

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY

Rule 1:28 New Jersey Lawyers' Fund for Client Protection

(Rule 1:28-1, et seq.)

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RULE 1:28. New Jersey Lawyers Fund For Client Protection

1:28-1. Purpose; Administration; Appointments

(a) Administration. The Supreme Court shall appoint seven trustees to administer and operate, in accordance with these rules, the New Jersey Lawyers' Fund for Client Protection, whose purpose is the reimbursement, to the extent and in the manner provided by these rules, of losses caused by the dishonest conduct of members of the bar of this State.

(b) Qualification, Terms of Trustees. The original appointment shall be of one trustee for a one-year term, one for a 2-year term, one for a 3-year term, one for a 4-year term and one for a 5-year term. At the expiration of such terms all subsequent appointments shall be for a term of 5 years, and no trustee who has served a full 5-year term shall be eligible for immediate reappointment. A vacancy occurring during a term shall be filled for the unexpired portion thereof. Five trustees shall be members of the bar of this State; and two members shall not be attorneys.

(c) Organization; Meetings. The trustees shall organize annually and shall then elect from among their number a chair and a treasurer to serve for a one-year term and such other officers for such terms as they deem necessary or appropriate. Meetings thereafter shall be held at the call of the chair. Four trustees shall constitute a quorum and may transact all business except as may be otherwise provided by this rule or by the rules and regulations promulgated by the trustees.

(d) Regulations. The trustees shall adopt rules and regulations, consistent with these rules and subject to the approval of the Supreme Court, governing the administration of the Fund, the procedures for the presentation, consideration and payment of claims, and the exercise of their investment powers.

(e) Reimbursement. The trustees shall serve without compensation but shall be entitled to reimbursement from the Fund for their expenses reasonably incurred in the performance of their duties.

(f) Immunity. The Board of Trustees, Director and Counsel, Deputy Counsel, Secretary and all staff personnel shall be absolutely immune from suit, whether legal or equitable in nature, for any conduct in the performance of their official duties.

Note: Source-R.R. 1:22A-1(a) (b) (c) (d) (e); paragraphs (a) (b), and (c) amended and paragraph (f) adopted June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (b) amended May 3, 1994 to be effective immediately; paragraph (c) amended June 28, 1996 to be effective September 1, 1996.

1:28-2. Payment to the Fund; Enforcement

(a) Generally. Except as hereinafter provided, each holder of a plenary license to practice law in the State of New Jersey shall pay annually to the treasurer of the Fund a sum that shall be determined each year by the Supreme Court. An attorney who makes payment after February 1 of the billing year, or such other date as the Court may determine, but before being placed on the Ineligible List shall be subject to a late fee as set forth in Rule 1:20-1(d), which shall be shared equally with the Disciplinary Oversight Committee. The treasurer shall annually report the names of all attorneys failing to comply with the provisions of this Rule to the Supreme Court for inclusion on the list of those attorneys deemed ineligible to practice law in New Jersey by order of the Court. An

attorney shall be reinstated automatically to the practice of law without further order of the Court on filing with the Fund the annual registration statement for the current year together with the annual payment, the late fee, any arrears due from prior years, and a reinstatement fee of \$50 if the attorney's name is being removed from one calendar year's Ineligible List or \$100 if the attorney's name is being removed from two or more calendar year's Lists.

All persons admitted pro hac vice in accordance with Rule 1:21-2, those holding limited licenses as in-house counsel under R. 1:27-2, those registered as multijurisdictional practitioners under RPC 5.5(b), those certified as Foreign Legal Consultants under R. 1:21-9, and those permitted to practice under R. 1:21-3(c) shall also make the same annual payment described above subject to the same late fees and reinstatement from ineligible list fees. However, such persons shall not be entitled to the exemptions provided hereinafter.

For the purpose of annual assessment all members of the Bar, including those admitted pro hac vice, those holding limited licenses as in-house counsel, those registered as multijurisdictional practitioners, those certified as Foreign Legal Consultants, and those permitted to practice under R. 1:21-3(c) shall report changes of address as they occur and thus keep their billing address current with the Fund at all times.

