

UTAH

Lawyers' Fund for Client Protection

(Utah Supreme Court
Rules of Professional Practice
Article 9 – Lawyers' Fund
for Client Protection
Rule 14-901, et seq.)

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UTAH COURTS

ARTICLE 9. FUND FOR CLIENT PROTECTION

Rule 14-901. Definitions.

As used in this article:

- (a) "Bar" means the Utah State Bar;
- (b) "Board" means the Board of Commissioners of the Utah State Bar;
- (c) "Committee" means the Committee on Fund for Client Protection;
- (d) "Dishonest conduct" means either wrongful acts committed by a lawyer or a licensed paralegal practitioner in the nature of theft or embezzlement of money or the wrongful taking of or conversion of money, property or other things of value, or refusal to refund unearned fees received in advance where the lawyer or licensed paralegal practitioner performed no service or such an insignificant service that the refusal to return the unearned fees constitutes a wrongful taking or conversion of money; and
- (e) "Fund" means the Fund for Client Protection; and
- (f) "Supreme Court" means the Utah Supreme Court.

Effective May 1, 2019

Rule 14-902. Purpose and scope; establishment of Fund.

- (a) The Fund is established to reimburse clients for losses caused by the dishonest conduct committed by lawyers admitted to practice in Utah or licensed paralegal practitioners licensed in Utah.
- (b) The purpose of the Fund is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to practice law in Utah or licensed paralegal practitioners licensed in Utah, occurring in the course of the lawyer/client, licensed paralegal practitioner/client or fiduciary relationship between the lawyer or licensed paralegal practitioner and the claimant.
- (c) Every lawyer and licensed paralegal practitioner have an obligation to the public to participate in the collective effort of the Bar to reimburse persons who have lost money or property as a result of the dishonest conduct of another lawyer or licensed paralegal practitioner. Contribution to the Fund is an acceptable method of meeting this obligation.

(d) These rules shall be effective for claims filed after August 1990, and the Committee, which was previously authorized under the former resolution, may act under the terms of the former resolution on claims filed prior to the effective date of these rules.

Effective May 1, 2019

Rule 14-902 Note.

By resolution of the Board of Commissioners of the Utah State Bar, a Client Security Fund was approved and established by the Supreme Court, effective April 9, 1977. The Fund was established to provide meaningful, prompt cost reimbursements to clients who had been injured by a lawyer's dishonest act. The original resolution did not provide sufficient rules and/or guidelines for the Committee that was embodied by the resolution to utilize in making its recommendations to the Board of Bar Commissioners. The American Bar Association has adopted, as of August 9, 1989, Model Rules for Lawyers' Fund for Client Protection. The following Rules adopt many of the principles from the American Bar Association Model Rules, as well as features from other states and from the prior resolution of the Board of Commissioners of the Utah State Bar, as approved by the Supreme Court.

Licensed Paralegal Practitioners were included in the Fund in 2019 after the Utah Supreme Court exercised its constitutional authority to govern the practice of law and authorized Licensed Paralegal Practitioners to provide limited legal services in the practice areas of: (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking and custody and support; (2) forcible entry and detainer; and (3) debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases.

Rule 14-903. Committee membership and terms; Board approval of Committee recommendations.

(a) The Committee shall consist of five lawyers, each to function for a period of five years. The initial membership of the Committee shall be comprised of those individuals who are members of the Committee existing under the former resolution at the time of the adoption of these rules. Subsequent appointments shall be for a term of three years or the term

uniformly determined for all Committee members by the Board. Vacancies shall be filled by appointment by the president of the Bar, with the approval of the Board, for the unexpired term.

(b) The Board shall retain the capacity to make any final determination after considering the recommendations of the Committee. The Board, functioning with regard to the Fund, is under the supervision of the Supreme Court.

Rule 14-904. Funding.

(a) The Supreme Court shall provide for funding by the lawyers and licensed paralegal practitioners licensed in this state in amounts adequate for the proper payment of claims and costs of administering the Fund subject to paragraph (c).

(b) All determinations with regards to funding shall be within the discretion of the Board, subject to approval of the Supreme Court.

