

ALASKA

Lawyers' Fund for Client Protection of the Alaska Bar Association

(Alaska Court Rules
Part V. Lawyer's Fund
For Client Protection
Rule 45 through Rule 60)

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(B) any instrument relating to the administration of a decedent's estate in the United States of America;

(4) prepare any instrument concerning the marital relations, rights or duties of a resident of the United States of America, or the custody or care of the children of a resident;

(5) provide professional legal advice on the law of the State of Alaska, any other state or territory of the United States of America, the District of Columbia, the United States or any foreign country other than the country where the consultant is admitted as an attorney or counselor at law or the equivalent, whether provided incident to the preparation of legal instruments or otherwise. If a particular matter requires legal advice from a person admitted to practice law as an attorney in a jurisdiction other than where the consultant is admitted as an attorney or counselor at law or equivalent, the foreign law consultant shall consult an attorney, counselor of law or the equivalent in the other jurisdiction on the particular matter, obtain written legal advice and transmit the written legal advice to the client;

(6) in any way represent that the person is licensed as an attorney or counselor at law in the State of Alaska, or the equivalent in any jurisdiction, unless so licensed; or

(7) use any title other than "foreign law consultant"; provided that the person's authorized title and firm name in the foreign country in which the person is admitted to practice as an attorney or counsel at law or the equivalent may be used if the title, firm name, and the name of the foreign country are stated together with the title "foreign law consultant."

(f) Disciplinary Provisions.

(1) A person licensed to practice as a foreign law consultant under this rule is subject to the jurisdiction of the Alaska Supreme Court, the Disciplinary Board of the Alaska Bar Association, the Rules of Disciplinary Enforcement, and Ethics Opinions adopted by the Board of Governors of the Alaska Bar Association.

(2) A person licensed to practice as a foreign law consultant shall execute and file with the clerk, in the form and manner as the court may prescribe:

(A) a statement that the foreign law consultant has read and will observe the Rules of Disciplinary Enforcement, Ethics Opinions adopted by the Board of Governors of the Alaska Bar Association, and the Alaska Rules of Professional Conduct;

(B) an undertaking or appropriate evidence of professional liability insurance, in an amount as the Court may prescribe, to ensure the foreign law consultant's proper professional conduct and responsibility;

(C) a signed document stating the foreign law consultant's address within the State of Alaska and designating the clerk of this court as the consultant's agent upon whom process may be served, with the effect as if served personally upon the consultant, in any action or proceeding brought against the consultant arising out of or based upon any legal services rendered or offered to be rendered by the consultant

within or to residents of the State of Alaska, if due diligent service cannot be made upon the consultant at the consultant's address; and

(D) a commitment to notify the Court of any resignation or revocation of the foreign law consultant's admission to practice in the foreign country of admission, or of any censure, suspension, or expulsion respecting admission.

(SCO 946 effective January 15, 1989; amended by SCO 1669 effective April 15, 2008; and by SCO 1829 effective October 15, 2014)

**PART V. LAWYERS' FUND FOR
CLIENT PROTECTION**

Rule 45. Definitions.

(a) The "Board" is the Board of Governors of the Alaska Bar Association.

(b) The "Fund" is the Lawyers' Fund for Client Protection of the Alaska Bar Association.

(c) The "Committee" is the Lawyers' Fund for Client Protection Committee.

(d) The term "lawyer" as used in this part and the rules contained therein means an active member of the Alaska Bar Association domiciled in Alaska at the time of the act or omission which is the basis of the application of the fund. The act or omission complained of need not have taken place within the State of Alaska in order for an application to the fund to be made or granted.

(e) The words "dishonest conduct" or "dishonest act" as used herein means wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.

(f) "Reimbursable losses" are only those losses of money, property or other things of value which meet all of the following tests:

(1) The loss was caused by the dishonest conduct of a lawyer when

(i) acting as a lawyer, or

(ii) acting in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or

(iii) acting as an escrow holder or other fiduciary, having been designated as such by a client in the matter in which the loss arose or having been so appointed or selected as a result of the client-attorney relationship.

