

# *Alabama State Bar*

## *Client Security Fund Rules*

### **I. SCOPE**

These rules shall govern proceedings conducted upon applications for reimbursement from the Client Security Fund of the Alabama State Bar established pursuant to Rule of the Alabama Supreme Court.

### **II. DEFINITIONS**

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

- A. The “Committee” shall mean the Client Security Fund Committee.
- B. The “Fund” shall mean the Client Security Fund of the Alabama State Bar.
- C. “Lawyer” shall mean one who, at the time of the act complained of, was a member of the Alabama State Bar, was domiciled in the State of Alabama, and was actually engaged in the practice of law in the State of Alabama.

The fact that the act complained of took place outside the State of Alabama does not necessarily mean that the lawyer was not engaged in the practice of law in Alabama.

- D. “Reimbursable Losses” are only those losses of money or other property of clients of lawyers which meet the following tests:
  - (a) The dishonest conduct which occasioned the loss occurred on or after the effective date of these rules; and
  - (b) The loss was caused by the dishonest conduct of a lawyer acting either as an attorney or as a fiduciary in the matter in which the loss arose; and
  - (c) The lawyer shall have died; been adjudicated a bankrupt; been adjudicated an incompetent; been disbarred or suspended from the practice of law; voluntarily resigned from the practice of law; left the jurisdiction or cannot be found; become a judgment debtor of the claimant, or shall have been adjudged guilty of a crime which judgment or judgments shall have been predicated upon the dishonest conduct of the lawyer; or the Committee shall have determined that the claim is an appropriate case for consideration for reimbursement because the loss was caused by the dishonest conduct of a member of the Alabama State Bar.

- E. “Non-reimbursable losses” are as follows:
- (a) Losses of a spouse, child, parent, grandparent, sibling, partner, associate or employee of the attorney(s) causing the losses.
  - (b) Losses covered by any bond, surety agreement or insurance contract to the extent covered thereby, including any loss to which any bondsman or surety or insurer is subrogated to the extent of that subrogation interest.
  - (c) Losses of any financial institution which could only be recoverable under a “banker’s blanket bond” or similar insurance or surety contract, whether or not the institution had such bond or contract in force.
  - (d) Losses which are recoverable from some other source.
  - (e) Losses barred under any applicable statute of limitations.
- F. “Dishonest Conduct” shall mean wrongful acts committed by a lawyer against a person in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value.
- G. “Claimant means a person who has applied to the fund for reimbursement.
- H. “Client” means a person engaging the professional legal services of a lawyer or for whose benefit the lawyer is acting in a fiduciary capacity.

### **III. APPLICATIONS FOR REIMBURSEMENT**

- A. The Committee shall prepare a form of application for reimbursement
- B. The form shall be sworn to and executed under penalty of perjury and shall require, as minimum information:
- (a) The name and address of the lawyer.
  - (b) The amount of the alleged loss.
  - (c) The date or period of time during which the alleged loss incurred.
  - (d) The date upon which the alleged loss was discovered.
  - (e) The name and address of the applicant.
  - (f) A general statement of facts related to the application.

- (g) A statement that the applicant has read these Rules and agrees to be bound by them.
- (h) A statement that the loss was not covered by any insurance, indemnity or bond, or if so covered, the name and address of the insurance or bonding company, if known, and the extent of such coverage and the amount of payment, if any, made.
- (i) A statement that the applicant agrees that the result of the investigation together with all evidence in connection therewith shall remain confidential except as otherwise provided herein.
- (j.) Said application shall either be typewritten or printed. If not legible, it shall be forthwith returned to the applicant.
- (k) The form or application shall contain the following statement in bold type:

**“In establishing the Client Security Fund, the Alabama State Bar did not create or acknowledge any legal responsibility for the acts of individual lawyers in the practice of law. All reimbursements of losses by the Client Security Fund shall be a matter of grace in the sole discretion of the committee administering the Fund and not as a matter of right. No client or member of the public shall have any right in the Client Security Fund as a third party beneficiary or otherwise.”**

- C. Applications shall be addressed to the office of the Alabama State Bar, P.O. Box 671, Montgomery, Alabama, 36101, and shall forthwith be transmitted by such office to the Chairman of the Committee.
- D. All applications shall be filed no later than three (3) years after the claimant knew or should have known of the reimbursable loss as defined.
- E. The Chairman shall cause a copy of the application to be served upon the lawyer or his personal representative, in the event the attorney is deceased, by certified mail, return receipt requested.