(c) The Bar shall have the authority to assess its members and licensed paralegal practitioners for purposes of maintaining the Fund at sufficient levels to pay eligible claims in accordance with these rules. The Committee shall report annually to the Commission on a timely basis as to known prospective claims as well as total claims paid to date so that an appropriate assessment can be made for the upcoming fiscal year. After the assessment at the beginning of the fiscal year is determined, the Fund balance shall be set in an amount of not less than \$200,000. The Bar shall then report to the Supreme Court as to known prospective claims as well as total claims paid to date after which the final assessment and fund balance shall be set with the Court's approval.

(d) A lawyer's or licensed paralegal practitioner's failure to pay any fee assessed under paragraph (c) shall be cause for administrative suspension from practice until payment has been made.

(e) Any lawyer or licensed paralegal practitioner whose actions have caused payment of funds to a claimant from the Fund shall reimburse the Fund for all monies paid out as a result of his or her conduct with interest at legal rate, in addition to payment of the assessment for the procedural costs of processing the claim and reasonable attorney fees incurred by the Bar's Office of Professional Conduct or any other attorney or

investigator engaged by the Committee to investigate and process the claim as a condition of continued practice.

(e)(1) In lawyer or licensed paralegal practitioner discipline cases for which the Fund pays an eligible claim, the lawyer's or licensed paralegal practitioner's license to practice shall be administratively suspended for non-payment until reimbursement to the Fund has been made by the lawyer or licensed paralegal practitioner.

Effective May 1, 2019

Rule 14-905. Segregated bank account.

All monies or other assets of the Fund including accrued interest thereon shall be held in the name of the Fund in a bank account segregated from all other accounts of the Bar or any committees or sections, subject to the direction of the Board.

Rule 14-906. Committee meetings.

(a) The Committee shall meet as frequently as necessary to conduct the business of the Fund and to timely process claims.

(b) The chairperson shall call a meeting at any reasonable time, or upon the request of at least two Committee members.

(c) A quorum of any meeting of the Committee shall be three members.

(d) Minutes of the meeting shall be taken and permanently maintained.

Rule 14-907. Duties and responsibilities of the committee.

The Committee shall have the following duties and responsibilities:

(a) to receive, evaluate, determine and make recommendations to the Board relative to the individual claims;

(b) to promulgate rules of procedure not inconsistent with these rules;

(c) to provide a full report, at least annually, to the Board and to make other reports as necessary;

(d) to publicize its activities to the public and the Bar, subject to approval of the Board;

(e) to appropriately utilize Bar staff to assist in the Committee's performance of its functions effectively and without delay;

(f) to engage in studies and evaluations of programs for client protection and the prevention of dishonest conduct by lawyers and licensed paralegal practitioners; and
(g) to perform all other acts necessary or proper for the fulfillment of the purposes of the Fund and its effective administration.

Effective May 1, 2019

Rule 14-908. Conflict of interest.

(a) A Committee member who has or has had a lawyer-client relationship or a 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, lawyer or licensed paralegal practitioner.

(b) A Committee member with a past or present relationship, other than as provided in paragraph (a), with a claimant, the lawyer or the licensed paralegal practitioner whose alleged conduct is the subject of a claim, shall disclose such relationship to the Committee and, if the Committee deems appropriate, that Committee member shall not participate in any proceeding relating to such claim.

Effective May 1, 2019

Rule 14-909. Immunity.

The Committee members, employees and agents of the Bar and claimant and lawyers who assist claimants are absolutely immune from civil liability for all acts in the course of their duties.

Rule 14-910. Eligible claim.

(a) The loss must be caused by the dishonest conduct of the lawyer or the licensed paralegal practitioner and shall have arisen out of the course of a lawyer/client, licensed paralegal practitioner/client, or fiduciary relationship between the lawyer or the licensed paralegal practitioner and the claimant and by reason of that relationship.

(b) The claim for reimbursement shall be filed within one year after the date of the final order of discipline.

(b)(1) In cases of the lawyer's or licensed paralegal practitioner's death, the claim for reimbursement shall be filed within one year of the lawyer's or licensed paralegal practitioner's date of death.

