

# NORTH CAROLINA

## The Client Security Fund of the North Carolina State Bar

(Section .1400 – Rules Governing the  
Administration of the Client Security Fund  
of the North Carolina State Bar  
27 NCAC 01D .1401, et seq.)

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*History Note:* Authority - Order of the NC Supreme Court;  
Eff. March 6, 2008;  
Recodified from Rule .1317 Eff. July 1, 2010;  
Amended Eff. March 8, 2012.

#### **27 NCAC 01D .1319 CERTIFICATION**

Every lawyer admitted to practice in North Carolina shall certify annually on or before June 30 to the North Carolina State Bar that all general trust accounts maintained by the lawyer or his or her law firm are established and maintained as IOLTA accounts as prescribed by Rule 1.15 of the Rules of Professional Conduct and Rule .1316 of this subchapter or that the lawyer is exempt from this provision because he or she does not maintain any general trust account(s) for North Carolina client funds. Any lawyer acting as a settlement agent who maintains a trust or escrow account used for the purpose of receiving and disbursing closing and loan funds shall certify annually on or before June 30 to the North Carolina State Bar that such accounts are established and maintained as IOLTA accounts as prescribed by G.S. 45A-9 and Rule .1316 of this subchapter.

*History Note:* Authority - Order of the N.C. Supreme Court;  
Eff. March 6, 2008;  
Amended Eff. February 5, 2009;  
Recodified from Rule .1318 Eff. July 1, 2010;  
Amended Eff. March 8, 2012.

#### **27 NCAC 01D .1320 NONCOMPLIANCE**

Every lawyer must comply with all of the administrative requirements of this Rule, including the certification required in Rule .1319 of this Subchapter. A lawyer's failure to comply with the mandatory provisions of this Subchapter shall be reported to the Administrative Committee which may initiate proceedings to suspend administratively the lawyer's active membership status and eligibility to practice law pursuant to Rule .0903 of this Subchapter.

*History Note:* Order of the N.C. Supreme Court;  
Adopted Eff. March 6, 2008;  
Amended Eff. January 28, 2010;  
Recodified from Rule .1319 Eff. July 1, 2010.

#### **27 NCAC 01D .1321 SEVERABILITY**

If any provision of this plan or the application thereof is held invalid, the invalidity does not affect other provisions or application of the plan which can be given effect without the invalid provision or application, and to this end the provisions of the plan are severable.

*History Note:* Order of the N.C. Supreme Court;  
Eff. March 6, 2008;  
Recodified from Rule .1320 Eff. July 1, 2010.

### **SECTION .1400 - RULES GOVERNING THE ADMINISTRATION OF THE CLIENT SECURITY FUND OF THE NORTH CAROLINA STATE BAR**

#### **27 NCAC 01D .1401 PURPOSE; DEFINITIONS**

(a) The Client Security Fund of the North Carolina State Bar was established by the Supreme Court of North Carolina pursuant to an order dated August 29, 1984. The fund is a standing committee of the North Carolina State Bar Council pursuant to an order of the Supreme Court dated October 10, 1984, as amended. Its purpose is to reimburse, in whole or in part in appropriate cases and subject to the provisions and limitations of the Supreme Court's orders and these Rules, clients who have suffered financial loss as the result of dishonest conduct of lawyers engaged in the private practice of law in North Carolina, which conduct occurred on or after January 1, 1985.

(b) As used herein the following terms have the meaning indicated.

