

# VERMONT

## Vermont Bar Association Client's Security Fund

### (Vermont Bar Association Client's Security Fund Rules)

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**VERMONT BAR ASSOCIATION  
CLIENT'S SECURITY FUND RULES**

(Adopted April 18, 1986)  
(Revised September 5, 2003)

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## **DEFINITIONS**

**CLAIM:**

A written application to the Committee for reimbursement of a loss.

**CLAIMANT:**

A person or entity who has sustained a loss as a result of a lawyer's dishonest conduct.

**COMMITTEE:**

The Clients' Security Fund Committee.

**FUND:**

The Clients' Security Fund

**LAWYER:**

A person, who, at the time of the act complained of, was admitted to practice before the Vermont Supreme Court and was in active practice.

**LOSS:**

The loss of money or property occasioned by the dishonest conduct of a lawyer occurring within the State of Vermont.

**DISHONEST CONDUCT:**

A misappropriation, embezzlement, defalcation, or conversion of money, property, or other thing of value.

**RULE 1 ESTABLISHMENT**

- A. There is established the Clients' Security Fund to reimburse claimants for losses caused by the dishonest conduct of a lawyer.
- B. There is established the Clients' Security Fund Committee which shall receive, hold, manage and disburse from the Fund such monies as may from time to time be allocated to the Fund.

**RULE 2 APPROPRIATION TO FUND**

The Vermont Bar Association shall provide funding necessary for the payment of claims and the costs of administration. The total amount of said fund shall be determined by the Vermont Bar Association Board of Managers.

**RULE 3 FUNDS**

All monies or other assets allocated to the Fund shall be held in a separate account in the name of the Fund, subject to the written direction of the Committee, provided, however, that monies allocated to the Fund may be commingled with other monies for investment purposes only.

**RULE 4 COMPOSITION OF THE COMMITTEE**

- A. The Committee shall consist of the Board of Bar Managers.
- B. The President shall appoint a chairperson in the event of a claim being made who will be responsible for following the procedures set forth herein.
- C. The treasurer shall be bonded in such manner and amount as the Committee shall determine.

**RULE 5 COMMITTEE MEETINGS**

- A. The Committee shall meet no less than once per year upon call of the Chairperson provided that the Chairperson shall call a meeting at any reasonable time at the request of at least two members of the Committee.
- B. A quorum for any meeting of the Committee shall be the same as that for the Board of Bar Managers.
- C. Hearings on claims shall be recorded and permanently maintained by the Secretary.

**RULE 6 DUTIES AND RESPONSIBILITIES OF THE COMMITTEE**

The Committee shall have the following duties and responsibilities:

- A. To receive, evaluate, determine and pay claims;
- B. To promulgate rules of procedure not inconsistent with these Rules;
- C. To prudently invest such portions of the funds as may not be needed currently to pay losses;
- D. To consider the purchase of insurance to cover extraordinary losses in excess of the assets of the fund, provided that the purchase of such insurance is approved by the membership of the Vermont Bar Association;

- E. To make an annual report to the bar association and make other reports and publicize its activities as the Committee may deem advisable;
- F. To employ and compensate consultants, agents, legal counsel and other persons as necessary; and
- G. To prosecute the claims for restitution to which the Fund is entitled.

## **RULE 7 CONFLICT OF INTEREST**

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.

## **RULE 8 CLAIMS**

- A. The Committee shall in each case establish and cause publication of dates for closure of the filing of claims against the fund. The Committee shall not entertain claims against the fund filed two years after the claimant knew or should have known of the dishonest conduct of the lawyer; or two years after the claimant has exhausted reasonable legal and other avenues against all potential obligors on the claim, whichever is later.
- B. The loss shall have arisen out of and during the course of a lawyer-client or fiduciary relationship between the lawyer and the claimant.
- C. No payment shall be made from the Fund unless and until:
  - (1) Disciplinary proceedings have been commenced against the lawyer in the Vermont Supreme Court and the lawyer against whom a claim of dishonest conduct has been made has been suspended or disbarred from practice by the Supreme Court of the State of Vermont or has resigned during the pendency of the disciplinary proceedings.
  - (2) The lawyer against whom a claim of dishonest conduct has been made has died or been adjudged mentally incompetent.
- D. Except as provided by section E of this Rule, the following losses shall not be reimbursable:
  - (1) Losses of spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;
  - (2) Losses compensable 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;
  - (3) Losses of any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract.

- 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.

## **RULE 9 PROCEDURES FOR CLAIMANTS**

The claim shall be filed with the Committee on the provided form at the executive offices of the Vermont Bar Association, or in the manner and place otherwise designated in its rules of procedure.

## **RULE 10 ADJUDICATION**

- A. The lawyer shall be given a copy of the claim and an opportunity to respond to it within 20 days upon his receipt of the claim.
- B. The Professional Conduct Board shall be promptly notified of the claim and requested to furnish a report of its investigation on the matter to the Committee, to the extent permitted by Section 20 of the Permanent Rules of the Professional Responsibility Board.
- C. Upon receipt of the report of investigation of the Professional Responsibility Board, the Committee shall evaluate whether the investigation is complete and determine whether the Committee should conduct additional investigation. If the Professional Responsibility Board indicated that it will not conduct an investigation or if 120 days have elapsed since notification to the Board and no report has been furnished to the Committee, the Committee may conduct its own investigation.
- D. When the record is complete the claim shall be determined upon all available evidence, and notice shall be given to the claimant and the lawyer of the Committee's action.
- E. When an essential element for reimbursement is not present, the Committee shall dismiss the claim and shall promptly notify the claimant of the reasons for the dismissal.
- F. The Committee shall determine the order and manner of payment and pay all approved claims, subject to the provisions of Rules 11 and 12.

