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IN THE SUPREME COURT OF THE STATE OF UTAH

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|-----------------|---|-------------------------|
| IN RE: |) | |
| |) | PETITION TO AMEND |
| |) | LAWYERS' FUND FOR |
| UTAH STATE BAR, |) | CLIENT PROTECTION RULES |
| |) | AKA CLIENT SECURITY |
| Petitioner. |) | FUND RULES |

INTRODUCTION

THE UTAH STATE BAR ("Bar") hereby files this "Petition to Amend the Bar's Lawyers' Fund for Client Protection Rules" (otherwise known as Client Security Fund Rules or "Rules"). Utah's Client Security Fund, like other states' similar funds, was established to promote public confidence in the administration of justice and the integrity of the legal profession by providing meaningful, prompt cost reimbursement to clients who have been injured by a lawyer's dishonest acts. After careful study beginning at a regularly scheduled meeting in October of 2009, the Board of Bar Commissioners ("Board") presents eight (8) proposed revisions to the Rules which are designed to protect the Client Security Fund and better address a more equitable distribution of reimbursed fees paid, particularly

when the destructive misconduct of any one lawyer produces an unusually high number of clients with significant claims.

BACKGROUND

The Bar's Client Security Fund (the "Fund") was approved by this Court in 1977 pursuant to a resolution by the Board. The Fund originally operated somewhat informally with a few guidelines, and there was no systematic method of regularly replacing funds paid out in reimbursed legal fees until 1987. The need for uniform rules and a systematic method of replenishing the Fund soon became apparent. About the same time, the American Bar Association ("ABA") was examining the need for all states to develop a client protection program and to promulgate rules governing the client reimbursement process. Utah's implementing rules were enacted in 1990 to better guide the Fund's operations and the drafters, the Court's Advisory Committee, largely adopted concepts from the ABA's Model Rules for Lawyers' Fund for Client Protection (ABA Model Rules). The Advisory Committee also reviewed and incorporated ideas from other states' programs. A copy of the Bar's current CSF Rules is attached as *Exhibit "A"* and a copy of the current ABA Model Rules for comparison is attached as *Exhibit "B."*

BASIC OPERATIONS OF THE CLIENT SECURITY FUND

A comprehensive description of the Fund's purpose is set forth at Rule 14-902 (b): The purpose of the 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 Utah, occurring in the course of the lawyer/client or fiduciary relationship between the lawyer and the claimant. Under the Rules, the Bar's Client Security Fund Committee ("CSF Committee") is charged with evaluating and processing claims. The CSF Committee is comprised of a long-time chair, Judge David R. Hamilton, and a number of experienced lawyers. It meets several times a year to conduct hearings for adversely-impacted clients. Basic administrative functions are supported by a Bar staff member. The Rules expressly provide that reimbursement from the Fund is a matter of grace and that no person has a legal right to payment. While there are a number of threshold eligibility provisions in the Rules (Rule 14-910), all claims, whether arising from the death of a lawyer who took a retainer for work he or she did not perform or resulting from the dishonest conduct of a lawyer,¹ must be vetted by the Bar's Office of Professional Conduct (OPC). That process enables the CSF Committee to verify certain facts and basic information. In fact, no claim can be paid until such time that any disciplinary proceeding involving the lawyer is completed and a court order has been issued. See Rules 14-912(b), 14-912(f) and 14-912(i).

In order to conserve the Fund resources, claims arising from client losses due to lawyer-related loans or investments are not eligible for reimbursement. In

¹ "Dishonest conduct" is defined in Rule 14-901(d) as meaning "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 earned 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."

addition, losses which are covered by other means (such as insurance or a bond) and third party assigned claims are excepted as well as losses resulting from the lawyer's malpractice. After the CSF Committee conducts a proceeding or hearing under Rule 14-912, it makes a decision and provides a written report and recommendation to the Board. That recommendation ranges from denial to payment in full or in part for eligible claims which the CSF Committee deems valid based on information provided by OPC and on the evidence adduced at the hearing. Under the Rules, the Board makes the final decision. All claimants must sign subrogation agreements with the Bar and any publicly-disciplined lawyer whose dishonest conduct results in reimbursement to a claimant is obligated to make restitution to the Fund.² Since its formal inception, the Fund has been solely supported by a separate assessment of lawyers collected during the Bar's yearly licensing cycle. Rule 14-904 provides the authority for the Bar to make the annual assessment by delegation from the Court. All Utah lawyers who are on "active status" (i.e., authorized to practice law) are assessed an annual but nominal fee generally ranging between \$10 and \$20. (A copy of the CSF lawyer assessment history is attached at *Exhibit "C."*) The Bar's Executive Director and Financial Officer determine the amount of the annual assessment based on the previous year's paid claims. The annual amount is also determined