- (1) "Applicant" shall mean a person who has suffered a reimbursable loss because of the dishonest conduct of an attorney and has filed an application for reimbursement.
- (2) "Attorney" shall mean an attorney who, at the time of alleged dishonest conduct, was licensed to practice law by the North Carolina State Bar. The fact that the alleged dishonest conduct took place outside the state of North Carolina does not necessarily mean that the attorney was not engaged in the practice of law in North Carolina.
- (3) "Board" shall mean the Board of Trustees of the Client Security Fund.
- (4) "Council" shall mean the North Carolina State Bar Council.
- (5) "Dishonest conduct" shall mean wrongful acts committed by an attorney against an applicant in the nature of embezzlement from the applicant or the wrongful taking or conversion of monies or other property of the applicant, which monies or other property were entrusted to the attorney by the applicant by reason of an attorney-client relationship between the attorney and the applicant or by reason of a fiduciary relationship between the attorney and the applicant customary to the practice of law.
- (6) "Fund" shall mean the Client Security Fund of the North Carolina State Bar.
- (7) "Reimbursable losses" shall mean only those losses of money or other property which meet all of the following tests:
  - (A) the dishonest conduct which occasioned the loss occurred on or after January 1, 1985;
  - (B) the loss was caused by the dishonest conduct of an attorney acting either as an attorney for the applicant or in a fiduciary capacity for the benefit of the applicant customary to the private practice of law in the matter in which the loss arose;
  - (C) the applicant has exhausted all viable means to collect applicant's losses and has complied with these Rules.
- (8) The following shall not be deemed "reimbursable losses":
  - (A) losses of spouses, parents, grandparents, children and siblings (including foster and half relationships), partners, associates or employees of the attorney(s) causing the losses;
  - (B) losses covered by any bond, security agreement or insurance contract, to the extent covered thereby;
  - (C) losses incurred by any business entity with which the attorney or any person described in Part (b)(8)(A) of this Rule is an officer, director, shareholder, partner, joint venturer, promoter or employee;
  - (D) losses, reimbursement for which has been otherwise received from or paid by or on behalf of the attorney who committed the dishonest conduct;
  - (E) losses arising in investment transactions in which there was neither a contemporaneous attorney-client relationship between the attorney and the applicant nor a contemporaneous fiduciary relationship between the attorney and the applicant customary to the practice of law. By way of illustration but not limitation, for purposes of this Rule [Part (b)(8)(E) of this Rule], an attorney authorized or permitted by a person or entity other than the applicant as escrow or similar agent to hold funds deposited by the applicant for investment purposes shall not be deemed to have a fiduciary relationship with the applicant customary to the practice of law.
- (9) "State Bar" shall mean the North Carolina State Bar.
- (10) "Supreme Court" shall mean the North Carolina Supreme Court.
- (11) "Supreme Court orders" shall mean the orders of the Supreme Court dated August 29, 1984, and October 10, 1984, as amended, authorizing the establishment of the Client Security Fund of the North Carolina State Bar and approving the rules of procedure of the Fund.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.*

## **27 NCAC 01D .1402 JURISDICTION: AUTHORITY**

(a) G.S. 84 vests in the State Bar authority to control the discipline, disbarment, and restoration of licenses of attorneys; to formulate and adopt rules of professional ethics and conduct; and to do all such things necessary in the furtherance of the purposes of the statutes governing the practice of the law as are not themselves prohibited by law. G.S. 84-22 authorizes the State Bar to establish such committees, standing or special, as from time to time the council deems appropriate for the proper discharge of its duties; and to determine the number of members,

composition, method of appointment or election, functions, powers and duties, structure, authority to act, and other matters relating to such committees. The rules of the State Bar, as adopted and amended from time to time, are subject to approval by the Supreme Court under G.S. 84-21.

(b) The Supreme Court orders, entered in the exercise of the Supreme Court's inherent power to supervise and regulate attorney conduct, authorized the establishment of the Fund, as a standing committee of the council, to be administered by the State Bar under rules and regulations approved by the Supreme Court.

*History Note:* Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.

#### **27 NCAC 01D .1403 OPERATIONAL RESPONSIBILITY**

The responsibility for operating the Fund and the program of the board rests with the board, subject to the Supreme Court orders, the statutes governing the practice of law, the authority of the council, and the rules of the board.

*History Note:* Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.

#### **27 NCAC 01D .1404 SIZE OF BOARD**

The board shall have five members, four of whom must be attorneys in good standing and authorized to practice law in the state of North Carolina.

*History Note:* Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.

#### **27 NCAC 01D .1405 LAY PARTICIPATION**

The board shall have one member who is not a licensed attorney.

*History Note:* Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.

#### **27 NCAC 01D .1406 APPOINTMENT OF MEMBERS; WHEN; REMOVAL**

The members of the board shall be appointed by the council. Any member of the board may be removed at any time by the affirmative vote of a majority of the members of the council at a regularly called meeting. Vacancies occurring by reason of death, disability, resignation, or removal of a member shall be filled by appointment of the president of the State Bar with the approval of the council at its next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term.

*History Note:* Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.

