

# RHODE ISLAND

## The Lawyer's Fund for Client Reimbursement

(Rules of the Lawyer's Fund  
for Client Reimbursement  
Rule 1., et seq.)

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**RULES OF THE LAWYERS' FUND FOR  
CLIENT REIMBURSEMENT**

**Rule 1. Purpose:** The predecessor of the Lawyer's Fund for Client Reimbursement (the "Fund") was established by the Rhode Island Bar Association ("Bar Association") on October 14, 1968 to promote public confidence in the integrity of the legal profession by reimbursing losses, in whole or in part, caused by dishonest conduct of Rhode Island lawyers occurring in the course of the attorney-client relationship. It is funded entirely by contributions from Rhode Island lawyers.

**Rule 2. Administration:** The Fund shall be administered by a Committee, which shall hold the monies or other assets of the Fund in a separate account or accounts in the name of the Fund. All costs of administering the Fund and all claims against the Fund which have been approved by the Committee shall be paid from the Fund. Any income earned by the Fund shall be added to principal.

**Rule 3. The Committee:**

A. The Committee shall consist of seven or fewer members of the Rhode Island Bar Association appointed by the President-Elect to serve one year. An effort shall be made to provide continuity among Committee members and, to that end, Committee members may serve successive terms. The

President-Elect shall select the Chairperson. The President of the Bar Association shall be an ex-officio Member and the Executive Director of the Bar Association shall serve as the non-voting secretary of the committee. The Committee shall meet at the call of the chairperson as frequently as necessary to timely process claims. A quorum for any meeting of the Committee shall be three members.

B. The Committee shall have the following duties and responsibilities:

(1) To receive, evaluate, determine and pay claims;

(2) To promulgate rules of procedure not inconsistent with these Rules, subject to the provisions of Rule 9.B;

(3) To provide a full report at least annually to the Bar Association and make other reports as the Committee may deem advisable;

(4) To employ and compensate consultants, agents, legal counsel and other persons as necessary;

(5) To prosecute claims for restitution or subrogation as may be available to the Fund;

(6) To keep a written record of Committee meetings, claims filed, and the disposition of claims filed;

(7) To invest and safeguard the Fund, provided, however, sufficient monies shall be held in liquid form to pay claims and expenses;

(8) To publicize its activities to the public and the bar subject to the limitations of these Rules;

(9) To perform all acts necessary to carry out the purpose of the Fund.

C. 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 or who is related by blood, marriage, or adoption to 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. In the event that more than two members of the Committee are disqualified from participating in the investigation or adjudication of a claim, the President of the Bar Association may designate as many members of the Bar Association as are necessary to investigate or adjudicate that claim.

**Rule 4. Claims:**

A. To constitute a reimbursable loss the loss must have arisen out of and during the course of a lawyer-client or fiduciary-beneficiary relationship between the lawyer and the claimant. For purposes of these rules, a fiduciary-beneficiary relationship between the lawyer and the claimant shall not result in a reimbursable loss unless the lawyer was acting as a fiduciary, as that term is herein defined, and unless the dishonest conduct of the attorney is conduct which constitutes the practice of law. If the lawyer's activity with respect to the transaction in which the loss was incurred did not require a license to practice law, the loss is reimbursable only if it could not have occurred but for the lawyer-client relationship.

B. A claim for a reimbursable loss as defined by Rule 4 A may be filed at any time, but in no event later than one year from the date when the claimant

knew, or should have known of the loss or, the date when disciplinary action has been made public by the Supreme Court to Rhode Island against the lawyer causing the loss which is the subject of the claim, or the lawyer has died or been adjudged insane or incompetent, whichever first occurs, except that a claim may be considered as provided in Rule 4.E.

C. The Committee shall require proof by a preponderance of evidence that the claimant's loss was a result of the lawyer's dishonest conduct.

D. Except as provided by Rule 4.E., the following losses shall not be reimbursable:

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

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

(3) Losses incurred by any business entity in which the lawyer had an interest, directly or indirectly, unless such interest is in a publicly held entity;

(4) Losses incurred by any governmental entity or agency;

(5) Losses representing advanced fees collected by the lawyer unless it can be shown (1) that the lawyer performed no services after receipt of the fees, and (2) that it appears that there was no intent to perform services at the time of receipt of the fees;

(6) Losses representing unrepaid loans to the lawyer;

(7) Losses representing interest or costs of collection;

(8) Losses representing attorney's fees, unless such attorney's fee has been disclosed and approved by the Committee; and

(9) Losses claimed by a commercial, for profit, debt collection entity, as assignee of a claim of a creditor, except to the extent, and in an amount, that such entity has paid value therefore to the original creditor prior to the date of the alleged wrongful conduct of the attorney named in the claim.

