Effective: November 1, 2006

Article 9. Lawyers' Fund for Client Protection.

~~Preamble.~~

~~By resolution of the Board of Commissioners of the Utah State Bar, a Client Security Fund was approved and established by the Utah Supreme Court, effective April 9, 1977.~~

~~The Fund was established to provide meaningful, prompt cost reimbursements to clients who had been injured by a lawyer's dishonest act.~~

~~The original resolution did not provide sufficient rules and/or guidelines for the Committee that was embodied by the resolution to utilize in making its recommendations to the Board of Bar Commissioners.~~

~~The American Bar Association has adopted, as of August 9, 1989, Model Rules for Lawyers' Fund for Client Protection. The following Rules adopt many of the principles from the American Bar Association Model Rules, as well as features from other states and from the prior resolution of the Board of Commissioners of the Utah State Bar, as approved by the Utah Supreme Court.~~

~~Submitted this 3rd Day of August, 1990 by the Client Security Fund Committee~~

Rule 14-901. Definitions. As used in this article:

(a) "Bar" means the Utah State Bar;

(b) "Board" means the Board of Commissioners of the Utah State Bar;

(c) "Committee" means the Committee on Lawyers' Fund for Client Protection;

(d) "dishonest conduct" means either wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking of or conversion of money, property or other things of value, or refusal to refund unearned fees received in advance where the lawyer performed no service or such an insignificant service that the refusal to return the unearned fees constitutes a wrongful taking or conversion of money; and

(e) "Fund" means the Lawyers' Fund for Client Protection.

(f) "Supreme Court" means the Utah Supreme Court;

Rule ~~1~~14-902. Purpose and scope; establishment of Fund.

(a) The Fund is established to reimburse clients for losses caused by the dishonest conduct committed by lawyers admitted to practice in Utah.

~~A.~~(b) The purpose of the ~~Lawyers'~~ Fund ~~for Client Protection~~ 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 State of~~ Utah, occurring in the course of the lawyer/client or fiduciary relationship between the lawyer and the claimant.

~~B.~~(c) 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 ~~Lawyers'~~ Fund ~~for Client Protection~~ is an acceptable method of meeting this obligation.

(d) These rules shall be effective for claims filed after August 1990, and the Committee, which was previously authorized under the former resolution, may act under the terms of the former resolution on claims filed prior to the effective date of these rules.

Rule ~~2~~14-903. ~~Establishment~~Committee membership and terms; Board approval of Committee recommendations.

~~A. There is established the Lawyers' Fund for Client Protection to reimburse clients for losses caused by the dishonest conduct committed by lawyers admitted to practice in the State of Utah.~~

~~B.~~(a) The Committee ~~of the Fund~~ shall consist of five ~~(5)~~ attorneys, each to function for a period of five ~~(5)~~ years. The initial membership of the Committee shall be comprised of those individuals who are members of the Committee existing under the former resolution at the time of the adoption of these ~~R~~rules. Subsequent appointments shall be for a term of three ~~(3)~~ years or the term uniformly determined for all Committee members by the ~~Utah State Bar~~Board. Vacancies shall be filled by appointment by the ~~P~~president of the ~~Utah State~~ Bar, with the approval of the Board ~~of Commissioners~~, for the unexpired term.

(b) The Board ~~of Bar Commissioners~~ shall retain the capacity to make any final determination after considering the recommendations of the Committee. The Board ~~of Commissioners of the Utah State Bar~~, functioning with regard to the ~~Lawyers'~~ Fund ~~for Client Protection~~, is under the supervision of the ~~Utah~~ Supreme Court.

~~C. These Rules shall be effective for claims filed after August 1990, and the Committee, which was previously authorized under the former resolution, may act under the terms of the former resolution on claims filed prior to the effective date of these Rules.~~

Rule ~~3~~14-904. Funding.

~~A.~~(a) The Supreme Court shall provide for funding by the lawyers ~~of~~ licensed in this ~~S~~state in amounts adequate for the proper payment of claims and costs of administering the Fund subject to ~~sub~~paragraph ~~E~~(c).

~~B. A lawyer's failure to pay any fee assessed shall be cause for suspension from practice until payment has been made.~~

~~C. Any lawyer whose actions have caused payment of funds to a claimant from the Fund shall reimburse the Fund for all monies paid out as a result of his or her conduct with interest at legal rate, in addition to payment of the assessment for the procedural costs of processing the claim and reasonable attorney fees incurred by the Office of Professional Conduct or any other attorney or investigator engaged by the Committee to investigate and process the claim as a condition of continued practice.~~

~~D.~~(b) All determinations with regards to funding shall be within the discretion of the Board~~ of Bar Commissioners of the Utah State Bar~~, subject to approval of the ~~Utah~~ Supreme Court.