² Generally, all Supreme Court orders disbaring a lawyer contain a provision that states if the Fund has paid out a claim, the lawyer is obligated to reimburse the Fund before readmission to the Bar. The Bar's Rules Governing Admission also provide that any disbarred attorney seeking readmission must make restitution. District court orders also generally specify that the disciplined lawyer must make restitution to the Fund.

in light of Rule 14-904 (c) which states that the assessment shall be made only as necessary to maintain a minimum Fund balance of \$200,000.

THE MATTHEW GRAFF MATTER

From time to time, one lawyer's dishonest conduct is so destructive that it wrecks havoc throughout a community. In these instances, clients who have retained the lawyer discover at some point that little to nothing has been done on their case - and the money they paid is gone.³ When these types of matters arise, they invariably result in widespread, negative publicity impacting the legal community as a whole as they typically generate client losses in the thousands or even hundreds of thousands of dollars.

Utah's most calamitous case arose in the spring of 2009 in Southern Utah. On May 28, 2009, a successful lawyer in Cedar City, Matthew T. Graff, was criminally charged with two counts of Unlawful Dealing of Property by a Fiduciary, a second-degree felony. After OPC instituted formal disciplinary proceedings, Mr. Graff stipulated to an interim suspension of his Bar license on June 8, 2009 and a Supreme Court Order Accepting Resignation with Discipline Pending was issued on November 16, 2009.

Unfortunately, as typically is the case, the damage was already done. It appears that among numerous clients in Iron and Washington Counties, Mr. Graff had taken nearly \$2,500,000 from his victims. (See copy of Cedar City

³Earl and Lynn Spafford were one such instance. Between 1996-1999, the father/son lawyer team created over \$130,000 in CSF claims. (See attached copy of claims at *Exhibit "D."*) Client losses actually exceeded \$130,000 but for a variety of reasons (mostly due to "investments"), were not eligible for reimbursement. Similarly, only a portion of claims were paid because of the per claim limit provided by the Rules.

newspaper article dated February 3, 2010 attached as *Exhibit "E."*⁴ Mr. Graff was sentenced to two concurrent terms and one consecutive term of 1 to 15 years in prison. Other lawyers realized the harm that had been inflicted on victims and the legal community as a whole. Timothy Anderson was appointed as a trustee upon OPC's request. Mr. Anderson collected over 450 boxes of legal files and sent letters to over 500 clients notifying them of their files. He returned a large number of those files to the proper clients so that they could seek help elsewhere. Mr. Anderson also assisted the courts with an accounting of funds. Moreover, other lawyers took on *pro bono* cases for Mr. Graff's clients. In one example, Steven Sullivan solicited *pro bono* lawyers to help offset the damage done to Mr. Graff's clients. (See *Exhibit "F."*)

Approximately \$220,000 was recovered by the Iron County Attorney's Office and distributed to some of the victims as partial restitution. (A copy of the distribution list is attached as *Exhibit "G."*) No other recovery of funds has been made to date, however, and there is little hope that additional recovery will be made.

THE BOARD'S CONCERNS

With Graff clients facing massive losses and in the wake of widespread publicity, clients began contacting the Bar. By fall of 2009, the CSF Committee had already received over \$200,000 in claims. (At the time of filing this Petition, the Bar has received claims totaling nearly \$500,000. See attached summary of

⁴ While Mr. Graff took money for which he performed no meaningful legal service, he also pocketed funds from case settlements and payments for medical expenses intended for clients.

claims at *Exhibit "H."*) A Board committee was formed to consider how best to respond to the avalanche of claims in light of the limited resources of the Fund.⁵ Rule 14-913 provides that the Board may fix a maximum reimbursement per claim and a maximum amount which may be paid out in a calendar year for claims regarding an individual attorney. Those amounts are currently \$20,000 per claim and \$75,000 per attorney per calendar year. Otherwise, there is currently no lifetime claim limit per attorney. The Board's initial concerns focused primarily on fairness. It desired to forestall a "run on the Fund" where claimants who filed early in the process could end up with a disproportionate reimbursement *vis a vis* claimants who filed later. The Board also worried that the misconduct of one attorney could decimate the Fund, leaving potential aggrieved clients of other attorneys without recourse. In discussing their concerns at the October and November 2009 meetings, Board members expressed that they wanted increased flexibility in how to pay claims such as *pro rata* installments over a period of time. Finally, the Board was concerned about the current statute of limitations (four years) and wanted to shorten the window of time to file a claim in order to encourage claimants to file as early as possible after a lawyer's misconduct came to light and in order to facilitate an equitable apportionment of available payments.

