

SOUTH CAROLINA

Lawyers' Fund for Client Protection of the South Carolina Bar

(Lawyers' Fund for Client Protection of the
South Carolina Bar Rules of Procedure
Section I., et seq.)

This page is for information
only and is Not part of the
attached document(s). It was
created by Kenneth F. Irek for
clarification and indexing.

**LAWYERS' FUND FOR CLIENT PROTECTION
OF THE SOUTH CAROLINA BAR
RULES OF PROCEDURE**

Section I. DEFINITIONS

For the purpose of these Rules of Procedure, the following definitions shall apply:

1. The "Committee" shall mean the Lawyers' Fund for Client Protection Committee of the South Carolina Bar.
2. The "Fund" shall mean the Lawyers' Fund for Client Protection of the South Carolina Bar.
3. A "Lawyer" shall mean one who, at the time of the act complained of, was a member of the South Carolina Bar, was domiciled in South Carolina, and was actually engaged in the practice of law in South Carolina. The fact that the act complained of took place outside of the State of South Carolina does not necessarily mean that the lawyer was not engaged in the practice of law in South Carolina.
4. "Client" shall mean a person engaging the professional legal services of a lawyer.
5. "Reimbursable Losses" are only those losses of money or other property of clients of lawyers which meet the following tests:
 - (a) The conduct which occasioned the loss occurred on or after the effective date of this Rule.
 - (b) The application must be received by the South Carolina Bar within three (3) years of the date the applicant discovered or reasonably ought to have discovered the dishonest conduct. No application may be considered after the expiration of six years from the date of the dishonest conduct. In the event that the application is deemed to be more appropriately handled by the Resolution of Fee Disputes Board, the transfer of the application shall toll the statute of limitations for filing a claim with the Lawyers Fund.
 - (c) 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.
 - (d) The loss to be paid to any one client shall not exceed \$40,000; the aggregate total of claims paid per attorney shall not exceed \$200,000.
 - (e) The lawyer has been disbarred or suspended from the practice of law, has voluntarily resigned from the practice of law, has died, has disappeared, has removed himself from the State and is not subject to judicial process, has been adjudicated a bankrupt, or has been adjudicated mentally incompetent or where the loss has been certified to the Committee by the Board of Governors of the South Carolina Bar or by the Commission on Lawyer Conduct as an appropriate

case for consideration because the loss was caused by the dishonest conduct of a member of the South Carolina Bar.

The following shall normally be excluded from “Reimbursable Losses”:

- (a) Losses of wives, other close relatives, partners, associates and employees of lawyers causing the losses.

The following shall be excluded from “Reimbursable Losses”:

- (a) Losses covered by any bond, surety agreement, or insurance contract are excluded to the extent covered thereby; including any loss to which any bondsman or surety or insurer is subrogated to the extent of that subrogated interest. Losses of any financial institution which are recoverable under a “banker's blanket bond” or similar commonly available insurance or surety contract are excluded.
6. “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. This shall include failure to refund fees in accordance with the Resolution of Fee Disputes Board findings against the suspended or disbarred lawyer.

Section II. APPLICATION FOR REIMBURSEMENT

1. The Committee shall prepare a “Form of Application for Reimbursement.” The Committee in its discretion may waive a requirement that an application be filed on such form.
2. The form shall require, as minimum information:
 - (a) The name and address of the lawyer.
 - (b) The amount of the alleged loss claimed.
 - (c) The date or period of time during which the alleged loss was incurred.
 - (d) Name and address of the applicant.
 - (e) A general statement of facts relative to the application.
 - (f) Verification by the applicant.
3. The form or application shall contain the following statement in boldface type:

“IN ESTABLISHING THE LAWYERS’ FUND FOR CLIENT PROTECTION, THE SOUTH CAROLINA BAR DID NOT CREATE, NOR ACKNOWLEDGE ANY LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS IN THE PRACTICE OF LAW. ALL REIMBURSEMENTS OF LOSSES OF THE LAWYERS’ FUND FOR CLIENT PROTECTION SHALL BE A MATTER OF GRACE IN THE SOLE DISCRETION OF THE

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

4. Applications shall be addressed to the Lawyers' Fund for Client Protection of the South Carolina Bar, P.O. Box 608, Columbia, South Carolina 29202, and shall forthwith be transmitted by such office to the Chair of the Committee, with a copy being simultaneously transmitted to each member of the Committee.
5. The Committee may, in its discretion, require the exhaustion of some or all civil remedies before processing or paying claims.
6. If the lawyer is a member in good standing of the South Carolina Bar, the applicant's cooperation in grievance proceedings against such lawyer shall be a prerequisite to the granting of relief to such applicant from the Fund. The Committee may require that a claimant prosecute or cooperate in appropriate civil proceedings against the accused lawyer as a prerequisite to the granting of relief to such applicant from the Fund.