#### **27 NCAC 01D .1407 TERM OF OFFICE**

Each member who is appointed to the board, other than a member appointed to fill a vacancy created by the death, disability, removal or resignation of a member, shall serve for a term of five years beginning as of the first day of the month following the date upon which the appointment is made by the council. A member appointed to fill a vacancy shall serve the remainder of the vacated term.

*History Note:* Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.

#### **27 NCAC 01D .1408 STAGGERED TERMS**

It is intended that members of the board shall be elected to staggered terms such that one member is appointed in each year.

*History Note:* Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.

#### **27 NCAC 01D .1409      SUCCESSION**

Each member of the board shall be entitled to serve for one full five-year term. A member appointed to fill a vacated term may be appointed to serve one full five-year term immediately following the expiration of the vacated term but shall not be entitled as of right to such appointment. No person shall be reappointed to the board until the expiration of three years following the last day of the previous term of such person on the board.

*History Note:      Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.*

#### **27 NCAC 01D .1410      APPOINTMENT OF CHAIRPERSON**

The chairperson of the board shall be appointed from the members of the board annually by the council. The term of the chairperson shall be one year. The chairperson may be reappointed by the council thereafter during tenure on the board. The chairperson shall preside at all meetings of the board, shall prepare and present to the council the annual report of the board, and generally shall represent the board in its dealings with the public.

*History Note:      Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.*

#### **27 NCAC 01D .1411      APPOINTMENT OF VICE-CHAIRPERSON**

The vice-chairperson of the board shall be appointed from the members of the board annually by the council. The term of the vice-chairperson shall be one year. The vice chairperson may be reappointed by the council thereafter during tenure on the board. The vice-chairperson shall preside at and represent the board in the absence of the chairperson and shall perform such other duties as may be assigned to him by the chairperson or by the board.

*History Note:      Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.*

#### **27 NCAC 01D .1412      SOURCE OF FUNDS**

Funds for the program carried out by the board shall come from assessments of members of the State Bar as ordered by the Supreme Court, from voluntary contributions, and as may otherwise be received by the Fund.

*History Note:      Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.*

#### **27 NCAC 01D .1413      FISCAL RESPONSIBILITY**

All funds of the board shall be considered funds of the State Bar and shall be maintained, invested, and disbursed as follows:

- (1) Maintenance of Accounts; Audit - The State Bar shall maintain a separate account for funds of the board such that such funds and expenditures therefrom can be readily identified. The accounts of the board shall be audited annually in connection with the audits of the State Bar.
- (2) Investment Criteria - The funds of the board shall be kept, invested, and reinvested in accordance with investment policies adopted by the council for dues, rents, and other revenues received by the State Bar in carrying out its official duties. In no case shall the funds be invested or reinvested in investments other than such as are permitted to fiduciaries under the General Statutes of North Carolina.
- (3) Disbursement - Disbursement of funds of the board shall be made by or under the direction of the secretary of the State Bar.

*History Note:      Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;  
Readopted Eff. December 8, 1994.*

#### **27 NCAC 01D .1414      MEETINGS**

The annual meeting of the board shall be held in October of each year in connection with the annual meeting of the State Bar. The board by resolution may set other regular meeting dates and places. Special meetings of the board may be called at any time upon notice given by the chairperson, the vice-chairperson, or any two members of the board. Notice of meeting shall be given at least two days prior to the meeting by mail, telegram, facsimile

transmission or telephone. A quorum of the board for conducting its official business shall be a majority of the members serving at a particular time. Written minutes of all meetings shall be prepared and maintained.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.*

#### **27 NCAC 01D .1415 ANNUAL REPORT**

The board shall prepare at least annually a report of its activities and shall present the same to the council at the annual meeting of the State Bar.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.*

#### **27 NCAC 01D .1416 APPROPRIATE USES OF THE CLIENT SECURITY FUND**

(a) The board may use or employ the Fund for only the following purposes within the scope of the board's objectives as heretofore outlined:

- (1) to make reimbursements on approved applications as herein provided;
- (2) to purchase insurance to cover such losses in whole or in part as is deemed appropriate;
- (3) to invest such portions of the Fund as may not be needed currently to reimburse losses, in such investments as are permitted to fiduciaries by the General Statutes of North Carolina;
- (4) to pay the administrative expenses of the board, including employment of counsel to prosecute subrogation claims.

(b) The board with the authorization of the council shall, in the name of the North Carolina State Bar, enforce any claims which the board may have for restitution, subrogation, or otherwise, and may employ and compensate consultants, agents, legal counsel, and such other employees as it deems necessary and appropriate.

