

**KENTUCKY BAR ASSOCIATION
RULES OF THE SUPREME COURT OF KENTUCKY**

PRACTICE OF LAW

SCR 3.820 Clients' Security Fund

There shall be maintained a special fund for the purpose of providing indemnification to clients who may suffer pecuniary loss by reason of fraudulent or dishonest acts on the part of a member of the Kentucky Bar Association. The fund shall be named, held, administered and disbursed in accordance with the provisions hereinafter set forth.

(1) Purpose and Scope.

(a) The purpose of the Clients' Security Fund is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to practice law in the courts of this State occurring in the course or arising out of a lawyer-client relationship between the lawyer and the claimant.

(b) Every lawyer has an obligation to the public to participate in the collective effort of the bar to reimburse persons who have lost money or property as a result of the dishonest conduct of another lawyer. Contribution to the Clients' Security Fund is an acceptable method of meeting this obligation.

(2) Establishment

(a) There is established the Clients' Security Fund to reimburse claimants for losses caused by dishonest conduct committed in this state by lawyers admitted to practice in this State.

(b) There is established, under the supervision of the Supreme Court of Kentucky, the Clients' Security Fund Board of Trustees, which shall receive, hold, manage and disburse from the Fund such monies as may from time to time be allocated to the Fund.

(c) These rules shall be effective for claims filed with the Trustees after October 20, 1971 and the Trustees shall not pay claims for losses incurred as a result of dishonest conduct committed prior thereto.

(3) Funding

(a) The Court shall provide for funding by the lawyers of the State in amounts adequate for the proper payment of claims and the costs of administering the Fund.

(b) A lawyer's failure to pay any fee assessed shall be a cause for suspension from practice until payment has been made.

(c) A lawyer whose dishonest conduct has resulted in reimbursement to a claimant shall make restitution to the Fund including interest and the expense incurred by the Fund in processing the claim. A lawyer's failure to make satisfactory arrangements for restitution shall be cause for suspension, disbarment, or denial of an application for reinstatement

(4) Funds

All monies or other assets of the Fund shall constitute a trust and shall be held in the name of the Fund, subject to the direction of the Trustees.

(5) Composition and Officers of the Board

(a) The Trustees shall consist of three lawyers and two nonlawyers appointed by the Board of Governors for initial terms as follows:

- (1) One lawyer for one year;
- (2) One nonlawyer for two years;
- (3) 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. The Board of Governors may limit the number of successive terms that Trustees may serve.

- (b) Trustees shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.
- (c) Vacancies shall be filled by appointment by the Board for any unexpired terms.
- (d) The Trustees shall select a chairperson and such other officers as they deem appropriate.

(6) Board Meetings

- (a) The Trustees shall meet as frequently as necessary to conduct the business of the Fund and to timely process claims.
- (b) The Chairperson shall call a meeting at any reasonable time or upon the request of at least two Trustees.
- (c) A quorum for any meeting of the Board shall be three Trustees.
- (d) A record of meetings shall be taken and maintained.

(7) Duties and Responsibilities of the Trustees

The Trustees 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, subject to approval by the Board of Governors;
- (c) to prudently invest such portions of the funds as may not be needed currently to pay losses;
- (d) to provide a full report at least annually to the Court and to make other reports as necessary;
- (e) to publicize its activities to the public and the bar;
- (f) to retain and compensate consultants, auditors, actuaries, agents, legal counsel, special commissioners appointed under SCR 3.395, and other persons as necessary;
- (g) to prosecute for restitution to which the Fund is entitled;
- (h) to engage 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 and effective administration of the Fund.

(8) Conflict of Interest

- (a) A Trustee who has or has had a lawyer-client relationship or a 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.
- (b) A Trustee with a past or present relationship, other than as provided in section (a), with a claimant or the lawyer whose alleged conduct is the subject of the claim, shall disclose such relationship to the panel and, if the panel deems appropriate, that Trustee shall not participate in any proceeding relating to such claim.

(9) Immunity

The Trustees, employees and agents of the panel shall be absolutely immune from civil liability for all acts in the course of their official duties. Absolute immunity shall also extend to claimants and lawyers who assist claimants for all communications to the Fund.

(10) Eligible Claims

- (a) The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of or in the course of a lawyer-client relationship between the lawyer and the claimant.
- (b) The claim shall have been filed no later than two years after the claimant knew or

should have known of the dishonest conduct of the lawyer.

(c) As used in these Rules, "dishonest conduct" means:

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

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

(d) Except as provided by section (e) of this Rule, the following losses shall not be reimbursable:

(1) Losses incurred as a result of any negligent act of malpractice,

(2) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;

(3) 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;

(4) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(5) Losses incurred by any business entity controlled by the lawyer, any person or entity described in section (d)(1), (2), or (3) hereof;

(6) Losses incurred by any governmental entity or agency.

(e) In cases of extreme hardship or special and unusual circumstances, the panel of Trustees may, in its discretion, recognize a claim which would otherwise be excluded under these Rules.

(f) In cases where it appears that there would be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the panel of Trustees may in its discretion, deny the claim.

(11) Procedures and Responsibilities for Claimants

(a) The Trustees shall prepare and approve a form for claiming reimbursement.

