herein.
- (j) Said application shall either be typewritten or printed. If not legible, it shall be forthwith returned to the applicant.
- (k) The form or application shall contain the following statement in bold type:

“IN ESTABLISHING THE CLIENT SECURITY FUND, THE ALABAMA STATE BAR DID NOT CREATE NOR ACKNOWLEDGE ANY LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS IN THE PRACTICE OF LAW. ALL REIMBURSEMENTS OF LOSSES BY THE CLIENT SECURITY FUND SHALL BE A MATTER OF GRACE IN THE SOLE

DISCRETION OF THE COMMITTEE ADMINISTERING THE FUND AND NOT AS A MATTER OF RIGHT. NO CLIENT OR MEMBER OF THE PUBLIC SHALL HAVE ANY RIGHT IN THE CLIENT SECURITY FUND AS A THIRD PARTY BENEFICIARY OR OTHERWISE.”

C. Applications shall be addressed to the office of the Alabama State Bar at P.O. Box 671, Montgomery, Alabama 36101, and shall forthwith be transmitted to the Committee.

D. All applications shall be filed no later than three (3) years after the applicant knew or should have known of the reimbursable loss as defined. However, the filing of a grievance with the Disciplinary Commission, Disciplinary Board, or General Counsel shall toll the statute of limitations during the period in which the grievance is pending, but in no event shall an application be filed later than six (6) years after the applicant knew or should have known of the reimbursable loss.

E. The Committee shall cause a copy of the application to be served upon the lawyer or his personal representative, in the event the attorney is deceased, by certified mail, return receipt requested.

[Amended eff. 1-14-2011.]

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