SECTION III. PROCESSING APPLICATION

1. The Committee shall cause reasonable investigation of any applications coming to its attention, either by applications for reimbursement or by certification from the Commission on Lawyer Conduct, its agents, or the Board of Governors of the South Carolina Bar.
2. The Chair of the Committee shall cause each such application to be sent to a member of the Committee or other member of the South Carolina Bar for investigation and report. A copy of the application shall be served upon or sent by registered mail to the last known address of the lawyer who it is claimed committed the dishonest act. Whenever possible, the application will be referred to a member of the Committee or member of the South Carolina Bar who practices in the Judicial Circuit wherein the alleged defalcating lawyer practiced.
3. When, in the opinion of the member to whom application has been referred, the application is clearly not for a reimbursable loss, no further investigation need be conducted. A report with respect to such application shall be made as hereinafter specified by the member to whom the application was referred.
4. A member to whom a report is referred for investigation shall conduct such investigation in such manner as deemed necessary and desirable to determine whether the application is for a reimbursable loss and to guide the Committee in determining the extent, if any, to which the application shall be paid from the Fund.
5. Any information obtained by the member from the files of the Commission on Lawyer

Conduct shall be used solely by or for the Lawyers' Fund for Client Protection Committee; but otherwise shall constitute confidential information.

6. Reports with respect to applications shall be submitted by the members to whom they have been referred for investigation to the Committee Liaison within ninety days.
7. The Committee Liaison shall submit reports with respect to applications to the Chair of the Committee and to the members of the Committee within ten working days of their receipt.
8. After considering the reports on applications to be processed, a Committee member may request that testimony be presented. Absent such recommendation or request, applications shall be processed on the basis of information contained in the report of the member who investigated such applications. In all cases, the alleged defalcating lawyer or a personal representative will be given an opportunity to be heard by the Committee if he or she so requests. The "fact" of dishonest conduct is usually determined by the Commission on Lawyer Conduct or a civil or criminal court; not by the Lawyers' Fund for Client Protection Committee.
9. The Committee shall, in its discretion, determine the amount of loss, if any, for which any client shall be reimbursed from the Fund. In making such determination, the Committee shall consider, *inter alia*, the following:
 - (a) Any conduct of the client which contributed to the loss.
 - (b) The comparative hardship which the client suffered because of the loss.
 - (c) The total amount of reimbursable losses of the clients of any one lawyer or association of lawyers.
 - (d) The total amount of reimbursable losses in previous years for which the total reimbursement has not been made and the total assets of the Fund.
 - (e) The total amount of insurance or other source of funds available to compensate the client for the loss.
 - (f) The Committee may, in its discretion, allow further reimbursement in any year of a reimbursable loss allowed by it in prior years with respect to a loss which has not been fully reimbursed; provided such further reimbursement would not be inconsistent or in conflict with any previous determination with respect to such a loss.
 - (g) No reimbursement shall be made to any client, a report of whose application has not been submitted to the Committee, except as provided below. No reimbursement shall be made to any client unless said reimbursement is approved by a majority vote of the Committee at a duly held meeting at which a quorum is present, except as provided below.

Small claims may be authorized by the Chair of the Committee and paid without a

meeting of the Committee upon compliance with the following procedure:

- (i) The application is for reimbursement in an amount of \$1,000 or less;
 - (ii) The investigating member has represented that all elements justifying reimbursement under these rules have been satisfied; and
 - (iii) The members of the Committee are provided a copy of the client's application and the investigating member's report, a majority of members approve such reimbursement, and approvals are filed with the records of the Committee.
10. An applicant may be advised of the status of the Committee's consideration of his application and shall be advised of the final determination of the Committee.
11. All participants in the application, investigation or proceeding (including the applicant) shall conduct themselves so as to maintain the confidentiality of the application, investigation or proceedings. This provision shall not be construed to deny relevant information to the Commission on Lawyer Conduct or authorized agencies investigating qualifications for governmental employment, or to prohibit the release of statistical information which does not disclose the identity of the parties. If requested, any information from the files of the Lawyers' Fund for Client Protection may be provided to law enforcement and the Commission on Lawyer Conduct.

Section IV. SUBROGATION FOR REIMBURSEMENT MADE.