E. In cases of extreme hardship or special and unusual circumstances, as where conditions have been shown to exist which preclude formal disciplinary action against the offending lawyer by the Supreme Court or the Disciplinary Committee, the Committee may, in its discretion, consider claims which would otherwise be excluded by the rules, or which do not meet all conditions for filing or allowance.

**Rule 5. Procedure by Claimant:**

A. In order for a claim to be considered, the claimant shall file the claim with the Committee on a form approved by the Committee. The claim form shall be sworn to by the claimant and shall contain at least the following information:

- (1) The name, address and telephone number of the claimant.
- (2) The name and address of the lawyer causing the alleged loss.
- (3) The amount and approximate date of the alleged loss.
- (4) The date when claimant discovered the loss and how it was discovered.

(5) A description of the services performed or supposed to have been performed by the lawyer including a copy of any written agreement with the lawyer.

(6) A description of the alleged dishonest conduct of the lawyer including the names, addresses and telephone numbers of any persons having knowledge thereof, together with any other important facts.

(7) A description of all steps taken to recover the loss from any source.

(8) A statement as to how the claimant learned about the Fund and that claimant agrees to publication of appropriate information if reimbursement is granted.

(9) A statement that the claimant agrees to assign and subrogate the claim to the Fund to the extent of the amount of any reimbursement granted and to cooperate with the fund in connection herewith.

B. The claim form shall prominently include the following legend:

"The Rhode Island Bar Association has not assumed any legal responsibility for the acts of lawyers and no person has a legal right to reimbursement of losses covered by these rules whether as claimant, third-party beneficiary or otherwise. Reimbursement of a loss is a matter of grace in the sole discretion of the Committee".

C. Claim forms shall be mailed or delivered to the Rhode Island Bar Association. The Executive Director of the Bar Association shall promptly bring such claims to the attention of the Committee.

**Rule 6. Procedure by Committee.**

A. When an essential element for reimbursement is not alleged, the Committee shall promptly notify the claimant of the information needed for further consideration of the claim.

B. The Committee may, in its discretion, request the President of the Bar Association to designate a member or members of the Bar Association to investigate any claim presented to the Committee.

C. The lawyer or his/her personal representative if he/she is incompetent or deceased shall be notified of the claim by service of the complaint on him/her or his/her personal representative and given an opportunity to respond to the claim within twenty (20) days. Service shall be made by delivery in person or by certified mail, return receipt requested.

D. The Committee may request that hearings be held and evidence presented. The lawyer, claimant, or personal representative, may, in the discretion of the Committee, be given an opportunity to be heard. Tape recordings shall be made of such hearings.

E. Proof by a preponderance of the evidence that claimants' loss resulted from the lawyer's dishonest conduct shall be required. The claim shall be determined on the basis of all available evidence (whether or not admissible in a court of law) presented, and notice shall be given to the lawyer, claimant or personal representative of the Committee's action.

F. The Committee shall determine the order and manner of

payment and pay all approved claims.

G. The maximum amount, which any one claimant may recover from the Fund arising from an instance or course of dishonest conduct is \$50,000, provided, however, that the aggregate maximum amount for which the Fund shall reimburse losses as the result of the dishonesty of a single lawyer or group of lawyers acting in collusion is \$200,000.00. Whenever it appears to the Committee that claims predicated upon the alleged conduct of such lawyer or lawyers may exceed this limit, no claims shall be paid until all such claims filed within one year immediately following the filing of the initial claim against the lawyer or lawyers have been processed. Those approved by the Committee shall then (if necessary), be apportioned on a pro-rata basis so that the total payments do not exceed \$200,000.00.

H. A claimant may request reconsideration within 30 days of the denial or determination of the amount of a claim. If the claimant fails to make a request or the request is denied, the decision of the Committee is final.

**Rule 7. Exhaustion of Recovery and Subrogation /proration of recovery and expense**

A. Exhaustion of Recovery

(1) Requirement of Exhaustion. A claimant must exert every reasonable effort to exhaust all other sources of reimbursement for the loss giving rise to the claim before the claimant is eligible for reimbursement from the Fund, except as hereafter provided:

(a) Claimant shall be deemed to have failed the requirement of exhaustion unless the claimant demonstrates to the satisfaction of the Committee that the claimant has made reasonable efforts to collect from the assets, insurance and sureties of the lawyer responsible for the loss, such lawyer's law firm and from third parties who may be liable to the claimant (including, but limited to, banks). Among other ways, a reasonable effort to comply with (1) above can be demonstrated if the claimant, after attempting to do so, is unable to retain an attorney on a contingent fee basis to represent the claimant on such claims as may be available to recover for the loss.