*History Note: Authority - Orders of the North Carolina Supreme Court, August 29, 1984, October 10, 1984; Readopted Effective December 8, 1994; Amendments Approved by the Supreme Court: September 28, 2017.*

#### **27 NCAC 01D .1417 APPLICATIONS FOR REIMBURSEMENT**

(a) The board shall prepare a form of application for reimbursement which shall require the following minimum information, and such other information as the board may from time to time specify:

- (1) the name and address of the applicant;
- (2) the name and address of the attorney who is alleged to have engaged in dishonest conduct;
- (3) the amount of the alleged loss for which application is made;
- (4) the date on or period of time during which the alleged loss occurred;
- (5) a general statement of facts relative to the application;
- (6) a description of any relationship between the applicant and the attorney of the kinds described in Rule .1401(b)(8)(A) and (C) of this Section;
- (7) verification by the applicant;
- (8) all supporting documents, including:
  - (A) copies of any court proceedings against the attorney;
  - (B) copies of all documents showing any reimbursement or receipt of funds in payment of any portion of the loss.

(b) The application shall contain the following statement in boldface type:

**"IN ESTABLISHING THE CLIENT SECURITY FUND PURSUANT TO ORDER OF THE SUPREME COURT OF NORTH CAROLINA, THE NORTH CAROLINA STATE BAR DID NOT CREATE OR ACKNOWLEDGE ANY LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL ATTORNEYS IN THE PRACTICE OF LAW. ALL REIMBURSEMENTS OF LOSSES FROM THE CLIENT SECURITY FUND SHALL BE A MATTER OF GRACE IN THE SOLE DISCRETION OF THE BOARD ADMINISTERING THE FUND AND NOT A MATTER OF RIGHT. NO APPLICANT OR MEMBER OF THE PUBLIC SHALL HAVE ANY RIGHT IN THE CLIENT SECURITY FUND AS A THIRD PARTY BENEFICIARY OR OTHERWISE."**

(c) The application shall be filed in the office of the State Bar in Raleigh, North Carolina, attention Client Security Fund Board, and a copy shall be transmitted by such office to the chairperson of the board.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.*

## **27 NCAC 01D .1418 PROCESSING APPLICATIONS**

(a) The board shall cause an investigation of all applications filed with the State Bar to determine whether the application is for a reimbursable loss and the extent, if any, to which the application should be paid from the Fund.

(b) The chairperson of the board shall assign each application to a member of the board for review and report. Wherever possible, the member to whom such application is referred shall practice in the county wherein the attorney practices or practiced.

(c) A copy of the application shall be served upon or sent by registered mail to the last known address of the attorney who it is alleged committed an act of dishonest conduct.

(d) After considering a report of investigation as to an application, any board member may request that testimony be presented concerning the application. In all cases, the alleged defalcating attorney or his or her representative will be given an opportunity to be heard by the board if the attorney so requests.

(e) The board shall operate the Fund so that, taking into account assessments ordered by the Supreme Court but not yet received and anticipated investment earnings, a principal balance of approximately one million dollars (\$1,000,000) is maintained. Subject to the foregoing, the board shall, in its discretion, determine the amount of loss, if any, for which each applicant should be reimbursed from the Fund. In making such determination, the board shall consider, inter alia, the following:

- (1) the negligence, if any, of the applicant which contributed to the loss;
- (2) the comparative hardship which the applicant suffered because of the loss;
- (3) the total amount of reimbursable losses of applicants on account of any one attorney or firm or association of attorneys;
- (4) the total amount of reimbursable losses in previous years for which total reimbursement has not been made and the total assets of the Fund;
- (5) the total amount of insurance or other source of funds available to compensate the applicant for any reimbursable loss.

(f) The board may, in its discretion, allow further reimbursement in any year of a reimbursable loss reimbursed in part by it in prior years.

(g) Provided, however, and the foregoing notwithstanding, in no case shall the Fund reimburse the otherwise reimbursable losses sustained by any one applicant as a result of the dishonest conduct of one attorney in an amount in excess of one hundred thousand dollars (\$100,000).

(h) No reimbursement shall be made to any applicant unless reimbursement is approved by a majority vote of the entire board at a duly held meeting at which a quorum is present.