Any member of the Bar who receives a billing notice addressed to another member of the Bar shall either forward the notice to the intended recipient or return it to the Fund.

(b) Exceptions. The following categories of plenary license holders shall be exempt from payment to the Fund:

- (1) Newly admitted attorneys, for the balance of the calendar year of their plenary admission and for the next succeeding calendar year;
- (2) Attorneys who have been admitted to practice for fifty years or more;
- (3) Attorneys on full-time active duty with the armed forces, VISTA, or the Peace Corps and not engaging in any way in private practice, but they shall be considered in all respects inactive New Jersey attorneys; and
- (4) Attorneys who have retired completely from the practice of law, but they shall be considered in all respects inactive New Jersey attorneys.

(c) License Revocation for Repeated Non-Compliance. Any attorney who, at the time of the publication of the Fund's Ineligible Attorneys List for 2005 and thereafter, has been declared ineligible for seven or more consecutive years shall have his or her license to practice in this State administratively revoked by Order of the Supreme Court.

On the entry of a license revocation Order pursuant to this Rule, the attorney's membership in the Bar of this State shall cease. Any subsequent application for membership shall be in accordance with the provisions of Rule 1:24. An Order of revocation shall not, however, preclude the exercise of jurisdiction by the disciplinary system in respect of any misconduct that occurred prior to Order's effective date.

Note: Source-R.R. 1:22A-2; amended July 17, 1975 to be effective September 8, 1975; amended January 31, 1984 to be effective February 15, 1984; amended June 29, 1990 to be effective September 4, 1990; redesignated paragraph (a) amended and paragraph (b) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (b) amended February 8, 1993, to be effective immediately; paragraph (a) amended and new paragraph (c) added July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 23, 2010 to be effective September 1, 2010.

1:28-3. Payment of Claims

(a) Eligible Claims. The Trustees may consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state or an attorney (i) admitted pro hac vice, (ii) holding limited license as in-house counsel, (iii) registered as multijurisdictional practitioner, (iv) certified as a foreign legal consultant or (v) permitted to practice under Rule 1:21-3(c), if the attorney was acting either as an attorney or fiduciary, provided that:

(1) Said conduct was engaged in while the attorney was a practicing member of the Bar of this State or admitted Pro Hac Vice in a matter pending in this State;

(2) On or after January 1, 1969, the attorney has been suspended, disbarred or placed in disability inactive status, has resigned with prejudice or has pleaded guilty to, or been convicted of embezzlement or misappropriation of money or other property; or an ethics committee has certified a claim to the trustees as an appropriate matter for their consideration. Where an ethics committee does not act and an attorney cannot be located, is deceased or incapacitated, the trustees may consider timely application directly provided that the trustees find that the claim is an appropriate matter for their consideration;

(3) The claim is filed within one year of the earliest of an event set forth in subparagraph (2) above. The time limitation set forth in this subparagraph may be extended by the trustees in their discretion;

(4) The claim is made directly by or on behalf of the injured client or the client's personal representative or, if a corporation, by or on behalf of itself or its successors in interest; and

(5) The claimant certifies that the relevant facts have been fully disclosed in writing to the appropriate law enforcement and disciplinary authorities. A willfully false certification in this regard shall be an absolute bar to any award.

(b) Consideration of Claims. The trustees in their sole discretion but on the affirmative vote of 4 of them shall determine which eligible claims merit reimbursement from the Fund and the amount, time, manner, conditions and order of payment of reimbursement. In making such determinations the trustees shall consider, among other appropriate factors, the following:

(1) The amounts available and likely to become available to the Fund for the payment of claims and the size and number of claims which are likely to be presented;

(2) The amount of the claimant's loss as compared with the amount of losses sustained by other eligible claimants;

(3) The degree of hardship suffered by the claimant as a result of the loss;

(4) The degree of negligence, if any, of the claimant which may have contributed to the loss;

(5) The potential for recovery from a collateral source.

