

**VERMONT BAR ASSOCIATION
CLIENT SECURITY FUND RULES**

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TABLE OF CONTENTS

DEFINITIONS

RULE 1	ESTABLISHMENT
RULE 2	CLIENT SECURITY FUND
RULE 3	FUNDS
RULE 4	COMPOSITION OF THE COMMITTEE
RULE 5	COMMITTEE MEETINGS
RULE 6	DUTIES AND RESPONSIBILITIES OF THE COMMITTEE
RULE 7	CONFLICT OF INTEREST
RULE 8	CLAIMS
RULE 9	PROCEDURES FOR CLAIMANTS
RULE 10	ADJUDICATION
RULE 11	EVIDENCE
RULE 12	LIMITATIONS ON AMOUNT OF REIMBURSEMENT
RULE 13	RECONSIDERATION
RULE 14	LEGAL RIGHTS TO PAYMENT FROM FUND
RULE 15	SUBROGATION
RULE 16	CONFIDENTIALITY
RULE 17	COMPENSATION FOR REPRESENTING CLAIMANTS

DEFINITIONS

Claim:

A written application to the Committee for reimbursement of a loss.

Claimant:

A person or entity who has sustained a Loss as a result of a Lawyer's Dishonest Conduct.

Committee:

The Client Security Fund Committee.

Fund:

The Client Security Fund.

Lawyer:

A person, who, at the time of the act complained of, was admitted to practice before the Vermont Supreme Court and was in active practice in the State of Vermont.

Loss:

The loss of money or property occasioned by the Dishonest Conduct of a Lawyer in connection with their practice in the State of Vermont.

Dishonest Conduct:

A misappropriation, embezzlement, defalcation, or conversion of money, property, or other thing of value.

RULE 1 ESTABLISHMENT

- A. There is established the Client Security Fund to reimburse Claimants for Losses caused by the Dishonest Conduct of a lawyer.
- B. There is established the Client Security Fund Committee which shall receive, hold, manage and disburse from the Fund such monies as may from time to time be allocated to the Fund.

RULE 2 CLIENT SECURITY FUND

The Vermont Bar Association will maintain the Client Security Fund from which to pay approved claims and the costs of administration. The total amount of the Fund will be determined by the Vermont Bar Association Board of Managers, and will be in an amount it considers, in its best judgment, to be likely to meet valid Claims against the

Fund. It may, in its judgment, establish an annual fee to be paid by active members of the Association to maintain the Fund.

RULE 3 FUNDS

All monies or other assets allocated to the Fund will be held in a separate account in the name of the Fund, subject to the written direction of the Committee; provided, however, that monies allocated to the Fund may be commingled with other monies for investment purposes only.

RULE 4 COMPOSITION OF THE COMMITTEE

- A. The Committee will be the Executive Committee of the Board of Bar Managers.
- B. The President will preside over meetings of the Committee and be responsible for following the procedures set forth below.
- C. The Committee will make a recommendation as to claims to a quorum of the Board of Managers, which shall make final decisions.

RULE 5 COMMITTEE MEETINGS

- A. The Committee will meet no less than once per year upon call of the President, who will also call a meeting at any reasonable time at the request of at least two other members of the Committee.
- B. A quorum for any meeting of the Committee will be four members.

RULE 6 DUTIES AND RESPONSIBILITIES OF THE COMMITTEE

The Committee will have the following duties and responsibilities:

- A. To receive, evaluate, determine and pay claims (subject to Rule 4C);
- B. To promulgate rules of procedure not inconsistent with these Rules;
- C. To prudently invest such portions of the funds as may not be needed currently to pay losses;
- D. To consider the purchase of insurance to cover extraordinary losses in excess of the assets of the fund if the purchase of such insurance is approved by the Board of Managers;
- E. To make an annual report to the Vermont Bar Association and make other reports and publicize its activities as the Committee may consider advisable;
- F. To employ and compensate consultants, agents, legal counsel and other persons as necessary; and
- G. To prosecute the claims for restitution to which the Fund is entitled.

RULE 7 CONFLICT OF INTEREST

A member of the Committee or the Board of Managers who has or has had a lawyer-client relationship or financial relationship with a Claimant or with a Lawyer who is the subject of a Claim must not participate in the investigation or adjudication of a Claim involving that Claimant or Lawyer.