(b)(2) In cases of the lawyer's or licensed paralegal practitioner's formal disability, the claim for reimbursement shall be filed within one year of the date of the order of disability.

(c) If the subject of the application for reimbursement from the Fund is or arises out of loss occasioned by a loan or an investment transaction with a lawyer or licensed paralegal practitioner, each loss will not be considered reimbursable from the Fund unless it arose out of and in the course of the attorney/client relationship or licensed paralegal practitioner/client relationship; and but for the fact that the dishonest lawyer or licensed paralegal practitioner enjoyed an attorney/client or licensed paralegal practitioner/client relationship with the claimant, such loss could not have occurred. In considering whether that standard has been met the following factors will be considered:

(c)(1) the disparity in bargaining power between the lawyer or the licensed paralegal practitioner and the client in their respective educational backgrounds in business sophistication;

(c)(2) the extent to which the lawyer's or the licensed paralegal practitioner's status overcame the normal prudence of the claimant;

(c)(3) the extent to which the lawyer or licensed paralegal practitioner, by virtue of the attorney/client or licensed paralegal practitioner/client relationship with the claimant, became privy to information as to the client's financial affairs. It is significant if the lawyer or licensed paralegal practitioner knew of the fact that the client had available assets or was expecting to receive assets which were ultimately wrongfully converted by the lawyer or licensed paralegal practitioner;

(c)(4) whether a clear majority of the service arose out of a relationship requiring a license to practice law in Utah, as opposed to one that did not. In making this evaluation, consideration will be given to:

(c)(4)(A) whether the transaction originated with the lawyer or licensed paralegal practitioner;

(c)(4)(B) the reputation of the lawyer or licensed paralegal practitioner as to scope and nature of his/her practice and/or business involvement;

(c)(4)(C) the amount of the charge made for legal services, if any, compared to that for a finder's fee, if any; and

(c)(4)(D) the number of prior transactions of either a similar or different nature in which the client participated, either with the lawyer or licensed paralegal practitioner involved or any other lawyer, licensed paralegal practitioner, person or business organization;

(c)(5) the extent to which the lawyer or licensed paralegal practitioner failed to make full disclosure to the client in compliance with the Utah Rules of Professional Conduct, including disclosure of the lawyer's or licensed paralegal practitioner's financial condition and his/her intended use of the funds.

(d) Exceptions. Except as provided by paragraph (e), the following losses shall not be reimbursed:

(d)(1) loss incurred by spouses, children, parents, grandparents, siblings, partners and associates of the lawyer or licensed paralegal practitioner;

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

(d)(3) losses of any financial institution which are recoverable under a "Banker's Blanket Bond" or similar commonly available insurance or surety contract;

(d)(4) any business entity controlled by the lawyer, licensed paralegal practitioner or any person or entity described in paragraph (d)(1);

(d)(5) any governmental entity or agency;

(d)(6) any assigned claims, third party claims, claims of heirs or estates of deceased claimants;

(d)(7) any claims where claimant has failed to exhaust all other reasonably available services or recovery methods;

(d)(8) any investment losses, as distinguished from legal fees, which might reasonably be characterized as:

(d)(8)(A) any pyramid or ponzie scheme;

(d)(8)(B) any investment in or loan to any offshore entity;

(d)(8)(C) any investment in or loan to an entity that claims that a benefit to the investor would be the evasion, avoidance, reduction or other sheltering of taxes that would be otherwise assessed on the investment; or

(d)(8)(D) any investment that promises such a high rate of return that a reasonable and prudent person would suspect that the venture is of unusually high risk.

(e) In cases of extreme hardship or special and unusual circumstances, the Committee may, in its discretion, recognize a claim which would otherwise be excluded under these rules.

Effective May 1, 2019

Rule 14-911. Procedures and form; responsibilities of claimants to complete form.

(a) The Committee shall prepare and approve a form of claim for reimbursement.