~~E~~(c)~~.~~ The ~~Utah State~~ Bar shall have the authority to assess its members until such time that the Fund reaches the level of $200,000~~.00~~; thereafter, the assessment shall be made only as necessary to maintain a minimum balance in the ~~f~~Fund of $200,000.~~00~~

(d) A lawyer's failure to pay any fee assessed under paragraph (c) shall be cause for administrative suspension from practice until payment has been made.

(e) Any lawyer whose actions have caused payment of funds to a claimant from the Fund shall reimburse the Fund for all monies paid out as a result of his or her conduct with interest at legal rate, in addition to payment of the assessment for the procedural costs of processing the claim and reasonable attorney fees incurred by the Bar's Office of Professional Conduct or any other attorney or investigator engaged by the Committee to investigate and process the claim as a condition of continued practice.

Rule ~~4~~14-905. ~~Funds~~Segregated bank account.

All monies or other assets of the Fund including accrued interest thereon shall be held in the name of the Fund in a bank account segregated from all other accounts of the Bar or any committees or sections~~ thereof~~, subject to the ~~written~~ direction of the Board~~ of Bar Commissioners of the Utah State Bar~~.

Rule ~~5~~14-906. Committee ~~M~~meetings.

~~A.~~(a) The Committee shall meet as frequently as necessary to conduct the business of the Fund and to timely process claims.

~~B.~~(b) The ~~C~~chairperson shall call a meeting at any reasonable time, or upon the request of at least two Committee members.

~~C.~~(c) A quorum of any meeting of the ~~Board~~ Committee shall be three ~~(3) Committee~~ members.

~~D.~~(d) Minutes of the meeting shall be taken and permanently maintained.

Rule ~~6~~14-907. Duties and responsibilities of the committee.

The Committee shall have the following duties and responsibilities:

~~A.~~(a) ~~T~~to receive, evaluate, determine and make recommendations to the Board ~~of Bar Commissioners~~ relative to the individual claims;

~~B.~~(b) to ~~P~~promulgate rules of procedure not inconsistent with these ~~R~~rules~~.~~;

~~C.~~(c) ~~T~~to provide a full report, at least annually, to the Board ~~of Bar Commissioners~~ and to make other reports as necessary;

~~D.~~(d) ~~T~~to publicize its activities to the public and the Bar, subject to approval of the Board ~~of Bar Commissioners.~~;

~~E.~~(e) ~~T~~to appropriately utilize ~~the~~Bar staff ~~of the Utah State Bar~~ to assist in the Committee's performance of its functions effectively and without delay~~.~~;

~~F.~~(f) ~~T~~to engage in studies and evaluations of programs for client protection and the prevention of dishonest conduct by lawyers~~.~~; and

~~G.~~(g) ~~T~~to perform all other acts necessary or proper for the fulfillment of the purposes of the Fund and its effective administration.

Rule ~~7~~14-908. Conflict of interest.

~~A.~~(a) A Committee member 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.~~(b) A Committee member with a past or present relationship, other than as provided in ~~Section A~~paragraph (a)~~ of this Rule~~, with a claimant or the lawyer whose alleged conduct is the subject of a claim, shall disclose such relationship to the Committee and, if the Committee deems appropriate, that Committee member shall not participate in any proceeding relating to such claim.

Rule ~~8~~14-909. Immunity.

The Committee members, employees and agents of the ~~Utah State~~ Bar and claimant and lawyers who assist claimants are absolutely immune from civil liability for all acts in the course of their duties.

Rule ~~9~~14-910. Eligible claim.

~~A.~~(a) The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of the course of a lawyer/client or fiduciary relationship between the lawyer and the claimant and by reason of that relationship.

~~B.~~(b) The claim shall be filed in a timely fashion after the claimant knew or should have known of the dishonest conduct of the lawyer but not later than four ~~(4)~~ years after discipline has been imposed.