(2) The loss was that of money, property, or other things of value which came into the hands of the lawyer by reason of having acted in the capacity described in paragraph (f)(1) of this rule.

(3) The dishonest conduct occurred on or after the effective date of this part.

(4) The claim shall have been filed no later than three years after the claimant knew or should have known of the dishonest conduct of the lawyer.

(5) The following shall not be an applicant:

(i) The spouse or other close relative, partner, associate or employee of the lawyer, or

(ii) An insurer, surety or bonding agency or company, or

(iii) Any business entity controlled by (1) the lawyer, (2) any person described in paragraph (i) hereof, or (3) any entity described either in paragraph (ii) hereof or in turn controlled by the lawyer or a person or entity described in paragraphs (i) or (ii) hereof, or

(iv) A governmental entity or agency, or

(v) A collection agency.

(6) The loss, or reimbursable portion thereof was not covered by any insurance or by any fidelity or surety bond fund, whether of the lawyer or the applicant or otherwise.

(7) Either

(i) the lawyer

(aa) has died or has been adjudicated mentally incompetent;

(bb) has been disciplined, or has voluntarily resigned from the practice of law in Alaska;

(cc) has become a judgment debtor of the applicant or has been adjudicated guilty of a crime which judgment or judgments shall have been predicated upon dishonest conduct while acting as specified in paragraph (f) (1) of this rule and which judgment or judgments remain unsatisfied in whole or in part; or

(ii) the Board has determined it to be an appropriate case for consideration under these rules.

(8) Reimbursable losses do not include interest on such losses or attorney fees incurred in attempts to recover them.

(g) "Notice" means the delivery of a written notice personally to the addressee or by mail to the most recent address which the addressee has provided to the Alaska Bar Association. Written notice shall be presumed to be received by the addressee five (5) days after the postmark date of certified or registered mail sent to the most current address which the addressee has provided to the Alaska Bar Association.

(Added by SCO 214 effective January 1, 1976; amended by SCO 722 effective December 15, 1986; and by SCO 1029 effective July 15, 1990)

Rule 46. Applications for Reimbursement.

(a) The Board shall prepare a form of application for reimbursement; in its discretion the Board may waive the requirement that a claim be filed on such form.

(b) The form shall be executed under penalty of perjury and shall require, as minimum information:

(1) The name and address of the lawyer.

(2) The amount of the alleged loss.

(3) The date or period of time during which the alleged loss was incurred.

(4) The date upon which the alleged loss was discovered.

(5) Name and address of the applicant.

(6) The general statement of facts relative to the application.

(7) A statement that the applicant has read these rules and agrees to be bound by them.

(8) 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.

(c) The form or application shall contain the following statement in bold type:

"THE ALASKA BAR ASSOCIATION HAS NO LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS. PAYMENTS FROM THE LAWYERS' FUND FOR CLIENT PROTECTION SHALL BE MADE IN THE SOLE DISCRETION OF THE ALASKA BAR ASSOCIATION."

(d) The form shall include in its body the pro tanto assignment from the applicant to the Alaska Bar Association of the applicant's right against the named lawyer, or the lawyer's personal representative, estate or assigns, as required by Alaska Bar Rule 55.

(Added by SCO 214 effective January 1, 1976; amended by SCO 466 effective June 1, 1981; by SCO 1029 effective July 15, 1990; and by SCO 1153 effective July 15, 1994)

Rule 47. Filing Applications and Preliminary Consideration.

(a) An application for reimbursement shall be filed with the Anchorage office of the Alaska Bar Association and shall forthwith be transmitted by such office to the Chair of the Committee. The Executive Director of the Alaska Bar Association shall designate a State Bar staff attorney or attorneys or a member of the Committee to assist the Committee and the Board in their consideration thereof.

(b) Whenever the attorney designated pursuant to Rule 47(a) reports that in his or her opinion a prima facie case for reimbursement loss is not shown, such report shall be transmitted to the Committee and if approved by a majority of the Committee, constitutes rejection of the application. Any such report shall state the reasons for the opinion and may rely on information outside the application, including further information from the applicant, provided that such information is identified in the report.