(b) The Committee may approve a claim, otherwise eligible for reimbursement, where the claimant is represented by counsel, such counsel is actively pursuing recovery in litigation for amounts in excess of the eligible claim, and where delay in approving the claim prior to exhaustion would result in undue hardship to the claimant and in prejudice to any subrogation rights of the Fund. Subrogation rights of the Fund and allocation of amounts recovered shall be governed by Rule 7B.

#### B. Subrogation Requirements

(1) Action by Fund. After payment of a claim, the Fund may bring such actions against such persons or entities who may be liable for the claimant's loss as the Fund deems advisable under any theory of recovery, plus the costs of such action, including attorney fees. All actions shall be under the control of the Fund, which may prosecute, decline to prosecute, compromise, settle or abandon any such action, as it may deem appropriate in its sole

discretion and without the necessity of the consent or approval of the claimant.

All sums recovered shall be paid first to the Fund up to the amount of the reimbursement made to the claimant plus the entirety of any expenses and costs, including attorney fees, incurred by the Fund in such action.

(2) Transfer of Claimant's Rights. As a condition precedent to payment of a claim, a claimant shall be required to execute and deliver to the Fund a subrogation agreement in the form prescribed by the Fund, from time to time in its reasonable discretion. At a minimum, the agreement shall assign to the Fund, the sum of the payment made to claimant, all of the claimant's rights against, including the right to sue, any and all persons and entities who may be liable on account of the dishonest acts, and losses with respect thereto described in the claim.

(3) Joinder of Claimant. Upon commencement of an action by the Fund as subrogee, the Fund shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses, provided however, that all sums recovered shall be paid first to the Fund up to the sum of the payment made to the claimant plus the entirety of any expenses and costs, including attorney fees, incurred by the Fund in such action.

(4) Cooperation by Claimant. The claimant shall be required to cooperate in all efforts undertaken by the Fund as subrogee.

(5) Allocation of Recovery/Fees and Expenses on Claims pursued by claimant. Where, pursuant to Rule 7.A, the claimant is pursuing claims in respect of an allowed reimbursement under Rule 7.A.(1)(b), all

recoveries shall be allocated proportionately between the Fund and the claimant as follows:

(a) The ratio of the allowed reimbursement to the principal amount of the loss in respect of which the allowance is made shall be determined.

(b) The Proportionate shares of any recovery for the Fund and Claimant respectively shall be calculated based on (a) above less proportionate burdens for fees and expenses.

(c) When the Fund's share of the aggregate recovery reaches the amount of the reimbursement, it shall release and discharge any further subrogation rights hereunder.

**Rule 8. Confidentiality:**

A. Claims, proceedings and reports involving claims for reimbursement are confidential until the Committee authorizes reimbursement to the claimant, except as hereafter provided.

B. If the lawyer whose alleged conduct gave rise to the claim requests that the matter be made public, (or makes the matter public) the requirement of confidentiality is waived.

C. Rule 8.A. shall not be construed to deny access to relevant information by professional disciplinary 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 claimant.

**Rule 9. General:**

A. The Committee may waive strict adherence to these Rules in any case in order to achieve the objectives of the Rhode Island Bar Association in establishing the Fund.

B. These Rules shall become effective when approved by the Executive Committee of the Rhode Island Bar Association and may be changed at any time by a majority vote of the Committee, subject to the approval of the Executive Committee, or by the Executive Committee alone.

**Rule 10. Definitions:**

A. A "lawyer" shall mean one who, at the time of the act complained of, was an active member of the Rhode Island Bar and maintained an office for the practice of law in Rhode Island.

B. "Reimbursable Losses" are only those losses of money or other property of clients of lawyers, which meet the requirements of Rule 4.

C. "Dishonest conduct" shall mean defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value by a lawyer.

D. "Fiduciary" shall mean a trustee under any trust, express, implied, resulting or constructive, an executor, administrator, guardian, conservator, receiver, trustee in bankruptcy, escrow agent, or assignee for the benefit or creditors.

- Amended November 20, 1990
- Amended by the Bar Association September 8, 1992
- Amended by Executive Committee (Rule 4(d)(9) November 26, 1996
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