

## RULE 25: TENNESSEE LAWYERS' FUND FOR CLIENT PROTECTION.

## Section 1. Tennessee Lawyers' Fund for Client Protection.

1.01. There is hereby established the Tennessee Lawyers' Fund for Client Protection to reimburse claimants for losses caused by any dishonest conduct committed by lawyers practicing in this state.

1.02. The purpose of the Tennessee Lawyers' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession as a whole by reimbursing losses caused by the rare instances of dishonest conduct of lawyers practicing in this state.

1.03. As used in these rules, "dishonest conduct" means the misappropriation or willful misapplication of a person's money, securities or other property.

1.04. This rule shall apply to dishonest conduct that arose out of the practice of law in Tennessee.

1.05. For purposes of this Rule, "lawyer" shall include a person:

(a) licensed to practice law in this jurisdiction;

(b) admitted as in-house counsel;

(c) admitted pro hac vice;

(d) practicing in Tennessee under the authority of Tennessee Supreme Court Rule 8, RPC 5.5(d)(1);

(e) admitted only in a non-United States jurisdiction but who is authorized to practice law in this jurisdiction; or

(f) recently suspended or disbarred whom clients reasonably believed to be licensed to practice law when the dishonest conduct occurred.

## Section 2. Funding.

2.01. The Fund shall consist of monies or other properties obtained by the following:

(a) Annual payments from lawyers in an amount set by the Court in Rule 9, Section 10.2(c) collected annually with the yearly registration fees by the Board of Professional Responsibility of the Supreme Court of Tennessee; lawyers exempted under Rule 9, Section 10.3 are also exempted from this rule; lawyers who became life members of the Fund on or before December 7, 1993, shall also be exempted from this rule

(b) Recoveries by subrogation or from lawyers or former lawyers or their estates reimbursed to the Fund for payments made by the Fund;

(c) Gifts or bequests from any source; and

(d) Earnings on investments of the Fund.

### Section 3. Funds.

3.01. All monies or other assets allocated to the Fund shall be held in a separate account in the name of the Fund, subject to written direction of the Board of the Tennessee Lawyers' Fund for Client Protection (the "Board").

### Section 4. Composition of Board.

4.01. The Board shall consist of six lawyers and three non-lawyers appointed for initial terms as follows:

(a) One lawyer from the Grand Division of East Tennessee to be appointed by the Supreme Court of Tennessee for a three year term;

(b) One lawyer from the Grand Division of Middle Tennessee to be appointed by the Supreme Court of Tennessee for a two year term;

(c) One lawyer from the Grand Division of West Tennessee to be appointed by the Supreme Court of Tennessee for a one year term;

(d) One non-lawyer from the Grand Division of East Tennessee to be appointed by the Supreme Court of Tennessee for a three year term;

(e) One non-lawyer from the Grand Division of Middle Tennessee to be appointed by the Supreme Court of Tennessee for a two year term;

(f) One non-lawyer from the Grand Division of West Tennessee to be appointed by the Supreme Court of Tennessee for a one year term;

(g) One lawyer from the Grand Division of East Tennessee to be appointed by the Supreme Court of Tennessee for a one year term;

(h) One lawyer from the Grand Division of Middle Tennessee to be appointed by the Supreme Court of Tennessee for a two year term;

(i) One lawyer from the Grand Division of West Tennessee to be appointed by the Supreme Court of Tennessee for a three year term.

4.02. Subsequent appointments shall be for a term of three years. Bar associations within the State of Tennessee may recommend individuals for appointment to the Board.

4.03. No appointee who has served two full terms of three years shall be eligible for reappointment to the Board until three years after the termination of the most recent term.

4.04. Vacancies shall be filled by appointment by the Supreme Court of Tennessee, whether said vacancies exist due to expiration of a member's term, resignation, removal, death, or disability.

4.05. The Supreme Court of Tennessee shall select a chairperson, vice-chairperson, secretary-treasurer and such other officers as the Court deems appropriate.