(c) In all other cases the attorney designated pursuant to Rule 47(a) shall refer the application to the Committee.

(Added by SCO 214 effective January 1, 1976; amended by SCO 407 effective, nunc pro tunc, January 1, 1980; and by SCO 1217 effective July 15, 1995)

Rule 48. The Committee.

(a) The Committee shall consist of at least six members of the Alaska Bar Association, appointed by the President, subject to ratification by the Board. Each appointment shall be for a three year term.

(b) A quorum at any meeting of the Committee shall be a majority of the members of the committee. A member participating in Committee proceedings by telephone is present for all purposes, including purposes of a quorum. In the absence of a quorum a matter may be considered by the members present, but no action may be taken with respect thereto. The vote of a majority of the members present and voting at a meeting at which a quorum is present shall constitute the action of the Committee.

(c) The Chairperson of the Committee shall be appointed by the President for a term of one year commencing July 1 and thereafter may serve in that office until his or her successor is appointed. The Chairperson may be reappointed as Chairperson. Should a vacancy occur in the office of the Chairperson, the President shall appoint a new Chairperson.

(d) A member of the Committee who has or has had a lawyer-client relationship or 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.

(Added by SCO 214 effective January 1, 1976; amended by SCO 408 effective, nunc pro tunc, January 1, 1980; by SCO 722 effective December 15, 1986; by SCO 1073 effective January 15, 1992; and by SCO 1311 effective July 15, 1998)

Rule 49. Authority of Committee and Board.

Upon consideration of applications for reimbursement the Board, or the Committee may:

- (a) Take and hear evidence pertaining to the application.
- (b) Administer oaths and affirmations.

(c) Compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the application.

(d) Upon application to and approval by the Executive Director, the Committee may engage the services of an investigator, accountant or other expert necessary to investigate and process the application.

(Added by SCO 214 effective January 1, 1976)

Rule 50. Evidence and Burden of Proof.

The proceedings had upon the applications need not be conducted according to technical rules relating to evidence and witnesses. 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 civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions; provided, however, that certified or duly authenticated copies of the record, including a transcript of testimony therein, of

(a) any disciplinary proceeding against the lawyer of which the lawyer had notice conducted by the Alaska Bar Association or any body authorized to conduct disciplinary proceedings against attorneys in any state or the District of Columbia.

(b) any proceeding conducted pursuant to Rules 16, 28, 29, Alaska Bar Rules.

(c) any proceeding resulting in the conviction of the lawyer of a crime, or

(d) any contested civil action or special proceeding to which a lawyer is a party or in whose behalf the action is prosecuted or defended, may constitute sufficient evidence to support a finding. The applicant bears the burden of proof upon the issues of reimbursable loss and the extent thereof and all facts shall be established by a preponderance of the evidence.

(Added by SCO 214 effective January 1, 1976; amended by SCO 1153 effective July 15, 1994)

Rule 51. When Testimony is to be Reported and Transcribed.

The testimony of all witnesses appearing before the Committee or the Board shall be recorded; but a transcript of said testimony shall not be prepared unless the Committee or the Board or its President orders its preparation. Either party may request a transcript at their own expense.

(Added by SCO 214 effective January 1, 1976; amended by SCO 722, effective December 15, 1986; and by SCO 867 effective July 15, 1988)

Rule 52. Consideration by Committee.

(a) Upon receipt of an application the Committee shall conduct such investigations and hold such hearings as it determines necessary to establish whether the application should be granted. Hearings will be conducted informally. Both the applicant and the lawyer shall be afforded opportunities to present argument and evidence, and to cross-examine opposing witnesses. The Committee may request the attorney selected pursuant to Rule 47(a) to present argument and evidence, if the Committee believes this will assist it in reaching its decision.

The Committee shall provide a copy of the application to the lawyer complained of and shall notify the lawyer and the applicant of the date and time for a hearing on the application.