~~C. As used in these Rules, "dishonest conduct" means any of the following:~~

~~C.1. Wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking of or conversion of money, property or other things of value.~~

~~C.2. Refusal to refund unearned fees received in advance where the lawyer performed no service or such an insignificant service that the refusal to return the unearned fees constitutes a wrongful taking or conversion of money.~~

~~D.~~(c) If the subject of the ~~A~~application for ~~R~~reimbursement from the Fund is or arises out of loss occasioned by a loan or an investment transaction with a lawyer, each loss will not be considered reimbursable from the fund unless it arose out of and in the

course of the attorney/client relationship; and but for the fact that the dishonest attorney enjoyed an attorney/client relationship with the claimant, such loss could not have occurred. In considering whether that standard has been met the following factors will be considered:

~~D.1~~(c)(1)~~.~~ ~~T~~the disparity in bargaining power between the attorney and the client in their respective educational backgrounds in business sophistication;

~~D.2~~(c)(2)~~.~~ ~~T~~the extent to which the lawyer's status overcame the normal prudence of the claimant;

~~D.3~~(c)(3)~~.~~ ~~T~~the extent to which the attorney, by virtue of the attorney/client relationship with the claimant, became privy to information as to the client's financial affairs. It is significant if the attorney knew of the fact that the client had available assets or was expecting to receive assets which were ultimately wrongfully converted by the attorney;

~~D.4~~(c)(4)~~.~~ ~~W~~whether a clear majority of the service arose out of a relationship requiring a license to practice law in ~~the State of~~ Utah, as opposed to one that did not. In making this evaluation, consideration will be given to:

~~D.4.a~~(c)(4)(A)~~.~~ ~~W~~whether the transaction originated with the attorney;

~~D.4.b~~(c)(4)(B)~~.~~ ~~T~~the reputation of the attorney as to scope and nature of his/her practice and/or business involvement;

~~D.4.c~~(c)(4)(C)~~.~~ ~~T~~the amount of the charge made for legal services, if any, compared to that for a finder's fee, if any; and

~~D.4.d~~(c)(4)(D)~~.~~ ~~T~~the number of prior transactions of either a similar or different nature in which the client participated, either with the attorney involved or any other attorney, person or business organization;~~.~~

~~5~~(c)(5)~~.~~ ~~T~~the extent to which the lawyer failed to make full disclosure to the client in compliance with the Utah Rules of Professional Conduct, including disclosure of the lawyer's financial condition and his/her intended use of the funds.

~~E~~(d)~~.~~ Exceptions. Except as provided by ~~Section F~~ paragraph (e) ~~of this Rule~~, the following losses shall not be reimbursed:

~~E.1~~(d)(1)~~.~~ ~~L~~loss incurred by spouses, children, parents, grandparents, siblings, partners and associates of the lawyer;

~~E.2~~(d)(2)~~.~~ ~~L~~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;

~~E.3~~(d)(3)~~.~~ ~~L~~losses of any financial institution which are recoverable under a "Banker's Blanket Bond" or similar commonly available insurance or surety contract;

~~E.4~~(d)(4)~~.~~ ~~A~~any business entity controlled by the lawyer or any person or entity described in ~~Section C(1), (2), or (3)~~paragraph (d)(1) ~~hereof~~;

~~5~~(d)(5)~~.~~ ~~A~~any governmental entity or agency;

~~6~~(d)(6)~~.~~ ~~A~~any assigned claims, third party claims, claims of heirs or estates of deceased claimants; ~~and~~

~~7~~(d)(7)~~.~~ ~~A~~any claims where claimant has failed to exhaust all other reasonably available services or recovery methods;~~.~~

~~8~~(d)(8)~~.~~ ~~A~~any investment losses, as distinguished from attorney fees, which might

~~8.A.~~ reasonably be characterized as:

~~8.A.a~~(d)(8)(A)~~.~~ ~~A~~any pyramid or ponzie scheme;

~~8.A.b~~(d)(8)(B)~~.~~ ~~A~~any investment in or loan to any offshore entity;

~~8.A.c~~(d)(8)(C)~~.~~ ~~A~~any investment in or loan to an entity that claims that a benefit to the investor would be the evasion, avoidance, reduction or other sheltering of taxes that would be otherwise assessed on the investment; or

~~8.A.d~~(d)(8)(D)~~.~~ ~~A~~any investment that promises such a high rate of return that a reasonable and prudent person would suspect that the venture is of unusually high risk.

~~8.B~~(e)~~.~~ In cases of extreme hardship or special and unusual circumstances, the Committee may, in its discretion, recognize a claim which would otherwise be excluded under these ~~R~~rules.

Rule ~~10~~14-911. Procedures and form; ~~and~~ responsibilities ~~for~~ of claimants to complete form.

~~A.~~(a) The Committee shall prepare and approve a form of claim for reimbursement.

