

KANSAS

Lawyers' Fund for Client Protection

(Rule 227 Rules relating to the
Lawyers' Fund for Client Protection
Rule 1.A., et seq.)

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Rule 227

RULES RELATING TO THE LAWYERS' FUND FOR CLIENT PROTECTION

RULE 1. PURPOSE AND SCOPE

A. The purpose of the Lawyers' Fund for Client Protection (LFCP or the Fund) is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses to clients caused by the dishonest conduct of lawyers admitted and licensed to practice law in the courts of this State, occurring in the course of a lawyer-client relationship between the lawyer and the claimant.

B. The Kansas Supreme Court, in the exercise of its inherent power to oversee the administration of justice and to regulate the practice of law and the attorneys at law in this State in the exercise of their professional responsibility, finds the need to participate in collective efforts of the bar to reimburse and to protect, insofar as reasonably possible, those persons who may be injured by the dishonest conduct of lawyers. Therefore, the Supreme Court adopts this Rule for such purpose.

C. The Fund is not a guarantor of honesty in the practice of law. Dishonest conduct by a member of the bar imposes no separate legal obligation on the profession collectively, or on the Fund, to compensate for the lawyer's misconduct. The Fund is a lawyer-financed public service, and the payment of reimbursement is a matter of grace and discretion by the Commission.

D. Losses caused by the dishonest conduct of lawyers serving as fiduciaries, in other than lawyer-client relationships, are not reimbursable.

RULE 2. ESTABLISHMENT

A. There is established the Lawyers' Fund for Client Protection.

B. There is established, under the supervision of the Kansas Supreme Court, the Client Protection Fund Commission, which may award payments to qualified claimants and authorize disbursements from the Fund under these Rules.

C. These Rules shall be effective for claims arising out of conduct occurring on or after July 1, 1993.

D. The Chief Justice shall have authority to contract on behalf of the Commission for the investment of moneys with the pooled money investment board under K.S.A. 75-4221a prior to the organizational meeting of the Commission.

RULE 3. FUNDING

A. The Supreme Court may provide for funding by the lawyers of the State through annual assessments on active Kansas lawyers and from transfers of moneys from the bar discipline fee fund.

The Fund shall not be a part of the state treasury. Any money recovered by the Commission shall be redeposited into the Fund.

B. Any lawyer whose actions have caused payment of funds to a claimant from the Fund shall make restitution or be subject to an action for restitution to the Fund for all moneys paid out as a result of his or her conduct with interest at the prejudgment rate under K.S.A. 16-201, in addition to payment of the procedural costs of processing the claim, including any attorney fees.

RULE 4. FUNDS AND DISBURSEMENTS

All moneys or other assets of the Fund shall be held in the name of the Fund. All disbursements and expenditures shall be made upon warrants of the Director of Accounts and Reports issued pursuant to vouchers prepared by the Commission and approved by the Chief Justice of the Supreme Court or by a person or persons designated by the Chief Justice.

RULE 5. COMPOSITION AND OFFICERS OF THE COMMISSION

A. The Commission shall comprise four active lawyers registered under Supreme Court Rule 208; one active or retired district judge, Court of Appeals judge, or Supreme Court justice; and two nonlawyers appointed by the Supreme Court for initial terms as follows:

- (1) two lawyers for one year;
- (2) one nonlawyer for two years;
- (3) one judge or justice and one lawyer for two years;
- (4) one nonlawyer for three years; and
- (5) one lawyer for three years.

Subsequent appointments shall be for a term of three years. Any vacancy occurring on the Commission shall be filled by the Supreme Court. A person appointed to fill a vacancy on the Commission shall be appointed to serve the unexpired term of the previous member. No member shall serve more than two consecutive three-year terms, except that any person initially appointed for less than three years may serve two consecutive three-year terms thereafter.

The Supreme Court may appoint a temporary Commissioner or Commissioners upon the request of the Commission.

B. Commission members shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

C. The Commission shall elect a chair and vice-chair, each of whom shall serve for a term of one year and until a successor is elected. The vice-chair shall perform all of the duties and exercise the authority of chair, in the chair's absence.

D. The Clerk of the Appellate Courts shall serve as secretary of the Commission. The Clerk shall not be a member of the Commission but shall act as the custodian of the official files and records of the Commission and perform such other ministerial functions as the Commission shall direct. All papers and pleadings shall be filed with the secretary of the Commission.

RULE 6. COMMISSION MEETINGS

A. The Commission shall meet as frequently and in a manner agreed by the Commission as necessary to conduct the business of the Fund and to timely process claims.