(b) The Committee may delegate responsibility for holding a hearing to a subcommittee of one or more of its members. The subcommittee shall prepare a proposed report containing the information required by Rule 52(c), which shall be promptly considered by the Committee. The Committee shall (1) approve and adopt the proposed report, or (2) remand the proposed report to the same or a different subcommittee for the taking of further evidence or for preparation of a new proposed report, or (3) consider the matter de novo on the basis of the record made at hearing.

(c) At the conclusion of the Committee's consideration of an application pursuant to this Rule, it shall promptly make and transmit to the office of the Alaska Bar Association a report consisting of a brief statement of the proceedings had, clear and concise findings of fact adopted by the Committee a brief statement of its conclusions and a recommendation to the Board.

(d) Upon receipt of the report, the Executive Director shall provide copies of it to the attorney or the attorney's representative and the claimant.

(e) Within twenty (20) days of receiving notice of the filing of the report with the Board, any party may file written objections to the report.

(Added by SCO 214 effective January 1, 1976; amended by SCO 409 effective, nunc pro tunc, January 1, 1980; by SCO 722 effective December 15, 1986; by SCO 867 effective July 15, 1988; by SCO 1029 effective July 15, 1990; by SCO 1064 effective July 15, 1991; and by SCO 1153 effective July 15, 1994)

Rule 53. Consideration by the Board.

(a) All reports filed by the Committee pursuant to Rule 52(d) are advisory only and shall be placed upon the calendar of the Board for consideration.

(b) The Board has the sole and final authority to determine whether and to what extent any application for reimbursement shall be granted and shall determine the order, manner (which may be in installments), and amount of payment of each application. The Board may postpone

consideration of any application until after any disciplinary action or any court proceeding pending or contemplated has been completed.

(c) Before the Board directs that payment from the Fund be made it must find that a reimbursable loss as defined in these rules has been established and the extent of the said loss.

(d) The loss to be paid to any individual claimant as the result of any dishonest act or omission in any one transaction, matter or proceeding involving any one lawyer shall not exceed the lesser of the following sums: (a) \$50,000, or (b) 10% of the Fund at the time the award is made. The aggregate maximum amount which all claimants may recover arising from an instance or course of dishonest conduct of any one lawyer is \$200,000. The total amount to be paid to all claimants in any one year shall not exceed 50% of the total amount of the Fund as of January 1 of the calendar year in which the awards are made.

(Added by SCO 214 effective January 1, 1976; amended by SCO 722 effective December 15, 1986; and by SCO 1029 effective July 15, 1990)

Rule 54. Payments at Discretion of State Bar.

All payments from the Fund, including the payment of trustee counsel compensation by the Board under Rule 31(g)(3), shall be a matter of grace and not of right and shall be in the sole discretion of the Alaska Bar Association. No client or member of the public shall have any right in the Fund as a third party beneficiary or otherwise.

(Added by SCO 214 effective January 1, 1976; amended by SCO 1459 effective April 15, 2002)

Rule 55. Assignment of Applicant's Rights and Subrogation.

Payments on approved applications shall be made from the Fund only upon condition that the Alaska Bar Association receives, in consideration for any payment from the Fund, a pro tanto assignment from the applicant of the applicant's right against the lawyer involved, or the lawyer's personal representative, estate or assigns. The collection of the aforementioned assignments shall be handled by the Executive Director of the Alaska Bar Association or a staff attorney thereof, under the supervision of the Board of Governors or in such other manner as may from time to time be directed by the Board of Governors. In order to effect collection of said assignment, the Executive Director or other attorney prosecuting the collection, may disclose such information concerning the application and the consideration thereof by the Alaska Bar Association as in the Executive Director's discretion is necessary; provided, however, that without prior approval of the Board of Governors, the Executive Director shall not disclose information which refers to the existence of any non-public disciplinary matter or proceeding. Upon commencement of an action by the Alaska Bar Association, pursuant to its subrogation rights, it shall give written notice thereof to the reimbursed applicant at the applicant's last known address. The reimbursed applicant may then join in

such action to press a claim for the applicant's loss in excess of the amount of the above reimbursement, but any recovery shall first be applied to offset the reimbursement.

(Added by SCO 214 effective January 1, 1976; amended by SCO 1153 effective July 15, 1994)

Rule 56. Applicant May Be Advised.