## **RULE 11 EVIDENCE**

- A. The Committee shall require proof by a preponderance of credible evidence that the claimant's loss was a result of the lawyer's dishonest conduct. A certified copy of a lawyer discipline order or a criminal conviction shall be deemed conclusive evidence that the lawyer committed the underlying conduct.

## **RULE 12 LIMITATIONS ON AMOUNT OF REIMBURSEMENT**

- A. The Committee may, in its sole discretion, and subject to sections B, [and] C, and D of this Rule, determines the amount to be paid on any claim approved under Rules 10 and 11.
- B. The maximum amount which any one claimant may recover from the Fund arising from an instance or course of dishonest conduct is \$15,000.
- C. The aggregate maximum amount which all claimants may recover arising from an instance or course of dishonest conduct by a lawyer is \$30,000.
- D. No payment shall be made from the Fund until the claimant has exhausted reasonable legal and other avenues against all potential obligors on the claim.
- E. In cases of extreme hardship or special and unusual circumstances, the Committee may, in its discretion, increase the aggregate maximum amount which all claimants may recover arising from an instance or course of dishonest conduct of a lawyer under this fund.

### **RULE 13 RECONSIDERATION**

The 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 14 LEGAL RIGHTS TO PAYMENT FROM FUND**

No person shall have any right to payment from the Fund as a claimant, third-party beneficiary or otherwise.

### **RULE 15 SUBROGATION**

- A. If reimbursement is made, the Fund shall be subrogated in the amount of the reimbursement and the Committee may bring such action as is deemed advisable against the lawyer, or the lawyer's estate. Such action may be brought either in the name of the claimant, or in the name of the Committee. Prior to payment of the claim, the claimant shall be required to execute a subrogation agreement. Upon commencement of an action by the Committee pursuant to its subrogation rights, it shall advise the claimant, who may then join in such action to recover losses in excess of the amount of the reimbursement from the Fund.
- B. Should the claimant bring an action for recovery of unreimbursed losses directly against the lawyer, or the lawyer's estate, the claimant shall notify the Committee of such action.

- C. The claimant is expected to cooperate in any effort the Committee undertakes to achieve reimbursement for the Fund.

**RULE 16 CONFIDENTIALITY**

- A. Applications, proceedings and reports involving applications for reimbursement are confidential until the Committee authorizes reimbursement to the claimant, except as provided below.
- B. If the lawyer whose alleged conduct gave rise to the claim requests that the matter be made public, the requirement of confidentiality is waived.
- C. Section A shall not be construed to deny access to relevant information by the Professional Responsibility Board 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 parties.
- D. Both the claimant and the lawyer shall be advised of the status of the Committee's consideration of the claim and shall be informed of the final determination.

**RULE 17 COMPENSATION FOR REPRESENTING CLAIMANTS**

Lawyers representing a claimant are requested not to charge for or accept compensation for prosecuting a claim on behalf of a claimant.

**STATEMENT OF CLAIM TO THE  
CLIENT'S SECURITY FUND COMMITTEE  
OF THE VERMONT BAR ASSOCIATION**

(It is recommended by the Committee that you consult with an attorney in filing this claim.)

1. Name of claimant.
2. Address of claimant.
3. Telephone number of claimant.
4. Name of attorney whose conduct is alleged to have caused claimant's loss.

5. Address of offending attorney.
6. State the date when you originally hired the offending attorney and the general nature of the business for which you hired him/her.
7. If you are presently represented by another attorney, state his/her name, address, and telephone number.
8. Indicate whether you have discussed this claim with your present attorney.
9. Describe the acts committed by the offending attorney which constitutes the basis for this claim.
10. State the total value of your loss by reason of the offending attorney's acts, and describe whether your loss is in money, securities, real estate, or other property.
11. State the date or period of time when the acts were committed, and state when you sustained your loss.
12. State when you discovered your loss and describe the manner in which the loss came to your attention.

**File Claim With:**  
**Vermont Bar Association**  
**Client Security Fund Committee**  
**P.O. Box 100**  
**Montpelier, VT 05601-0100**

### SUBROGATION AGREEMENT

Agreement made \_\_\_\_\_, 20\_\_\_\_, between  
 \_\_\_\_\_  
 \_\_\_\_\_ of  
 \_\_\_\_\_,

herein referred to as the claimant, and the Vermont Bar Association, herein referred to as the Association.

In consideration of the sum of

\_\_\_\_\_ Dollars (\$\_\_\_\_\_) paid to the claimant by the Association for loss sustained by the claimant by reason of embezzlement, conversion, or theft by \_\_\_\_\_ the claimant assigns and subrogates to the Association all rights, claims and rights of action that the claimant may have against any person, corporation or other entity that may be liable for the loss.

The claimant authorized the Association to sue, compromise or settle in the claimant's name and agrees to testify and otherwise assist in any proceeding that may be brought to recover the loss.

The claimant warrants that no settlement has been made with any third party.

The claimant does acknowledge that he has read the resolution establishing the Clients' Security Fund, as amended September 5, 2003, and does hereby certify that the above claim is made in accordance with said resolution and the by-laws adopted by the Clients' Security Fund Committee.

Executed on the date first written above.

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Vermont Bar Association