B. A quorum for any meeting of the Commission shall be four members of the Commission.

C. Minutes of meetings shall be taken and maintained by the secretary.

RULE 7. DUTIES AND RESPONSIBILITIES OF THE COMMISSION

The Commission shall have the following duties and responsibilities:

A. to receive, investigate, evaluate, and pay or deny such claims, or portions thereof, as the Commission deems appropriate;

B. to promulgate rules of procedure not inconsistent with these Rules;

C. to contract with the pooled money investment board established under K.S.A. 75-4221a for investment of Fund moneys. All moneys received as interest earned by the investment of Fund moneys by the pooled money investment board shall be credited to the Fund. The Commission's status to contract and authority for such contract is established by this Supreme Court Rule.

All moneys transferred from the K.S.A. 20-1a01 bar discipline fee fund under Kansas Supreme Court Rule 227 shall be credited to the Fund, which has been created by Kansas Supreme Court Rule 227.

The Commission shall advise and consult with the pooled money investment board as to appropriate general investment objectives and cash flow needs of the Fund. Any return on investment is to be compatible with the Fund's responsibility to consider and pay, in full or in part, legitimate claims as determined within the sole discretion of the Commission;

D. to provide a full report at least annually to the Supreme Court and to make other reports as necessary;

E. to publicize its activities to the public and the bar;

F. to retain and compensate legal counsel to make or supervise the making of an investigation and the gathering of evidence and to present evidence to the Commission, and to take any other legal action necessary to effectuate the purpose of the Fund;

G. to prosecute claims for restitution to which the Fund is entitled;

H. to participate in studies and programs for client protection and prevention of dishonest conduct by lawyers; and

I. to perform all other acts necessary or proper for the fulfillment of the purposes of the Fund and its effective administration.

RULE 8. CONFLICT OF INTEREST

A. A Commissioner 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 determination of a claim involving that claimant or lawyer.

B. A Commissioner with a past or present relationship, other than as provided in section A of this rule, with a claimant or the lawyer whose alleged conduct is the subject of the claim, shall disclose such relationship to the Commission and, if the Commission deems appropriate, that Commissioner shall not participate in any proceeding relating to such claim.

RULE 9. IMMUNITY

Members of the Commission, the commission secretary, commission counsel, commission staff, claimants, and lawyers who assist claimants shall be entitled to judicial immunity from civil liability for all acts in the course of their official duties.

RULE 10. REIMBURSEMENT FROM FUND IS A MATTER OF GRACE

No person shall have the legal right to reimbursement from the Fund whether as claimant, third-party beneficiary, or otherwise.

RULE 11. ELIGIBLE CLAIMS

A. The loss must be caused by the dishonest conduct of an active member of the bar of this State and shall have arisen in the course of a lawyer-client relationship between the lawyer and the claimant and by reason of that relationship.

B. The claim shall have been filed no later than one year after the claimant knew or should have known of the dishonest conduct of the lawyer.

C. As used in these Rules, "dishonest conduct" means any of the following:

(1) acts committed by a lawyer in the wrongful taking or conversion of money, property, or other things of value;

(2) refusal to refund unearned fees received in advance where the lawyer performed no services or such an insignificant portion of the service that the refusal to refund the unearned fees constitutes a wrongful taking or conversion of money;

- (3) the borrowing of money from a client without an intention to repay it or with disregard of his or her inability or reasonably anticipated inability to repay it; or
- (4) a lawyer's act of intentional dishonesty which proximately leads to the loss of money or property.

D. Except as provided by section E of this Rule, the following losses and damages shall not be reimbursable:

- (1) losses incurred by spouses, children, parents, grandparents, siblings, partners, associates, and employees of lawyer(s) causing the losses;
- (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;
- (3) losses incurred by any business entity controlled by the lawyer or any person or entity described in section D (1);
- (4) losses incurred by any governmental entity or agency; and
- (5) interest and other incidental and out-of-pocket expenses.

E. In cases of extreme hardship or special and unusual circumstances, the Commission may, in its discretion, recognize a claim arising out of conduct occurring on or after July 1, 1993, which would otherwise be excluded under these Rules.