~~B.~~(b) The form shall include at least the following information provided by the claimant under penalty of perjury:

~~B.1~~(b)(1)~~.~~ the claimant's n~~N~~ame and address~~ of claimant~~, home and business telephone, occupation and employer, and social security number for purposes of subrogation and tax reporting;

~~B.2~~(b)(2)~~.~~ the n~~N~~ame, address and telephone number of the lawyer who has dishonestly taken the claimant's money or property;

~~B.3~~(b)(3)~~.~~ ~~With~~ the legal or other fiduciary services the lawyer was to perform for the client;

~~B.4~~(b)(4)~~.~~ ~~H~~how much was paid to the lawyer;

~~B.5~~(b)(5)~~.~~ ~~T~~the copy of any written agreement pertaining to the claim;

~~B.6~~(b)(6)~~.~~ ~~T~~the form of the claimant's loss involved (e.g. money, securities or other property) and the attachment of any documents that evidence the claimed loss such as cancelled checks, title instruments, deeds~~,~~ or stock certificates~~, etc~~;

~~B.7~~(b)(7)~~.~~ ~~T~~the amount of loss and the date when the loss occurred;

~~B.8~~(b)(8)~~.~~ ~~T~~the date when the claimant discovered the loss and how the claimant discovered the loss;

~~B.9~~(b)(9)~~.~~ ~~T~~the lawyer's dishonest conduct and the names and addresses of any persons who have knowledge of the loss;

~~B.10~~(b)(10)~~.~~ ~~I~~identification of ~~to~~ whom the loss has been reported to (e.g. county attorney, police, disciplinary agency, or other person or entity), and a copy of any complaint and description of any action that was taken;

~~B.11~~(b)(11)~~.~~ ~~T~~the source, if any, from which the loss could be reimbursed, including any insurance, fidelity or surety agreement;

~~B.12~~(b)(12)~~.~~ ~~T~~the description of any steps taken to recover the loss directly from the lawyer or any other source;

~~B.13~~(b)(13)~~.~~ ~~T~~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

Committee of any reimbursements the claimant receives during the pendency of the claim;

~~B.14~~(b)(14)~~.~~ ~~T~~the existence of facts believed to be important to the ~~Fund's~~ Committee's consideration of the claim;

~~B.15~~(b)(15)~~.~~ ~~T~~the manner in which the claimant learned about the Fund;

~~B.16~~(b)(16)~~.~~ ~~T~~the name, address and telephone number of the claimant's present lawyer, if any;

~~B.17~~(b)(17)~~.~~ ~~T~~the claimant's agreement to cooperate with the Committee in reference to the claim, as required by ~~Rule 14~~the Utah or Federal Rules of Civil Procedure, in reference to civil actions which may be brought in the name of the ~~Utah State~~ Bar, pursuant to a subrogation and assignment clause, which shall also be contained within the claim;

~~B.18~~(b)(18)~~.~~ ~~T~~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; and

~~B.19~~(b)(19)~~.~~ ~~T~~the statement that the claimant agrees to the publication of appropriate information about the nature of the claim and the amount of reimbursement, if reimbursement is made.

~~C.~~(c) The claimant shall have the responsibility to complete the claim form and provide satisfactory evidence of a reimbursable loss.

~~D.~~(d) The claim shall be filed with the Committee by ~~leaving it with or mailing~~ providing the same to the Utah State Bar, Lawyers' Fund for Client Protection at the Law and Justice Center, 645 South 200 East, ~~Suite 310,~~ Salt Lake City, Utah 84111.

Rule ~~11~~14-912. Processing claims.

~~A.~~(a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these ~~R~~rules ~~9 and 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 Committee, the claim file shall be closed. The ~~C~~chairperson of the Fund may appoint any member of the Committee and/or his/herself ~~to function as a screening panel~~ to determine the eligibility of claims.

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

~~C.~~(c) The ~~Utah State~~ Bar's Office of Professional Conduct Senior Counsel shall be promptly notified of each and every claim.

~~D.~~(d) The ~~involved~~ lawyer alleged to have engaged in dishonest conduct shall be provided a copy of the claim and given an opportunity to respond in writing within ~~twenty (~~20~~)~~ days of the receipt thereof to the Committee.

~~E.~~(e) The Committee may request that testimony be presented. The lawyer or lawyer's representative shall be given an opportunity to be heard if they so request within ~~twenty (~~20~~)~~ days of receiving a notice from the Committee that the Committee will process the claim.

~~F.~~(f) The Committee may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for the purposes of professional discipline and further, represents only a recommendation to the ~~Utah State Bar~~ Board ~~of Bar Commissioners~~. A claim may only be considered if the individual attorney involved has been disciplined ~~by the Bar~~ to a threshold level of a public reprimand or is no longer in practice.