RULE 8 CLAIMS

- A. The Committee shall, in each case in which a Claim has been filed, establish and cause publication of dates for closure of the filing of Claims against the Fund arising from the same facts or against the same Lawyer. The Committee will not entertain Claims against the Fund filed two years after the Claimant knew or should have known of the Dishonest Conduct of the Lawyer; or two years after the Claimant has exhausted reasonable legal and other avenues against all potential obligors on the Claim, whichever is later.
- B. A Claim must be based on a Loss arising out of and during the course of a lawyer-client or fiduciary relationship between the Lawyer and the Claimant.
- C. No payment shall be made from the Fund unless and until:
 - (1) Disciplinary proceedings have been commenced against the Lawyer in the Vermont Supreme Court and the lawyer against whom a claim of Dishonest Conduct has been made has been suspended or disbarred from practice by the Supreme Court of the State of Vermont or has resigned during the pendency of the disciplinary proceedings; or
 - (2) The Lawyer against whom a claim of Dishonest Conduct has been made has died or been adjudged mentally incompetent.
- D. Except as provided by section E of this Rule, these Losses will not be reimbursable:
 - (1) Losses of spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the Losses;
 - (2) Losses compensable 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;
 - (3) Losses of any financial institution which are recoverable under a “banker’s blanket bond” or similar commonly available insurance or surety contract.
- E. In cases of extreme hardship or special and unusual circumstances, and in order to achieve a just result, the Committee may, in its discretion, recognize a Claim which would otherwise be excluded under these rules.

RULE 9 PROCEDURES FOR CLAIMANTS

The Claim must be filed with the Committee on the provided form at the executive offices of the Vermont Bar Association, or in the manner and place otherwise designated in its rules of procedure.

RULE 10 ADJUDICATION

- A. The Lawyer (or, if applicable, the Lawyer’s guardian, trustee, executor, or similar representative in the event the Lawyer has died or has been adjudged mentally incompetent) will be given a copy of the claim and an opportunity to respond to it within 20 days of receipt.
- B. The Professional Responsibility Board must be promptly notified of the Claim and requested to furnish a report of its investigation on the matter to the

Committee, to the extent permitted by the Permanent Rules of the Professional Responsibility Board or other applicable rules.

- C. Upon receipt of the report of investigation of the Professional Responsibility Board, the Committee will evaluate whether the investigation is complete and determine whether the Committee should conduct additional investigation or hold a hearing. If the Professional Responsibility Board states that it will not investigate or if 120 days have elapsed since notification to the Board and no report has been furnished to the Committee, the Committee may conduct its own investigation.
- D. Any hearings on claims will be recorded by any means permitted under V.R.C.P. 30, and permanently maintained by the Secretary.
- E. When the record is complete, the Claim will be determined upon all available evidence, and notice will be given to the Claimant and the Lawyer of the decision.
- F. When an essential element for reimbursement is not present (as provided in these Rules, including Rule 8 and subject to Rule 12), the Committee will dismiss the claim and will promptly notify the claimant of the reasons for the dismissal.
- G. The Committee will determine the order and manner of payment and pay all approved claims, subject to the provisions of Rules 11 and 12.

RULE 11 EVIDENCE

The Committee will require proof by a preponderance of credible evidence that the Claimant's Loss resulted from the Lawyer's Dishonest Conduct. A certified copy of a lawyer discipline order or a criminal conviction is conclusive evidence that the lawyer committed the underlying conduct.

RULE 12 LIMITATIONS ON AMOUNT OF REIMBURSEMENT

- A. The Committee shall, subject to sections B, C, and D of this Rule, determine the amount to be paid on any claim approved under Rules 10 and 11.
- B. No payment will be made from the Fund until the claimant has exhausted reasonable legal and other avenues against all potential obligors on the claim.
- C. The maximum amount which any one claimant may recover from the Fund arising from an instance or course of Dishonest Conduct is \$75,000.
- D. The aggregate maximum amount which all Claimants may recover arising from an instance or course of Dishonest Conduct by a Lawyer is the lesser of \$150,000 or 20% of the Fund as of the date of final decision.
- E. In cases of extreme hardship or special and unusual circumstances, the Committee may, in its discretion, increase the aggregate maximum amount which all claimants may recover arising from an instance or course of Dishonest Conduct of a Lawyer under this Fund.