The applicant may be advised of the status of the Alaska Bar Association's consideration of the applicant's application and shall be advised of the final determination of the Alaska Bar Association upon the same.

(Added by SCO 214 effective January 1, 1976; amended by SCO 1153 effective July 15, 1994; and by SCO 1395 effective October 15, 2000)

Rule 57. Rejection of the Application; Finality.

The applicant may apply to the Board for further consideration of the application within one month after the mailing of the notice of rejection by the Committee; otherwise such rejection is final and no further consideration shall be given by the Alaska Bar Association to said application or another based upon the same alleged facts.

(Added by SCO 214 effective January 1, 1976)

Rule 58. Confidential Nature of Proceeding and Records.

(a) The Committee and the Board, during consideration of an application, may have access to Alaska Bar Association disciplinary files and records, if any, pertaining to the alleged loss notwithstanding the provisions of Rule 22(b), Alaska Bar Rules. Any information or documents obtained by the Board or the Committee from said files or records shall be used solely for the purpose of determining the validity of the application, but otherwise shall constitute confidential information as provided in Rule 22(b).

(b) The files and records pertaining to all applications for reimbursement from the Fund and all investigations or proceedings conducted in connection therewith are the property of the Alaska Bar Association and are confidential and no information concerning them and the matters to which they relate shall be given to any persons except upon order of the Board of Governors or as in these rules provided.

(c) Unless otherwise ordered by the Board, the proceeding conducted before the Committee and the Board shall not be public.

(Added by SCO 214 effective January 1, 1976; amended by SCO 722 effective December 15, 1986)

Rule 59. Other Rules.

Except where otherwise specifically provided in this part, Rules 14 and 17 shall be applicable to this part; and in such cases the reference to "disciplinary proceedings" shall encompass Lawyers' Fund for Client Protection proceedings,

and the reference to "members of hearing committees" shall apply to the Lawyers' Fund for Client Protection Committee.

(Added by SCO 214 effective January 1, 1976; amended by SCO 466 effective June 1, 1981; by SCO 722 effective December 15, 1986; and by SCO 1029 effective July 15, 1990)

Rule 60. General Provisions.

(a) Bar Counsel shall refer potential claimants to the Lawyers' Fund for Client Protection at the completion of discipline proceedings when appropriate. Copies of the Lawyers' Fund for Client Protection Rules and any pamphlet which describes the Fund and procedures involved in filing a claim may be made available to the public.

(b) These rules may be changed at any time by a majority vote of the Committee at a duly held meeting at which a quorum is present, subject, however, to the approval of a majority vote of the Board of Governors of the Alaska Bar Association and the adoption of the change by the Supreme Court of the State of Alaska.

(c) **Immunity.**

(1) *General Immunity.* Members of the Board, members of the Committee, the Executive Director, Bar Counsel, and all Bar staff are immune from suit for conduct in the course and scope of their official duties as set forth in these rules.

(2) *Witness Immunity.* The Court or its designee may, in its discretion, grant immunity from criminal prosecution to witnesses in Lawyers' Fund for Client Protection proceedings upon application of the Board, Bar Counsel, the lawyer, or counsel for the lawyer, and after receiving the consent of the appropriate prosecuting authority.

(Added by SCO 214 effective January 1, 1976; amended by SCO 722 effective December 15, 1986; by SCO 962 effective July 15, 1989; by SCO 1029 effective July 15, 1990; by SCO 1176 effective July 15, 1995)

Part VI.

Rule 61. Suspension for Nonpayment of Alaska Bar Membership Fees, Fee Arbitration Awards, and Child Support Obligation; and for Failure to Respond to a Grievance.

(a) Any member failing to pay any fees within 30 days after they become due shall be notified in writing by certified or registered mail that the Executive Director shall petition a the Supreme Court of Alaska for an order suspending such member for nonpayment of fees.

(b) The Executive Director shall annually notify the clerks of court of the names and date of suspension of all members who have been then or previously suspended and not reinstated.

(1) Any member who has been suspended for less than one year, upon payment of all accrued dues, in addition to a