~~G.~~(g) 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 final decision by the Board ~~of Bar Commissioners~~ after a recommendation has been made by the Committee. The recommendation for approval or denial of a claim shall require the affirmative votes of at least a majority of the Committee members and a quorum of the voting members of the Board ~~of Bar Commissioners~~.

~~H.~~(h) Any proceeding upon a claim shall 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 on 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.

~~I.~~(i) The Board ~~of Bar Commissioners~~ shall determine the order and manner of payment and pay those claims it deems meritorious, but unless the Board ~~of Bar Commissioners~~ directs otherwise, no claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct as alleged in the claim; specifically, no determination and/or hearing shall take place until such time that all disciplinary proceedings have, in fact, been completed.

~~J.~~(j) Both the claimant and the lawyer shall be advised of the status of the Board's ~~of Bar Commissioners'~~ consideration of the claim and after having received the recommendation of the Committee, also shall be informed of the final determination.

~~K.~~(k) The claimant may request reconsideration within ~~thirty (~~30~~)~~ days of the denial or determination of the amount of the claim.

Rule ~~12~~14-913. Payment of reimbursement.

~~A.~~(a) The Board ~~of Commissioners~~ may, from time to time, fix a maximum amount of reimbursement that is payable by the Fund. Initially, the maximum amount shall be $10,000~~.00~~ per claim and $25,000~~.00~~ total dollars within any given calendar year with regards to an individual attorney.

~~B.~~(b) Claimant shall be reimbursed for losses in amounts to be determined by the Board ~~of Bar Commissioners~~ after recommendations by the Committee. Reimbursement shall not include interest and other incidental and out-of-pocket expenses.

~~C.~~(c) Payment of reimbursement shall be made in such amounts and at such time as the Board ~~of Bar Commissioners~~ approves and may be paid in lump sum or installment amounts.

~~D.~~(d) If a claimant is a minor or an incompetent, the reimbursement may be paid to any proper and legally recognized person or authorized entity for the benefit of the claimant.

Amendment Note: The Bar changed from a calendar year to a fiscal year (July 1 to June 30) in 1990.

The Board approved increasing the yearly per claim award limit from $10,000 to $20,000 and to eliminate the yearly per attorney claim limit of $25,000 on December 1, 2000.

The Board voted to reinstate the yearly attorney cap of $25,000 on June 8, 2001.

The Board voted to raise the yearly per attorney cap to $50,000 from the previously reinstated $25,000 cap on December 7, 2001.

Rule ~~13~~14-914. Reimbursement from the fund as a matter of grace.

No person shall have a legal right to reimbursement from the Fund, whether as claimant, beneficiary or otherwise~~.~~, ~~A~~and any payment is a matter of grace.

Rule ~~14~~14-915. Restitution and subrogation.

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

~~B.~~(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 claimant's rights against any third party or entity who may be liable for the claimant's loss.

~~C.~~(c) Upon commencement of an action by the ~~Utah State~~ Bar 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.~~(d) In the event the claimant commences an action to recover unreimbursed losses against the lawyer or any other entity who may be liable for the claimant's loss, the claimant shall be required to notify the ~~Utah State~~ Bar of such action.

~~E.~~(e) The claimant shall be required to agree to cooperate in all efforts that the ~~Utah State~~ Bar undertakes to achieve restitution for the Fund.

Rule ~~15~~14-916. Confidentiality.

Claims, proceedings and reports involving claims for reimbursement are confidential until the Committee recommends and final determination is made by the Board ~~of Bar Commissioners~~, authorizing reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Board ~~of Bar Commissioners~~ may publicize the

nature of the claim, the amount of reimbursement and the name of the lawyer. The name and address of the claimant shall not be publicized by the ~~Utah State~~ Bar, unless specific permission has been granted by the claimant.

Note: By resolution of the Board of Commissioners of the Utah State Bar, a Client Security Fund was approved and established by the Supreme Court, effective April 9, 1977. The Fund was established to provide meaningful, prompt cost reimbursements to clients who had been injured by a lawyer's dishonest act. The original resolution did not provide sufficient rules and/or guidelines for the Committee that was embodied by the resolution to utilize in making its recommendations to the Board of Bar Commissioners. The American Bar Association has adopted, as of August 9, 1989, Model Rules for Lawyers' Fund for Client Protection. The following Rules adopt many of the principles from the American Bar Association Model Rules, as well as features from other states and from the prior resolution of the Board of Commissioners of the Utah State Bar, as approved by the Supreme Court.