RULE 12. PROCEDURES AND RESPONSIBILITIES FOR FILING A CLAIM

A. The Commission shall prepare and approve a form of claim for reimbursement.

B. The form shall require at least the following information provided by the claimant under penalty of perjury:

- (1) the name and address of claimant, home and business telephone, occupation and employer, and social security number or federal tax identification number;
- (2) the name, address, and telephone number of the lawyer alleged to have dishonestly taken the claimant's money or property, and any family or business relationship of the claimant to the lawyer;
- (3) the legal or other fiduciary services the lawyer was to perform for the claimant;
- (4) the amount paid to the lawyer;
- (5) a copy of any written agreement pertaining to the claim;
- (6) the form of the claimant's loss (*e.g.*, money, securities, or other property);
- (7) the amount of loss and the date when the loss occurred;

- (8) the date when the claimant discovered the loss and how the claimant discovered the loss;
- (9) a description of the lawyer's dishonest conduct and the names and addresses of any persons who have knowledge of the loss;
- (10) the name of the person, if any, to whom the loss has been reported (*e.g.*, district attorney, police, disciplinary agency, or other person or entity) and a copy of any complaint and description of any action that was taken;
- (11) the source, if any, from which the loss can be reimbursed including any insurance, fidelity, or surety agreement;
- (12) a description of any steps taken to recover the loss directly from the lawyer or any other source;
- (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 Commission of any reimbursements claimant receives during the pendency of the claim;
- (14) any other facts believed to be important to the Commission's consideration of the claim;
- (15) the manner in which the claimant learned about the Fund;
- (16) the name, address, and telephone number of the claimant's present lawyer, if any;
- (17) a statement that the claimant agrees to cooperate with the Commission in reference to the claim or as required by Rule 16 in reference to civil actions which may be brought in the name of the Commission pursuant to a subrogation and assignment clause which shall also be contained within the claim;
- (18) the name and address of any other state's Fund to which the claimant has applied or intends to apply for reimbursement, together with a copy of the application; and
- (19) a 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 submitted to the Commission by filing the claim form with the Clerk of the Appellate Courts, 301 S.W. 10th Avenue, Topeka, Kansas 66612-1507.

E. As a condition precedent to the filing of a claim, the claimant must report the dishonest conduct to a county or district attorney or to the Disciplinary Administrator.

RULE 13. PROCESSING CLAIMS

A. When a claim is filed, the accused lawyer shall forthwith be notified and given an opportunity to respond to the claim. A copy of the claim shall be mailed by certified mail return receipt requested to the lawyer's last registered address (Rule 208), and the lawyer shall have 20 days from the date of the mailing in which to respond. A response is not required from the lawyer.

B. Whenever it appears that a claim is not eligible for reimbursement pursuant to these Rules, the claimant and lawyer shall be advised of the reasons that the claim is not eligible for reimbursement and that, unless additional facts to support eligibility are submitted to the Commission within 30 days, the claim will be dismissed.

C. A copy of an order disciplining a lawyer for the same act or conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall be evidence that the lawyer committed such act or conduct.

D. The Office of the Disciplinary Administrator shall be promptly notified of the claim and requested to furnish a report of its investigation on the matter to the Commission.

E. Upon receipt of the report of investigation of the Disciplinary Administrator, the Commission shall evaluate whether the investigation is complete and determine whether the Commission should conduct additional investigation or await the pendency of any disciplinary investigation or proceeding involving the same act or conduct that is alleged in the claim.

F. The Commission may conduct its own investigation or may request the Disciplinary Administrator to investigate and verify any claim not previously investigated by the Disciplinary Administrator.

G. The Commission may request that testimony or evidence be presented to complete the record. Upon request, the claimant or lawyer, or their personal representatives, shall be given an opportunity to be heard. The chairman, secretary, or any member of the Commission, acting under these Rules, may administer oaths and affirmations and compel by subpoena the attendance of witnesses and the production of pertinent books, papers, and documents. All subpoenas in connection with proceedings hereunder shall be issued by and returned to the secretary of the Commission. A judge of the district court of any judicial district in which the attendance or production is required shall, upon proper application, enforce the attendance and testimony of any witness and the production of any documents subpoenaed. Subpoena and witness fees and mileage shall be the same as in the district court.

H. The Commission may make a finding of dishonest conduct for purposes of determining a claim. Such a determination is not a finding of dishonest conduct for purposes of disciplinary proceedings or for civil or criminal judgments and is inadmissible in any other proceeding.

I. When the record is complete, the claim shall be determined on the basis of all available evidence, and notice shall be given to the claimant and the lawyer of the Commission's determination and the reasons therefor. The approval or denial of the claim shall require the affirmative votes of at least four Commissioners.

J. Any proceeding upon a claim need 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 rely 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 upon objection in court proceedings. The claimant shall have the duty to supply relevant evidence to support the claim.