(i) No attorney shall be compensated by the board for prosecuting an application before it.

(j) An applicant may be advised of the status of the board's consideration of the application and shall be advised of the final determination of the board.

(k) All applications, proceedings, investigations, and reports involving applicants for reimbursement shall be kept confidential until and unless the board authorizes reimbursement to the applicant, or the attorney alleged to have engaged in dishonest conduct requests that the matter be made public. All participants involved in an application, investigation, or proceeding (including the applicant) shall conduct themselves so as to maintain the confidentiality of the application, investigation or proceeding. This provision shall not be construed to deny relevant information to be provided by the board to disciplinary committees or to anyone else to whom the council authorizes release of information.

(l) The board may, in its discretion, for newly discovered evidence or other compelling reason, grant a request to reconsider any application which the board has denied in whole or in part; otherwise, such denial is final and no further consideration shall be given by the board to such application or another application upon the same alleged facts.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994; Amended Eff. March 6, 1997.*

## **27 NCAC 01D .1419 SUBROGATION FOR REIMBURSEMENT**

(a) In the event reimbursement is made to an applicant, the State Bar shall be subrogated to the amount reimbursed and may bring an action against the attorney or the attorney's estate either in the name of the applicant or in the name of the State Bar. As a condition of reimbursement, the applicant may be required to execute a "subrogation agreement" to such effect. Filing of an application constitutes an agreement by the applicant that the North Carolina State Bar shall be subrogated to the rights of the applicant to the extent of any reimbursement. Upon commencement of an action by the State Bar pursuant to its subrogation rights, it shall advise the reimbursed applicant at his or her last known address. A reimbursed applicant may then join in such action to recover any loss in excess of the amount reimbursed by the Fund. Any amounts recovered from the attorney by the board in excess of the amount to which the Fund is subrogated, less the board's actual costs of such recovery, shall be paid to or retained by the applicant as the case may be.

(b) 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 board a written agreement stating that in the event the reimbursed applicant or his or her estate should ever receive any restitution from the attorney or his or her estate, the reimbursed applicant agrees that the Fund shall be repaid up to the amount of the reimbursement from the Fund plus expenses.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.*

## **27 NCAC 01D .1420 AUTHORITY RESERVED BY THE SUPREME COURT**

The Fund may be modified or abolished by the Supreme Court. In the event of abolition, all assets of the Fund shall be disbursed by order of the Supreme Court.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984; Readopted Eff. December 8, 1994.*

## **SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM**

### **27 NCAC 01D .1501 SCOPE, PURPOSE AND DEFINITIONS**

#### **(a) Scope**

Except as provided herein, these rules shall apply to every active member licensed by the North Carolina State Bar.

#### **(b) Purpose**

The purpose of these continuing legal education rules is to assist lawyers licensed to practice and practicing law in North Carolina in achieving and maintaining professional competence for the benefit of the public whom they serve. The North Carolina State Bar, under Chapter 84 of the General Statutes of North Carolina, is charged with the responsibility of providing rules of professional conduct and with disciplining attorneys who do not comply with such rules. The Revised Rules of Professional Conduct adopted by the North Carolina State Bar and approved by the Supreme Court of North Carolina require that lawyers adhere to important ethical standards, including that of rendering competent legal services in the representation of their clients.

At a time when all aspects of life and society are changing rapidly or becoming subject to pressures brought about by change, laws and legal principles are also in transition (through additions to the body of law, modifications and amendments) and are increasing in complexity. One cannot render competent legal services without continuous education and training.

The same changes and complexities, as well as the economic orientation of society, result in confusion about the ethical requirements concerning the practice of law and the relationships it creates. The data accumulated in the discipline program of the North Carolina State Bar argue persuasively for the establishment of a formal program for continuing and intensive training in professional responsibility and legal ethics.

It has also become clear that in order to render legal services in a professionally responsible manner, a lawyer must be able to manage his or her law practice competently. Sound management practices enable lawyers to concentrate on their clients' affairs while avoiding the ethical problems which can be caused by disorganization.

It is in response to such considerations that the North Carolina State Bar has adopted these minimum continuing legal education requirements. The purpose of these minimum continuing legal education requirements is the same as the purpose of the Revised Rules of Professional Conduct themselves—to ensure that the public at large is served by lawyers who are competent and maintain high ethical standards.

#### **(c) Definitions**