(c) Limitation on Payments. The trustees shall, by regulation, fix the maximum amount which any one claimant may recover from the Fund and the aggregate maximum amount which may be recovered because of the dishonest conduct of any one attorney.

(d) Rights to Fund. No claimant or any other person or organization shall have any right in the Fund as beneficiary or otherwise.

(e) Conditions of Payment. The trustees may require as a condition to payment that the claimant execute such instruments, take such action or enter into such agreements as the trustees require, including assignments, subrogation agreements, trust agreements, and promises to cooperate with the trustees in making or prosecuting claims or charges against any person.

(f) Attorney's Fee. No attorney representing a claimant shall receive a fee for services unless authorized by the rules and regulations of the trustees and upon their express direction.

Note: Source-R.R. 1:22A-3(a) (b) (c) (d) (e) (f). Paragraph (a)(2) amended June 24, 1974 to be effective immediately; paragraph (a) amended and paragraph (a)(5) adopted January 31, 1984 to be effective February 15, 1984; paragraph (a)(1), (2), and (5) amended, former paragraph (a)(4) deleted, paragraph (a)(3) redesignated as paragraph (a)(4), new paragraph (a)(3) adopted; paragraph (b) amended and paragraph (b)(5) adopted June 29, 1990 to be effective September 4, 1990; paragraphs (a) and (a)(1) amended July 14, 1992 to be effective September 1, 1992; introductory paragraph and paragraphs (a)(4) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 23, 2010 to be effective September 1, 2010.

1:28-4. Duties of Trustees and Officers

(a) Audit and Report. The Fund shall be audited by state or private auditors annually and at such other times as the Supreme Court shall direct, such audits to be at the expense of the Fund. The annual audit shall be included in a report to be submitted annually by the trustees to the Supreme Court reviewing in detail the administration of the Fund during the preceding year.

(b) Applications to the Supreme Court. The trustees may apply to the Supreme Court for interpretations of these rules and of the extent of their powers thereunder and for advice regarding the proper administration of the Fund.

(c) Treasurer's Duties. The treasurer shall maintain the assets of the Fund in a separate account and shall disburse monies therefrom only upon the action of the trustees pursuant to these rules. Said treasurer shall file a bond annually with the trustees with such surety as may be approved by them and in such amount as they may fix.

Note: Source-R.R.1:22A-4; paragraph (c) amended June 29, 1990 to be effective September 4, 1990.

1:28-5. General Powers of Trustees

In addition to the powers conferred by these rules upon the trustees, they shall have the following general powers:

(a) to receive, hold, manage, distribute and invest the funds received by the Fund pursuant to R. 1:28-2 and such other funds as it may receive by voluntary contribution or otherwise;

(b) to enforce claims which the Fund may have for reimbursements, including utilization of the Comprehensive Enforcement Program; pursuant to N.J.S.A. 22A:2-23, the Fund shall not be liable for the payment of any fee provided for by N.J.S.A. 22A:2-1 et seq.;

(c) to employ and compensate consultants, agents, legal counsel and such other employees as they deem necessary and appropriate consistent with personnel policies of the judiciary.

Note: Source-R.R. 1:22A-5, amended January 31, 1984 to be effective February 15, 1984; paragraphs (b) and (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 12, 2002 to be effective September 3, 2002.

1:28-6. Subpoenas; Notice in Lieu of Subpoena; Noncompliance

(a) Issuance; Service. The trustees or an individual trustee or the Director or an attorney designated to act on behalf of the trustees, upon determining that any person has knowledge or is in possession or custody of books, papers, documents or other objects relevant to the disposition of a claim, may issue a subpoena or a notice in lieu of subpoena in the name of the Clerk of the Superior Court requiring such person to appear and testify or to produce such books, papers, documents or other objects before the trustees or an individual trustee, or the Director or an attorney designated to act on behalf of the trustees, at the time and place specified therein.