K. The Commission shall determine the order and manner of payment and pay all approved claims.

RULE 14. PAYMENT OF REIMBURSEMENT

A. The Commission is vested with the power, which it shall exercise in its sole discretion, to determine whether a claim merits reimbursement from the Fund and, if so, the amount of such reimbursement, not to exceed \$125,000 for any claimant, with an aggregate limit of \$350,000 for claims against any one lawyer; the time, place, and manner of its payment; the conditions upon which payment shall be made; and the order in which payment shall be made. In making such determinations the Commission may consider, together with such other factors as it deems appropriate, the following:

- (1) the amounts available and likely to become available to the Fund for payment of claims;
- (2) the size and number of claims which are likely to be presented in the future;
- (3) the total amount of losses caused by the dishonest conduct of any one lawyer or associated groups of lawyers;
- (4) the unreimbursed amounts of claims recognized by the Commission in the past as meriting reimbursement, but for which reimbursement has not been made in the total amount of the loss sustained;
- (5) the amount of the claimant's loss as compared with the amount of the losses sustained by others who may merit reimbursement from the Fund;
- (6) the degree of hardship the claimant has suffered by the loss; and
- (7) any conduct of the claimant which may have contributed to the loss.

B. If a claimant is a minor or an incompetent, the reimbursement may be paid to any person or entity for the benefit of the claimant.

[**History:** Am. effective December 1, 1999; Am. effective December 2, 2002; Am. effective February 13, 2008; Am. effective April 30, 2012.]

RULE 15. RECONSIDERATION

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

RULE 16. RESTITUTION AND SUBROGATION

A. A lawyer whose dishonest conduct results in reimbursement to a claimant may be liable to the Fund in an action for restitution. The Commission may bring such action as it deems advisable to determine and enforce its rights to restitution and as a subrogee or assignee of the claimant's rights.

B. As a condition of reimbursement, a claimant shall be required to provide the Fund with a transfer of the claimant's rights against the lawyer and the lawyer's legal representative, estate, or assigns, and of the claimant's rights against any third party or entity who may be liable for the claimant's loss, to the extent of the amount of the Fund's expenses and payments attributable to the claim. The Commission may sue to enforce such assigned or subrogated rights for the purposes of preserving its rights and recovering its expenses and payments to the claimant. All other rights of the claimant arising and accruing by reason of the dishonest conduct remain the property of the claimant.

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

D. In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another entity who may be liable for the claimant's losses, the claimant shall be required to notify the Commission of such action.

E. The claimant shall be required to agree to cooperate in all efforts that the Commission undertakes to achieve restitution for the Fund.

RULE 17. JUDICIAL RELIEF

A. When a claim has been filed as provided herein, the Commission may make application to the appropriate lower court for relief to protect the interests of the claimant or the Fund where the assets of the claimant appear to be in danger of misappropriation or loss, or to secure the claimant's or Fund's right to restitution or subrogation.

B. A court's jurisdiction in such proceedings shall include the authority to appoint and compensate custodial receivers to conserve the assets and practices of missing, incapacitated, and deceased lawyers.

RULE 18. CONFIDENTIALITY

A. Applications, proceedings, and reports involving applications for reimbursement are confidential until the Commission authorizes reimbursement to the claimant, except as provided below. Any person violating this rule of confidentiality may be subject to punishment for contempt of the Supreme Court.

B. The rule of confidentiality shall not apply to the claimant or respondent or to any information which the Commission considers to be relevant to any current or future criminal prosecution against the lawyer.

C. The Commission is authorized, in its discretion, to disclose to the Supreme Court Nominating Commission, the District Judicial Nominating Commissions, the Commission on Judicial Qualifications, or the Governor all or any part of the file involving any judge or prospective nominee for judicial appointment; and to make public all or any part of its files involving any candidate for election to or retention in public office.

D. The Commission in its discretion is authorized to disclose relevant information and to submit all or any part of its files to the Disciplinary Administrator for use and consideration in investigating or prosecuting alleged violations of the Supreme Court Rules Relating to Discipline of Attorneys.

E. Both the claimant and the lawyer shall be advised of the status of the Commission's consideration of the claim and shall be informed of the final determination. After payment of reimbursement, the Commission may publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer. The name and the address of the claimant shall not be publicized by the Commission unless specific written permission has been granted by the claimant.

[**History:** Am. E. effective June 25, 2010.]

RULE 19. COMPENSATION FOR REPRESENTING CLAIMANT

It is not intended that the client's application for reimbursement will be an adversarial process and for that reason, generally, counsel for the client will not be needed. If a client needs a lawyer, it is intended that lawyers will recognize this responsibility and provide assistance as a public service. It is also intended that all members of the Kansas Bar will cooperate in providing any services that applicants may need.

RULE 20. CITATION OF THE RULE

The Rules herein adopted may be referred to and cited as LFCP Rule 1.A., etc.

[**History:** New Rule effective March 30, 1993.]