RULE 13 RECONSIDERATION

The Claimant may request reconsideration within 30 days of the denial or determination of the amount of a Claim. If the Claimant fails to make a request or the request is denied,

the decision shall be deemed final.

RULE 14 LEGAL RIGHTS TO PAYMENT FROM FUND

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

RULE 15 SUBROGATION

- A. If reimbursement is made, the Fund will be subrogated in the amount of the reimbursement and the Committee may bring such action as is considered 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. Before payment of the Claim, the Claimant shall be required to execute a subrogation agreement. Upon commencement of an action by the Committee under its subrogation rights, it will 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 will notify the Committee of such action.
- C. The Claimant shall cooperate in any effort the Committee undertakes to achieve reimbursement for the Fund.

RULE 16 CONFIDENTIALITY

- A. Applications, proceedings and reports involving applications for reimbursement are confidential until the Committee authorizes reimbursement to 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 will not be construed to deny access to relevant information by the Professional Responsibility Board or other law enforcement authorities as the Committee authorizes, or the release of statistical information which does not disclose the identity of the Lawyer or the Claimant.
- D. Both the claimant and the Lawyer will be advised of the status of the Committee's consideration of the Claim and informed of the final determination.

RULE 17 COMPENSATION FOR REPRESENTING CLAIMANTS

It is strongly suggested that attorneys accept cases representing Claimants hereunder on a pro bono basis. In any event, attorneys representing a Claimant shall not charge for or accept compensation for prosecuting a Claim on behalf of a Claimant in an amount more than 25% of the amount recovered from the Fund.

**STATEMENT OF CLAIM
TO THE CLIENT SECURITY FUND COMMITTEE
OF THE VERMONT BAR ASSOCIATION**

Prior to submitting this Statement of Claim, please carefully review the Vermont Bar Association's Client Security Fund Rules (the "Rules"). By submitting this Statement of Claim, you hereby agree to be bound by the Rules. *It is recommended by the Committee that you consult with an attorney in filing this claim.*

1. Name of claimant.
2. Address of claimant.
3. Telephone number of claimant.
4. Name of lawyer whose conduct is alleged to have caused claimant's loss.
5. Address of that lawyer.
6. State the date when you originally hired that lawyer and the nature of the matter for which you hired that lawyer.
7. If you are presently represented by another attorney, state that attorney's name, address, and telephone number.
8. State whether you have discussed this claim with your present attorney.
9. Describe the acts committed by the lawyer constituting the basis for this claim.
10. State the total claimed value of your loss by reason of the lawyer's acts, and describe whether your loss is in money, securities, real estate, or other property.
11. State the date when, or period of time within which, the acts were committed, and state when you sustained your loss.
12. State when you discovered your loss and describe how the loss came to your attention.

File Statement of Claim with:

**Vermont Bar Association
Client Security Fund Committee
P.O. Box 100
Montpelier, VT 05601-0100**

SUBROGATION AGREEMENT

This Subrogation Agreement (the “Agreement”) is made as of _____, 20____, between _____ (the “Claimant”) and the Vermont Bar Association (the “Association”).

In consideration of the sum of _____ Dollars (\$_____) paid to the claimant by the Association for loss sustained by the Claimant (the “Loss”) by reason of embezzlement, conversion, or theft by _____, the Claimant hereby assigns and subrogates to the Association all rights, claims and rights of action that the Claimant has, shall have, may have against any person, corporation or other entity that may be liable for the Loss.

The Claimant authorizes the Association to sue, compromise or settle in the Claimant’s name and agrees to testify and otherwise assist in any proceeding that may be brought to recover the Loss.

The Claimant warrants that no settlement has been made with any third party with respect to the Loss.

The Claimant acknowledges having read the Vermont Bar Association Client Security Fund Rules, as amended, establishing the Client Security Fund, and hereby certifies that the Loss and the corresponding claim were made in accordance therewith.

Executed on the date first written above.

Claimant
Print Name: _____

Vermont Bar Association
By: _____
Duly Authorized Agent