In the event reimbursement is made to a client, the Fund shall be subrogated in this amount and may bring such action as is deemed advisable against the lawyer, his personal representative, heirs, devisees and assigns, and/or against all other persons or legal entities against whom the client may have a right of recovery by reason of the loss. Such action may be brought either in the name of the client, or in the name of the South Carolina Bar. The client shall be required to execute a "Subrogation Agreement" in this regard. Upon commencement of an action by the South Carolina Bar pursuant to its subrogation rights, it shall advise the reimbursed client at his last known address. A reimbursed client may then join in such action to press an application for his loss in excess of the amount of the above reimbursement.

The Client shall be entitled to bring an action for recovery of losses directly against the lawyer, or other person or entity if the Committee has not done so within six months of execution of the subrogation agreement. Any amounts recovered in such action either by the Committee or by the client, in excess of the amount to which the Fund is subrogated, less the Committee's actual costs of such recovery, shall be paid to or retained by the client as the case may be.

Before receiving a payment from the Fund, the person who is to receive such payment or

his or her legal representative, shall execute and deliver to the Committee a written agreement stating that in the event the reimbursed client or the client's estate should ever recover any restitution, the reimbursed client shall agree to repay to the Fund (up to the amount of reimbursement from the Fund) that amount which the original reimbursement from the Fund plus the present restitution exceeds the reimbursed clients actual loss, as that actual loss is or was determined by the Committee.

Section V. COMMITTEE MEETINGS

1. The Committee shall meet annually and from time to time upon call of the Chair, provided that the Chair shall call a meeting at any reasonable time at the request of at least two members of the Committee.
2. The Chair shall give the members not less than 15 days written notice of the time and place of each regular meeting and shall give not less than 5 days written notice of each special meeting. Notice of any meeting may be waived by a member either before or after the meeting.
3. A quorum at any meeting of the Committee shall be six members. No action shall be taken by the Committee in the absence of a quorum; but at any meeting any matter may be considered by the members present without the taking of any action with respect thereto. Written minutes of each meeting shall be prepared and permanently maintained.
4. The Chair of the Committee shall be appointed by the President of the South Carolina Bar; his or her term shall extend until the first meeting of the Committee in the following Bar year and until a successor is appointed. Should a vacancy occur in the office of Chair, such vacancy shall be filled in the manner of the original selection.
5. The fiscal year of the Committee shall coincide with the fiscal year of the South Carolina Bar.

Section VI. GENERAL PURPOSES

In any given case, the Committee may waive the technical adherence to these Rules of Procedure in order to achieve the objectives of the Rules of the Supreme Court establishing the Fund.

Section VII. GENERAL PROVISIONS

No publicity shall be given to applications for reimbursement until payment is approved; thereafter, publicity shall be within the discretion of the Committee subject to the provisions of Section III.

These Rules may be changed at any time by the majority vote of the Committee subject to the approval of the Board of Governors of the South Carolina Bar and provided such change is not inconsistent with the Rule of the Supreme Court of South Carolina establishing the Lawyers' Fund for Client Protection. Members of the Committee, investigating members and Bar staff shall be immune from liability and suit while acting within the scope of their duties under this Rule or any rules which may be promulgated by the Committee.

Section VIII. CONFIDENTIALITY

The Committee, pursuant to Rule 411(c)(4), memorializes a Rule regarding the confidentiality of applications, proceedings and reports. Unless otherwise directed by the lawyer that the matter be made public pursuant to the Rule, this Rule shall apply.

1. Upon filing of an application pursuant to Rule 411, the lawyer whose alleged conduct predicates the application shall be provided a copy of that application. The copy shall be sent to the address of the lawyer on the Bar member register, unless another address is known.

2. The cover letter forwarding the application to the lawyer will also identify the investigator assigned to the matter and invite that lawyer to contact the investigator should he or she deem it necessary. The investigator is under no obligation to contact the lawyer.

3. During the course of investigation, individual investigators gather information and prepare reports for the Committee to consider. The reports submitted by the individual investigator provide background and make a recommendation, although the recommendation is not binding upon the Committee. The reports are intended to provide as much information as possible so that the Committee can have a full and frank deliberation. All file materials other than the application and the Committee's decision, are deemed confidential work product and shall not be produced.

4. Nothing contained herein shall be construed to deny access to relevant information to appropriate authorized agencies as authorized by the Committee's Rule of Procedure. To that extent, information regarding obligations of lawyers to the Fund may be shared with appropriate authorities determining the feasibility of reinstating the lawyer to the practice of law. The deliberations and reasoning for the award amounts will not be shared with those agencies absent a case-by-case approval by the Committee.

5. Civil subpoenas will be honored as to specific matter, but work product in the course of an investigation shall not be produced.