#### **IV. MEMBERS**

- A. The Committee shall consist of seven (7) members of the Alabama State Bar. The members shall be appointed by the President of the Alabama State Bar for terms of three (3) Years. The President-elect of the Alabama State Bar shall be an ex-officio member of the Committee and shall have no vote.

- B. No appointee who has served two (2) full three-year terms shall be eligible for reappointment to the Committee until two (2) years after the end of the most recent term.
- C. Vacancies shall be filled by appointment of the President of the Alabama State Bar for the unexpired term.
- D. The Committee shall select a Secretary.
- E. The Chairman and the members of the Committee shall serve without compensation but shall be entitled to reimbursement of all their expenses reasonably incurred in the performance of their duties.

**V. MEETING OF THE COMMITTEE**

- A. The Committee shall meet from time to time upon call of the Chairman provided that the Chairman shall call a meeting at any reasonable time at the request of at least three (3) members of the Committee.
- B. The Chairman shall give the members reasonable notice of the time and place of each meeting.
- C. A quorum at any meeting of the Committee shall be a majority of the full Committee. No action shall be taken by the Committee in the absence of a quorum.
- D. Written reports or minutes of each meeting shall be prepared and permanently maintained.

**VI. 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 provide a full report at least annually to the bar association and make other reports and publicize its activities as the Committee may deem advisable;
- D. To employ and compensate consultants, agents, legal counsel and other persons as necessary;
- E. To prosecute claims for restitution to which the Fund is entitled; and
- F. To take whatever action is necessary to carry out the provisions of these rules.

## **VII. PROCESSING APPLICATIONS**

### **A. Preliminary Consideration**

- (1) Whenever the Committee receives an application, it may, in its absolute discretion, after investigation, require exhaustion of some or all civil remedies before processing or adjudicating the application or paying claims.
- (2) If the accused lawyer shall be a member in good standing of the Alabama State Bar, the applicant's cooperation in grievance proceedings by the Bar against such lawyer shall be a prerequisite to the granting of relief to such applicant from the Fund. The Committee may require that an applicant prosecute or cooperate in appropriate civil proceedings against the accused lawyer as a prerequisite to the granting of relief to such applicant from the Fund.

B. The Committee will hold such meetings and conduct such investigations or review as seem necessary or desirable in order to determine whether the claim is for a reimbursable loss, and to guide the Committee in determining the extent, if any, to which the claim shall be reimbursed. (If the Committee determines that investigation need be conducted and such determination shall constitute a rejection of the application.) If the Committee determines that it is necessary to hear the claimant and the attorney or to receive other evidence on behalf of the claimant, then and in that event the Committee shall request the appearance of such individuals and the receipt of such additional evidence as may be required. In all cases, the lawyer charged shall be given an opportunity to be heard by the Committee if he so requests.

C. The Committee, in its sole discretion, shall determine the amount of loss, if any, which any client shall be reimbursed from the Fund. In making such determination, the Committee shall consider, inter alia, the following:

- (a) The negligence, if any, of the client which contributed to the loss.
- (b) The comparative hardship of the client suffered by the loss.
- (c) The total amount of reimbursable losses in the previous years for which total reimbursement has not been made and the total assets of the Fund.
- (d) The total amount of reimbursable losses of the clients of any one lawyer or association of lawyers.
- (e) The Committee may, in its sole discretion, allow further reimbursement of a reimbursable loss allowed by it at a prior time with respect to a loss which has not been fully reimbursed; provided such further reimbursement would not be inconsistent or in conflict with any previous determination with respect to such a loss.