(b) The form shall include at least the following information provided by the claimant under penalty of perjury:

(b)(1) the claimant's name and address, home and business telephone, occupation and employer, and social security number for purposes of subrogation and tax reporting;

(b)(2) the name, address and telephone number of the lawyer or licensed paralegal practitioner who has dishonestly taken the claimant's money or property;

(b)(3) the legal or other fiduciary services the lawyer or licensed paralegal practitioner was to perform for the client;

(b)(4) how much was paid to the lawyer or licensed paralegal practitioner;

(b)(5) the copy of any written agreement pertaining to the claim;

(b)(6) the form of the claimant's loss involved (e.g. money, securities or other property) and the attachment of any documents that evidence the claimed loss such as cancelled checks, title instruments, deeds or stock certificates;

(b)(7) the amount of loss and the date when the loss occurred;

(b)(8) the date when the claimant discovered the loss and how the claimant discovered the loss;

(b)(9) the lawyer's or licensed paralegal practitioner's dishonest conduct and the names and addresses of any persons who have knowledge of the loss;

(b)(10) identification of whom the loss has been reported to (e.g. county attorney, police, disciplinary agency, or other person or entity), and a copy of any complaint and description of any action that was taken;

(b)(11) the source, if any, from which the loss could be reimbursed, including any insurance, fidelity or surety agreement;

(b)(12) the description of any steps taken to recover the loss directly from the lawyer, licensed paralegal practitioner or any other source;

(b)(13) the circumstances under which the claimant has been, or will be, reimbursed for any part of the claim (including the amount received or to be received, and the source), along with a statement that the claimant agrees to notify the Committee of any reimbursements the claimant receives during the pendency of the claim;

(b)(14) the existence of facts believed to be important to the Committee's consideration of the claim;

(b)(15) the manner in which the claimant learned about the Fund;

(b)(16) the name, address and telephone number of the claimant's present lawyer or licensed paralegal practitioner, if any;

(b)(17) the claimant's agreement to cooperate with the Committee in reference to the claim, as required by the Utah or Federal Rules of Civil Procedure, in reference to civil actions which may be brought in the name of the Bar, pursuant to a subrogation and assignment clause, which shall also be contained within the claim;

(b)(18) the name and address of any other state fund to which the claimant has applied or intends to apply for reimbursement, together with a copy of the application; and

(b)(19) the statement that the claimant agrees to the publication of appropriate information about the nature of the claim and the amount of reimbursement, if reimbursement is made.

(c) The claimant shall have the responsibility to complete the claim form and provide satisfactory evidence of a reimbursable loss.

(d) The claim shall be filed with the Committee by providing the same to the Utah State Bar, Fund for Client Protection at the Law and Justice Center, 645 South 200 East, Salt Lake City, Utah 84111.

Effective May 1, 2019

Rule 14-912. Processing claims.

(a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, the claimant shall be advised of the reasons why the claim may not be eligible for reimbursement, and that unless additional facts to support eligibility are submitted to the Committee, the claim file shall be closed. The chairperson of the Fund may appoint any member of the Committee and/or his/herself to determine the eligibility of claims.

(b) A certified copy of an order disciplining a lawyer or licensed paralegal practitioner for the same dishonest act or conduct alleged in the claim, or a final judgment imposing civil or criminal liability therefor, shall be evidence that a lawyer or licensed paralegal practitioner committed such dishonest act or conduct.

(c) The Bar's Office of Professional Conduct Senior Counsel shall be promptly notified of each claim.

(d) The lawyer or licensed paralegal practitioner alleged to have engaged in dishonest conduct shall be provided a copy of the claim and given an opportunity to respond in writing within 20 days of the receipt thereof to the Committee.

(e) The Committee may request that testimony be presented. The lawyer, licensed paralegal practitioner or his or her representative shall be given an opportunity to be heard if they so request within 20 days of receiving a notice from the Committee that the Committee will process the claim.

(f) The Committee may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for the purposes of professional discipline and further, represents only a recommendation to the Board. A claim may only be considered if the individual lawyer or licensed paralegal practitioner involved has been disciplined to a threshold level of a public reprimand or is no longer in practice.

(g) The claim shall be determined based on all available evidence, and notice shall be given to the claimant and the lawyer or licensed paralegal practitioner of the final decision by the Board after a recommendation has been made by the Committee. The recommendation for approval or denial of a claim shall require the affirmative votes of at least a majority of the Committee members and a quorum of the voting members of the Board.

