

APPENDIX

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 purposes 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 include a person:

- (a) licensed to practice law in this jurisdiction;
- (b) registered as in-house counsel;
- (c) admitted pro hac vice;
- (d) recently suspended, disbarred, or transferred to disability inactive status whom clients reasonably believed to be licensed to practice law when the conduct forming the basis of the suspension, disbarment, or transfer occurred; or
- (e) otherwise authorized to practice law in this jurisdiction.

The conduct that formed the basis of the lawyer's suspension, disbarment, or transfer must have occurred while the lawyer was engaged in the practice of law in Alabama and bear a rational relationship to the lawyer's practice of law in 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 that meet the following tests:

- (a) The dishonest conduct that 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 applicant, 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 that 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 incurred by any business entity controlled by

the lawyer(s), or any person or entity described in subsection E(a), (b), or (c) of this Rule.

- (e) Losses incurred by any governmental entity or agency.
- (f) Losses arising from business or personal investments not arising in the course of the client-lawyer relationship.
- (g) Consequential or incidental damages, such as lost interest or lawyer's fees or other costs incurred in seeking recovery of a loss.
- (h) Losses that are recoverable from some other source.
- (i) 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, including but not limited to failure to refund unearned fees received in advance as required by Rule 1.16 of the Alabama Rules of Professional Conduct.

G. "Applicant" 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 was 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 to the Committee.

D. All applications shall be filed no later than three (3) years after the applicant knew or should have known of the reimbursable loss as defined. However, the filing of a grievance with the Disciplinary Commission, Disciplinary Board, or General Counsel shall toll the statute of limitations during the period in which the grievance is pending, but in no event shall an application be filed later than six (6) years after the applicant knew or should have known of the reimbursable loss.

E. The Committee 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 and two (2) layperson members.

B. The members of the Alabama State Bar shall be appointed by the Board of Commissioners of the Alabama State Bar at the time and in a manner similar to the appointment of members of the Disciplinary Board of the Alabama State Bar as provided in Rule 4(a), Alabama Rules of Disciplinary Procedure. The members of the Alabama State Bar shall be appointed 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. No member of the Alabama State Bar who has served two (2) full three-year terms in succession shall be eligible for reappointment to the Committee until one (1) year after the end of the most recent term.

C. The layperson members shall be appointed for terms of one (1) year and may be reappointed to unlimited successive terms. Layperson members shall be nominated by members of the Executive Committee of the Alabama State Bar and shall be appointed by the president of the Alabama State Bar from those nominations.

D. Vacancies shall be filled by appointment by the president of the Alabama State Bar for the unexpired term.

E. The Committee shall select a secretary.

F. 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.

G. Members of the Committee shall attend a training session relating to lawyer disciplinary rules and procedures conducted by the Office of General Counsel within 12 months after their appointment to the Committee. Lawyer members of the Committee shall receive continuing legal education credit for this training.

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. Meetings may be by teleconference or videoconference.

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, provided that at least one (1) layperson member is present. 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.

E. The Committee shall establish a database and an index of claims and decisions, which shall be confidential.

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 Board of Bar Commissioners and the Alabama Supreme Court and

make other reports and publicize its activities as the Committee may deem advisable;

D. To recommend to the Executive Director of the Alabama State Bar appropriate staffing and to employ, in consultation with the General Counsel, consultants, agents, and legal counsel 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

(a) 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.

(b) 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 the claim is clearly not for a reimbursable loss, no further 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 applicant and the attorney or to receive other evidence on behalf of the applicant, 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 or she so requests.

C. The Committee, in its sole discretion, shall determine the amount of loss, if any, that 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 that 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 that 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.

F. Orders directing payment of claims are final, binding, and not subject to review or declination except as the result of facial deficiencies in any order or subrogation agreement. If such occurs, the Executive Director shall so notify the Committee within 14 days of the date of the order explaining the deficiency and what corrective action is deemed appropriate. Upon re-submission of a corrected order or agreement, payment shall be promptly made.

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 Ala. Code 1975, § 40-12-49, an annual fee of \$25.

B. Any person admitted to practice in the State of Alabama who upon obtaining the age of 65 years has elected to retire from the practice of law shall be exempt from any assessment under these Rules.

C. The Alabama State Bar is authorized to assess each lawyer who on January 1 of each year holds a special membership to the Alabama State Bar, as provided by Ala. Code 1975, § 34-3-17, an annual fee of \$25.

D. The Alabama State Bar is authorized to assess each lawyer who on January 1 of each year is registered as authorized house counsel, pursuant to Rule IX of the Rules Governing Admission to the Alabama State Bar, an annual fee of \$25.

E. The Alabama State Bar is authorized to assess each lawyer admitted pro hac vice pursuant to Rule VII of the Rules Governing Admission to the Alabama State Bar a fee of \$25 per application.

F. The Alabama State Bar is authorized to assess each lawyer who on January 1 of each year is disbarred, suspended, placed on disability inactive status, or otherwise inactive an annual fee of \$25, which shall be paid as a condition of reinstatement of the lawyer's license to practice law.

G. The fee assessed pursuant to subsections A, C, D, E,

and F above shall be used to fund the Client Security Fund.

H. The Committee shall review the annual assessments every five years and report to the Board of Bar Commissioners the sufficiency of the annual assessment in relation to the financial stability, strength, and integrity of the Fund.

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 that any one applicant may recover from the Fund arising from an instance or course of dishonest conduct is seventy-five thousand dollars (\$75,000).

C. The aggregate maximum amount that all applicants may recover arising from an instance or course of dishonest conduct is two-hundred thousand dollars (\$200,000).

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 as is deemed advisable against the lawyer or the lawyer's estate. Such action may be brought either in the name of the applicant or in the name of the Committee. Prior to payment of the claim the applicant 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 applicant, who may then join in such action to recover losses in excess of the amount of the reimbursement from the Fund.

B. Should the applicant bring an action for recovery of unreimbursed losses directly against the lawyer, or the lawyer's estate, the applicant shall notify the Committee of such action.

C. The applicant 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 applicant, 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. Subsection 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 that does not disclose the identity of the lawyer or the parties.

D. Both the applicant 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 FEES

No attorney representing an applicant for compensation from the Fund shall be compensated from the moneys or any portion thereof received from the Fund for his or her services. However, an attorney or attorneys appointed in the manner and under the circumstances set forth in Rule 27 and Rule 29 of the Alabama Rules of Disciplinary Procedure may file a claim with the Committee for payment from the Fund for services rendered or reasonable expenses incurred in carrying out their duties pursuant to that appointment. Any payment made from the Fund to an attorney or qualified medical expert pursuant to Rule 27 and Rule 29 of the Alabama Rules of Disciplinary Procedure shall not exceed \$25,000 per claim, unless circumstances in the discretion of the Committee warrant otherwise. Individuals 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 an applicant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving the applicant 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

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 and shall have no vote.

A. 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.

B. The Committee shall not reimburse any person, firm, or association (such as a bonding company, for example) for any loss wherein 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 that remain.

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

A. A lawyer who fails to pay by March 31 of a particular year the assessed annual 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.

B. Applications for pro hac vice admission pursuant to Rule VII of the Rules Governing Admission to the Alabama State Bar shall not be approved unless accompanied by the assessed fee as provided in Rule VIII of these Rules.