4.06. The Board members shall be bonded in such manner and amount as the Supreme Court of Tennessee may determine.

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

#### Section 5. Board Meetings.

5.01. The Board shall meet as frequently as necessary to carry out its duties, but no less than once per year.

5.02. The Chairperson shall call a meeting at any reasonable time, or upon the request of at least three members of the Board.

5.03. A quorum for any meeting of the Board shall be five members.

5.04. Minutes of meetings shall be taken and permanently maintained by the Board.

5.05. Meetings by telephone conference are permitted.

5.06. When the Board is hearing a claim, approval of a claim shall require the affirmative vote of a majority of members present. See Section 10.08 for the procedures for hearing claims.

#### Section 6. Duties and Responsibilities of the Board.

6.01. The Board shall have the following duties and responsibilities:

(a) To receive, evaluate, determine and pay approved claims;

(b) To promulgate rules of procedure not inconsistent with these Rules and subject to prior approval by the Supreme Court of Tennessee;

(c) To provide a full report at least annually to the Supreme Court of Tennessee and make other reports and publicize the activities to the public and the Bar;

(d) The staff and physical resources of the ~~Commission on Continuing Legal Education~~ Board of Professional Responsibility will assist in the Board's performance of its functions effectively and without delay; the Board will compensate the staff for its services;

(e) To retain and compensate consultants, actuaries, agents, legal counsel and other persons as necessary; this authority to contract for professional services as needed by the Board shall not be construed to authorize the Board to hire employees of the Board;

(f) To prosecute claims for restitution to which the Fund is entitled;

(g) To submit an annual budget for approval by the Supreme Court of Tennessee;

(h) To perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the Fund.

#### Section 7. Conflict of Interest.

701. A member of the Board 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 that claimant or lawyer.

702. A member of the Board with a past or present relationship, other than as provided in Section 7.01 of this rule, with a claimant or the lawyer whose alleged conduct is the subject of the claim shall disclose such relationship to the Board and, if the Board deems appropriate, that member shall not participate in any proceeding relating to such claim.

#### Section 8. Immunity.

8.01. The members, employees and agents of the Board are absolutely immune from civil liability for all acts in the course of and within the scope of their official duties.

#### Section 9. Procedures and Responsibilities for Claimants.

9.01. The Board shall prepare and approve a form of claim.

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

(a) Name and address of claimant, home and business telephone, occupation and employer, ~~social security number~~;

(b) Name, address and telephone number of the lawyer alleged to have engaged in dishonest conduct;

(c) The nature of services the lawyer performed and/or was to perform for the claimant, if any;

- (d) Whether the claimant's agreement with the lawyer was in writing, and, if so, attach a copy;
- (e) Specify whether the claimant's loss involves money, securities or other property;
- (f) The amount of loss and the date when the loss occurred, and if documentation is available, attach a copy;
- (g) The date when the claimant discovered the loss, and how the claimant discovered the loss;
- (h) A description of the lawyer's alleged dishonest conduct and the names and addresses of any persons who have knowledge regarding the loss;
- (i) Whether the loss has been reported to the district attorney, police, disciplinary agency or other (specify); and if so, furnish a copy of the complaint and describe what action was taken;
- (j) Whether the loss potentially can be reimbursed from any other source, such as insurance, fidelity or surety agreement and, if so, specify the source of such potential recovery;
- (k) Description of any steps taken to recover the loss directly from the lawyer, or any other source;
- (l) Any other facts believed to be important to the Fund's consideration of the claim;
- (m) How the claimant learned about the Fund;
- (n) The name, address and telephone number of the claimant's present lawyer, if any;
- (o) A statement that the claimant agrees to cooperate with the Board in reference to the claim or civil actions which may be brought in the name of the Board or in the name of the claimant pursuant to a subrogation and assignment which shall be contained within the claim.

9.03. The claimant shall have the responsibility of completion of the claim form and establishing that a compensable claim may exist.

9.04. The claim shall be filed with the Board in the manner and place designated in its rules of procedure.

#### Section 10. Processing Claims.

10.01. Immediately upon receipt by the Board, a copy of the claim shall be served upon the lawyer by certified mail or personal delivery directed to the address currently listed for such lawyer in the records of the Board of Professional Responsibility.