(h) Any proceeding upon a claim shall not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to relying on 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 court proceedings. The claimant shall have the duty to supply relevant evidence to support the claim.

(i) The Board shall determine the order and manner of payment and pay those claims it deems meritorious, but unless the Board directs otherwise, no claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct as alleged in the claim; specifically, no determination and/or hearing shall take place until such time that all disciplinary proceedings have, in fact, been completed.

(j) Both the claimant and the lawyer or licensed paralegal practitioner shall be advised of the status of the Board's consideration of the claim and after having received the recommendation of the Committee, also shall be informed of the final determination.

(k) The claimant may request reconsideration within 30 days of the denial or determination of the amount of the claim.

Effective May 1, 2019

Rule 14-913. Payment of reimbursement.

(a) The Board may, from time to time, fix a maximum amount of reimbursement that is payable by the Fund. Initially, the maximum amount shall be \$10,000 per claim and \$25,000 total dollars within any given calendar year with regard to an individual lawyer or licensed paralegal practitioner.

(a)(1) There shall be a lifetime claim limit of \$425,000 per lawyer or licensed paralegal practitioner.

(b) Claimant shall be reimbursed for losses in amounts to be determined by the Board after recommendations by the Committee. Reimbursement shall not include interest and other incidental and out-of-pocket expenses.

(c) Payment of reimbursement shall be made in such amounts and at such time as the Board approves and may be paid in lump sum or installment amounts. In the event that

the Committee determines that there is a substantial likelihood that claims against the lawyer or licensed paralegal practitioner may exceed either the annual or lifetime claim limits, claims may be paid on a pro rata basis or otherwise as the Board and the Committee determine is equitable under the circumstances.

(d) If a claimant is a minor or an incompetent, the reimbursement may be paid to any proper and legally recognized person or authorized entity for the benefit of the claimant.

Advisory Committee Notes

Rule 14-913 Amendment Note: The Bar changed from a calendar year to a fiscal year (July 1 to June 30) in 1990.

The Board approved increasing the yearly per claim award limit from \$10,000 to \$20,000 and to eliminate the yearly per lawyer claim limit of \$25,000 on December 1, 2000.

The Board voted to reinstate the yearly lawyer cap of \$25,000 on June 8, 2001.

The Board voted to raise the yearly per lawyer cap to \$50,000 from the previously reinstated \$25,000 cap on December 7, 2001.

The Board voted to raise the yearly per lawyer cap to \$75,000 on October 29, 2010.
Effective May 1, 2019

Rule 14-914. Reimbursement from the fund as a matter of grace.

No person shall have a legal right to reimbursement from the Fund, whether as claimant, beneficiary or otherwise, and any payment is a matter of grace.

Rule 14-915. Restitution and subrogation.

(a) A lawyer or licensed paralegal practitioner whose dishonest conduct results in reimbursement to a claimant shall be liable to the Fund for restitution, and the Bar may bring such action as it deems advisable to enforce such obligation.

(b) As a condition of reimbursement, a claimant shall be required to provide the Fund with a pro tanto transfer of the claimant's rights against the lawyer or licensed paralegal practitioner and their legal representative, estate or assigns; and of claimant's rights against any third party or entity who may be liable for the claimant's loss.

(c) Upon commencement of an action by the Bar as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

(d) In the event the claimant commences an action to recover unreimbursed losses against the lawyer, licensed paralegal practitioner or any other entity who may be liable for the claimant's loss, the claimant shall be required to notify the Bar of such action.

(e) The claimant shall be required to agree to cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.

Effective May 1, 2019

Rule 14-916. Confidentiality.

Claims, proceedings and reports involving claims for reimbursement are confidential until the Committee recommends, and final determination is made by the Board, authorizing reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Board may publicize the nature of the claim, the amount of reimbursement and the name of the lawyer or licensed paralegal practitioner. The name and address of the claimant shall not be publicized by the Bar, unless specific permission has been granted by the claimant.

Effective May 1, 2019