Subpoenas and notices in lieu of subpoena shall be served in the manner prescribed by R. 1:9, except that subpoenas may be served upon an attorney who is a witness or a party, by certified mail, return receipt requested and simultaneously by first class mail. No attendance fee need be paid.

(b) Noncompliance. If any person, without adequate excuse, shall fail to obey a subpoena, the trustees, or an individual trustee or an attorney designated to act on their behalf, may file with the Superior Court a verified statement setting forth the facts establishing such disobedience, and the court may then, in its discretion, institute contempt proceedings pursuant to R. 1:10-2. If such person is found guilty of contempt, the court may compel payment of the costs of the contempt proceedings to be taxed by the court.

Note: Adopted July 14, 1972 to be effective September 5, 1972; caption and paragraph (a) amended June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 13, 1994 to be effective September 1, 1994.

1:28-7. Administration

The Administrative Office of the Courts shall provide supporting services as requested by the Board of Trustees. Trustees, from funds available, shall reimburse the Administrative Office of the Courts for the salaries and benefits of Fund staff and for other expenses which may be incurred on the behalf of the Fund.

Note: Adopted June 29, 1973 to be effective September 10, 1973; amended June 29, 1990 to be effective September 4, 1990.

1:28-8. Custodial Receivers

Upon approval of the Board of Trustees pursuant to R. 1:28-1(c), the Director or an attorney designated to act on behalf of the Trustees may, upon the occasions set forth below, make application to an appropriate court for the appointment of a custodial receiver to take possession of the property of an attorney, including, but not limited to, property incident to the attorney's

law practice. Provided the Trustees first find a reasonable probability that a claim or claims will be presented to the Fund on account of the alleged misconduct of the attorney, such application may be made in any of the following instances:

- (a) Where an attorney has been disbarred or suspended by the Supreme Court, or where the attorney's resignation has been accepted by it, with prejudice.
- (b) Where the Trustees have received notice that a presentment has been or is about to be submitted against an attorney by a county ethics committee.
- (c) Where the Trustees have received notice that a criminal charge, whether by way of indictment or otherwise, has been or is about to be laid against an attorney.
- (d) Where an attorney shall admit the existence of defalcations with respect to clients' property, for which defalcations the attorney's misconduct shall have been responsible.
- (e) Where credible evidence of such misconduct reaches the Trustees otherwise than as set forth above.

Note: Adopted May 8, 1975, effective immediately; first paragraph amended and last paragraph deleted June 29, 1990 to be effective September 4, 1990; introductory paragraph and paragraphs (a) and (d) amended July 13, 1994 to be effective September 1, 1994.

1:28-9. Confidentiality

(a) All proceedings conducted and records made or maintained by the Fund in connection with the filing or consideration of claims shall be confidential and shall not be disclosed except as follows:

(1) Once a claim has been approved for payment, the Fund may, upon written request, make available the following information:

- (a) name and address according to Fund records of the respondent attorney;
- (b) name and city of residence of the claimant;
- (c) the amount claimed;
- (d) the amount awarded; and
- (e) a summary of the factual basis for the claim.

(2) Nothing herein shall preclude the release of information to the respondent and claimant or their attorneys or to the authorities specified in R. 1:28-3(a)(5), nor shall it preclude use of such information by the Fund pursuant to its rights under R. 1:28-3(e).

(3) Nothing herein shall preclude the inclusion of statistical information regarding claims in the annual report prepared pursuant to R. 1:28-4(a).

(b) Information received and maintained by the Fund in connection with the annual billing and registration of attorneys pursuant to R. 1:28-2 shall be made available to the

Supreme Court and the Administrative Office of the Courts upon request and may be made available to the public in accordance with such policies as the Trustees may adopt subject to approval of the Supreme Court. Copies of such records, including computer generated information, may be made available upon written request and upon such terms and conditions as the Trustees and the Supreme Court may in their discretion direct.

Note: Adopted June 29, 1990 to be effective September 4, 1990.