- (f) No reimbursement shall be made to any client unless said reimbursement is approved by a majority vote of the Committee at a duly held meeting at which a quorum is present.
- D. In determining whether or not any payment will be made on a claim, the Committee may consider:
  - (a) The condition of the Fund.
  - (b) The nature and size of the claim presented.
  - (c) Such other factors as the Committee may deem just and proper.
- E. Notice of the action taken by the Committee on any claim shall be transmitted by certified mail to all parties in interest.

**VIII. ASSESSMENT OF ANNUAL FEE**

- A. The Alabama State Bar is authorized to assess each lawyer who, on January 1 of each year holds a current business license to practice law, as required by Section 40-12-49, Code of Alabama, 1975, an annual fee of \$25. The fee may be assessed for as many as four years, i.e., for a maximum of \$100 per lawyer. This fee shall be used to fund the Client Security Fund.
- B. Any person admitted to practice in the State of Alabama, who upon obtaining the age of sixty-five years and having elected to retire from the practice of law, shall be exempt from any assessment under these rules.

**IX. LIMITATION ON PAYMENT**

- A. All payments from the fund shall be a matter of grace and not of right and shall be in the sole discretion of the Committee. No client or member of the public shall have any right in the Fund as a third-party beneficiary or otherwise.
- B. The maximum amount which any one claimant may recover from the Fund arising from an insurance or course of dishonest conduct is Ten Thousand Dollars (\$10,000.00).
- C. The aggregate maximum amount which all claimants may recover arising from an instance or course of dishonest conduct is Twenty Thousand Dollars (\$20,000.00).

**X. SUBROGATION**

- A. If reimbursement is made, the Fund shall be subrogated in the amount of the reimbursement and the Committee may bring such action 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.

#### **XI. CONFIDENTIALITY**

- A. Applications, proceedings, and reports involving applications for reimbursement are confidential until the Committee authorizes reimbursement of 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 professional discipline agencies 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.

#### **XII. ATTORNEY'S FEES**

No attorney representing a claimant for compensation from the Client Security Fund shall be compensated from the Client Security Fund for his or her services, except that, notwithstanding any provisions of these rules, an attorney or attorneys appointed by the presiding judge in the manner and under the circumstances set for the in Rule 29 of the Rules of disciplinary Procedure may file a claim with the committee for payment from the Fund for services rendered in carrying out their duties pursuant to that appointment. Any payment made from the fund shall be within the discretion of the committee, but shall not exceed \$10,000 per claim, and attorney or attorneys making such a claim shall have no right of payment from the Fund.

#### **XIII. 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 the claimant or lawyer.

**XIV. IMMUNITY**

The members of the Committee and staff persons assisting those members are absolutely immune from civil liability for all acts in the course of their official duties.

**XV. GENERAL PROVISIONS**

- A. The Executive Director of the Alabama State Bar shall act as the Treasurer of the Committee and shall be an ex officio member of the Committee.
- B. The Committee shall not consider granting reimbursement for loss or damage resulting from incompetence or malpractice, but only for loss sustained by reason of dishonest acts.
- C. The Client Security Fund Committee shall not reimburse any person, firm, or association (such as a bonding company, for example) for any loss where such person, firm or association has been compensated for assuming a risk of loss.

**XVI. SEVERABILITY**

These rules are severable. If any rule or any part thereof is declared invalid or unconstitutional, such declaration shall not affect the rules or portions thereof which remain.

**XVII. EFFECT OF LAWYER'S FAILURE TO PAY ASSESSED FEE**

A lawyer who fails to pay by March 31 of a particular year the assessed fee pursuant to Rule VIII shall be deemed to be not in compliance with these rules. Such a lawyer is subject to suspension pursuant to Rule 9 of the Alabama Rules of Disciplinary Procedure.