10.02. Whenever it appears that a claim is not compensable pursuant to these rules, the claimant shall be advised of the reasons why the claim is not compensable, and that unless additional facts to support eligibility are submitted to the Fund within 30 days, the claim shall be dismissed.

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

10.04. The Board of Professional Responsibility of the Supreme Court of Tennessee shall be promptly notified of the claim and requested to furnish a report of its investigation on the matter to the Board. Upon receipt of the report of investigation of the ~~disciplinary board~~ Board of Professional Responsibility, the Board shall evaluate whether the investigation is complete and determine whether the Board shall conduct additional investigation. The Board may withhold final action on any claim until disciplinary proceedings involving the same act or conduct ~~has~~ have been concluded, or may proceed before disciplinary proceedings are concluded, in its discretion.

10.05. The Board may conduct its own investigation when it deems it appropriate.

10.06. The Board may request that testimony be presented to complete the record. Upon request, the claimant and lawyer, or either of their personal representatives, will be given an opportunity to be heard. Attendance of witnesses and production of evidence may be compelled by a subpoena.

10.07. When the record is complete the claim shall be determined on the basis of all available evidence. Determinations shall be made upon the basis of a preponderance of the evidence.

10.08. Hearings may be held in the Grand Division of the State where the claimant and/or the accused lawyer resides. The Chairperson may designate the Board to sit in panels of three Board members as assigned by the Chairperson. A concurrence of all three panel members sitting shall constitute a decision of the Board. If a claim is not unanimously approved by a panel of three, then the full Board shall be presented the record and approval of a claim shall require the affirmative vote of a majority of Board members present. Notice shall be given to the claimant and the lawyer of the Board's determination and the reasons therefore.

10.09. Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence may 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.

## Section 11. Judgments.

11.01. The Board may require that claimants seeking more than \$1,000 obtain a judgment against the offending lawyer or former lawyer. Claimants may be eligible for payment from the Fund if the judgment shall remain unpaid after reasonable efforts to collect same.

## Section 12. Eligible Claims.

1201. A claim must be filed within three years of the date that a loss occurred or reasonably should have been discovered, but in no event later than five years from the date of a loss. This provision applies prospectively to losses that occur after the date of its adoption.

1202. Except as provided by Section 12.03 of this rule, the following losses shall not be reimbursable:

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

(b) Losses covered by any bond, surety agreement, 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;

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

(d) Loss of any business entity controlled by the lawyer or any person or entity described in Section 12.02, (a), (b) or (c) hereof;

(e) Losses of a governmental entity or agency.

1203. In cases of special and unusual circumstances, the Board may, in its discretion, recognize a claim which would otherwise be excluded under this rule.

1204. Paragraph 12.03 above notwithstanding, no payment from the Fund shall include interest, costs or attorneys' fees accrued as a result or consequence of prosecuting the claim before the Board, except as may be allowed pursuant to Section 18.01 herein.

### Section 13. Limitations on Amount of Reimbursements.

13.01. No payment shall exceed the sum of \$100,000 for loss sustained by any one claimant nor the aggregate sum of \$250,000 with respect to losses caused by any one lawyer or former lawyer, unless otherwise determined by the Board and approved by the Court. No payment shall exceed \$250,000 per transaction regardless of the number of persons aggrieved or the amount of loss in such transaction unless otherwise determined by the Board and approved by the Court. No payment shall exceed ten percent of the assets of the Fund at the time it is made, exclusive of funds received for Life Memberships. Where joint liability of wrongdoers exists, the Board has discretion to allocate payments as it deems appropriate within these limits. Payments may be in lump sum or installments as the Board may determine.