(b) The form shall include 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, social security 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) the copy of any written agreement pertaining to the claim;

(6) the form of the claimant's loss involved (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) 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. prosecuting 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) the 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 Board of any reimbursements the claimant receives during the pendency of the claim;
 - (14) the existence of facts believed to be important to the Fund'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;
 - (17) the claimant's agreement to cooperate with the Board in reference to the claim or as required by SCR 3.820 (16), in reference to civil actions which may be brought in the name of the Board pursuant to a subrogation and assignment clause which shall also be contained within the claim.
 - (18) the name and address of any other State Fund to which the claimant has applied or intends to apply for reimbursement, together with a copy of the application.
 - (19) a statement that the client 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 filed with the Trustees in the manner and place designated in the rules governing claims with the Fund.

(12) Processing Claims

- (a) Whenever it appears that a claim is not eligible for reimbursement pursuant to SCR 3.820 (10), the claimant shall be advised of the reasons why the claim may not be eligible for reimbursement, and that unless additional facts to support eligibility are submitted to the Fund, the claim file shall be closed.
- (b) A copy of an order disciplining a lawyer for the same dishonest act or conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, may be considered by the Trustees as evidence that the lawyer committed such dishonest act or conduct.
- (c) The lawyer disciplinary agency shall be promptly notified of the claim and requested to furnish a report of its investigation on the matter to the Trustees. The lawyer disciplinary agency shall allow the Fund's representative access to its records during an investigation of a claim. The Trustees shall evaluate whether the investigation is complete and determine whether the Trustees 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.
- (d) The Trustees may conduct their own investigation when deemed appropriate.
- (e) A copy of the claim shall be served upon the lawyer, or the lawyer's representative. The lawyer or representative shall have 20 days in which to respond.
- (f) The Trustees may request that testimony be presented to complete the record. Upon request, the claimant or lawyer, or their representative, will be given an opportunity to be heard.
- (g) A determination by the Trustees of dishonest conduct for purposes of adjudicating a claim shall not constitute a finding of dishonest conduct for purposes of professional discipline.
- (h) 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 Board's determination and the reasons therefor. The approval or denial of a claim shall require the affirmative votes of at least three trustees.
- (i) 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 over objection in court proceedings. The claimant shall have the duty to supply relevant evidence to support the claim.

(j) The Trustees shall determine the order and manner of payment and pay all approved claims, but unless the Trustees direct otherwise, no claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct that is alleged in the claim.

(k) Both the claimant and the lawyer shall be advised of the status of the Trustees' consideration of the claim and shall be informed of the final determination.

(l) The claimant or respondent lawyer may request reconsideration within 30 days of the denial or determination of the amount of a claim. The request shall plainly state the reasons for such reconsideration. The Trustees shall grant or deny this request within 30 days after the request is filed with the KBA administrator. If the claimant fails to make a request or the request is denied, the decision of the Board is final.

(13) Payment of Reimbursement

(a) The Board of Governors, with the approval of the Supreme Court, may from time to time fix a maximum amount on reimbursement that is payable by the Fund.

(b) Claimants shall be reimbursed for losses in amounts to be determined by the Trustees. No claim shall be paid for consequential damages flowing from the wrongful act of a practicing attorney. Claims shall be limited to actual pecuniary amounts retained, embezzled, stolen, or otherwise taken from or withheld from the claimant by the practicing attorney.

(c) Payment of reimbursement shall be made in such amounts and at such times as the Trustees deem appropriate and may be paid in lump sum or installment amounts.

(d) 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.

(14) 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.

(15) Restitution and Subrogation

(a) A lawyer whose dishonest conduct results in reimbursement to a claimant shall be liable to the Fund for restitution; and the Trustees may bring such action as it deems advisable to enforce such obligation.

(b) As a Condition of reimbursement, a claimant shall be required to provide the Fund with a *pro tanto* transfer of the claimant's rights against the lawyer, 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.

(c) Upon commencement of an action by the Clients' Security Fund as subrogee or assignee of a claim, 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 loss, the claimant shall be required to notify the Trustees of such action.

(e) The claimant shall be required to agree to cooperate in all efforts that the Trustees undertake to achieve restitution for the Fund.

(16) Judicial Relief

(a) The Trustees may make application to the appropriate court for relief to protect the interests of claimants or the Fund where:

- (1) the assets of client appear to be in danger of misappropriation or loss, or to secure the claimant's or Fund's rights to restitution or subrogation; or
- (2) the disciplinary agency has failed to exercise jurisdiction.

(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.

(17) Confidentiality

(a) Claims, proceedings and reports involving claims for reimbursement are confidential until the Trustees authorize reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Trustees 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 Trustees unless specific permission has been granted by the claimant.

(b) This Rule shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Trustees shall authorize, or the release of statistical information which does not disclose the identity of the lawyer or the parties.

(18) Compensation for Representing Claimants

No lawyer shall accept any payment for prosecuting a claim on behalf of a claimant.

HISTORY: Amended by Order 2007-007, eff. 2-1-08; prior amendments eff. 11-1-95 (Order 95-1), 8-1-92, 1-1-89, 1-1-88; adopted eff. 7-1-84