### Section 14. Considerations on Payment of Claims.

14.01. In determining whether to pay a claim and the amount to be paid, the Board may consider any matter which, in its discretion, it deems relevant, including but not limited to the following:

(a) The conduct, including negligence, if any, of the claimant which contributed to the loss;

- (b) The hardship which the claimant suffered because of the loss;
- (c) The total amount of reimbursable losses of applicants on account of any one lawyer or former lawyer or association of lawyers;
- (d) The total amount of reimbursable losses in previous years for which total reimbursement has not been made and the total assets of the Fund; and
- (e) Other sources of funds available to compensate the claimant for the loss.

#### Section 15. Legal Rights to Payment from Fund.

15.01. No person shall have any right to payment from the Fund as a claimant, third-party beneficiary or otherwise.

15.02. Decisions of the Board shall be final and not be subject to appeal or review by any court.

#### Section 16. Subrogation.

16.01. Payments on approval claims shall be made from the Fund only upon condition that the Board receives, in consideration for any payment from the Fund, a pro tanto assignment from the claimant of the claimant's right against the lawyer involved, or his or her personal representative, his or her estate or assigns or of the claimant's right against any third party or entity concerning the dishonestly caused loss for which the claimant is receiving reimbursement from the Fund, and to the extent of such payment, a lien shall be created in favor of the Fund which shall attach to any asset that may be payable to the claimant from, or on behalf of, the person or entity who caused the claimant's loss and which resulted in the claimant's award of reimbursement from the Fund.

16.02. If the reimbursement is made, the Fund shall be subrogated in the amount of the reimbursement. The Board may bring such action as it deems advisable against the lawyer, the lawyer's estate and any other person or entity who may be liable for the loss.

16.03. Should the claimant bring any action for recovery or reimbursed losses directly against the lawyer, the lawyer's estate or any other person or entity who may be liable for the loss, the claimant shall notify the Board of such action and send a copy of the complaint. Any voluntary payment from the lawyer or other recovery from any source shall also be reported to the Board.

16.04. The claimant shall cooperate in any effort the Board undertakes to achieve reimbursement for the Fund.

#### Section 17. Confidentiality.

17.01. Applications, proceedings and reports involving applications for reimbursement are confidential until the Board authorizes reimbursement to the claimant, except as provided below.



17.02. If the lawyer whose alleged conduct gave rise to the claim requests that the matter be made public, or if the lawyer's alleged conduct is the subject of a public disciplinary, civil or criminal proceeding, the requirement of confidentiality is waived.

17.03. Section 17.01 shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Board shall authorize, or the release of statistical information which does not disclose the identity of the lawyer or the parties.

17.04. Both the claimant and the lawyer shall be advised of the status of the Board's consideration of the claim and shall be informed of the final determination and the reasons for the determination.

17.05. The Board shall have discretion to seal such parts of a file that would be damaging to a claimant or to which the claimant has a statutory right of confidentiality.

#### Section 18. Compensation for Representing Claimants.

18.01. No lawyer shall charge or accept compensation for prosecuting a claim on behalf of a claimant ~~unless approved by the Board (a) on a contingency basis or (b) in excess of a fee of \$300.00. The fee shall be earned at an hourly rate to be approved by the Board and not above that provided in Rule 13 section (2)(c) of the Tennessee Supreme Court Rules. Lawyers owe a duty to the public to assist individuals wronged by members of the profession and may count hours spent assisting a claimant in the prosecution of a claim as pro bono hours if conducted without receiving a fee.~~

18.02. This prohibition only pertains to proceedings before the Board and not to the seeking of civil judgments and other actions taken by lawyers on behalf of claimants.

#### Section 19. Payments to the Board.

19.01. Failure of any lawyer to pay the amounts required by Section 2.01(a) of this rule shall be grounds for the suspension of the license to practice.

19.02. The Board of Professional Responsibility shall deposit all funds collected on behalf of the Tennessee Lawyer's Fund for Client Protection with the State Treasurer; all such funds including earnings on investments and all interest and proceeds from said funds, if any, are deemed to be, and shall be designated as, funds belonging solely to the Tennessee Lawyer's Fund for Client Protection. Withdrawals from those funds shall only be made by the Tennessee Lawyer's Fund for Client Protection for the purposes set forth in this rule, and for such other purposes as this Court may from time to time authorize or direct.