The Board met on July 14, 2010 to consider their committee's proposed changes to the Rules and approved a number of proposed revisions. These

⁵The Board committee was composed of Robert L. Jeffs (Bar President) and Commissioners Felshaw King and Lori W. Nelson with Katherine Fox designated as a Bar staff resource.

revisions were shared with Judge Hamilton, who then met with his CSF Committee members. The CSF Committee and Judge Hamilton had a number of questions as to how the proposed changes would work and drafted a memo to the Board's subcommittee. The subcommittee then met with Judge Hamilton and the Bar's General Counsel, Katherine Fox, to discuss the issues raised. As a result, additional amendments were made and Rob Jeffs presented the final revisions to the Board at its regularly scheduled October 29, 2010 meeting. With a few modifications, the final Rule amendments were adopted and are now submitted to the Court for its approval.

PROPOSED REVISIONS TO THE CSF RULES

A redlined copy of the proposed Rule amendments is attached as *Exhibit "I."* While a few "housekeeping" or minor changes are included, substantive revisions are suggested. An explanation for each revision follows:

RULE 14-903(a): No substantive change. The word "attorneys" has been changed to "lawyers" for purposes of consistency throughout the Rules.

RULE 14-904(c): Substantive change. There are two distinct changes proposed in this Rule. The first obligates the CSF Committee to communicate not just with the Bar's Executive Director and Financial Officer in order to set the yearly lawyer assessment for the upcoming licensing year but to confer with the Board as to the financial status of the Fund and prospective claims. This process will enable a more comprehensive review of the Fund's status in order to more finely determine the annual lawyer assessment. The second prong, while subtle,

is also substantive. Currently, the Rule provides that a minimum balance of \$200,000 shall be maintained in the Fund and that the yearly assessment should be determined with this minimum balance in mind. The proposed change indicates that after the Board determines the annual assessment, the Fund balance shall be set in an amount to accommodate the anticipated claims and not fall below the \$200,000 minimum balance.

RULE 14-904(e)(1): Substantive change. This provision is new. As discussed above, in order for the Fund to reimburse an otherwise eligible claim, the lawyer must have been publicly disciplined or died. In the majority of cases (approximately 70%), the lawyer has resigned with discipline pending or has been suspended or disbarred. Approximately 30% of cases involve a lawyer who has died after the client paid a retainer and little to no work was done. There have been two cases over the past five years, however, where a lawyer received a public reprimand and the Fund paid an eligible claim.⁶ To date, neither attorney (both of whom who have retained their licenses to actively practice law) has reimbursed the Fund for the respective \$7,000 and \$1,000 client disbursements made on their behalf. The Board strongly believes that an inexpensive and efficient means of "encouraging" reimbursement to the Fund in such cases, however infrequent, is needed. An administrative suspension of the lawyer's license appears to be an appropriate method to do so. The administrative

⁶ In a third matter where the lawyer received a public reprimand, the case eventually was resolved through fee arbitration rather than through the CSF process.

suspension would last only as long as the lawyer took to reimburse the Fund for the loss that the lawyer's dishonest conduct caused.

RULE 14-910(b): Substantive change. The current statute of limitations for claims is four years after the claimant discovers or should have discovered the lawyer's dishonest conduct. The current Rule also specifies that in any case, the claim must be filed no later than four years after discipline has been imposed. The proposed revision deletes reference to the client's discovery of the misconduct and instead, provides that the claim must be filed within one year of the date of the final order of discipline. In discussing the current statute of limitations, the Board concluded that the four year statute of limitations allows for tardy claims which in Graff-type scenarios could make determining the annual lawyer assessment and any equitable apportionment of claim payments more difficult. Because the claimant is generally involved in the discipline process and receives notice of the discipline, a one year statute of limitations is reasonable.

RULE 14-910(b)(1): Substantive change. This provision is new. It specifies that the new statute of limitations of one year expressly applies in cases where a lawyer dies and the client paid money for legal services which were not performed/rendered.

RULE 14-910(b)(2): Substantive change. This provision is new. It specifies that the new statute of limitations of one year expressly applies in cases where the lawyer's discipline is tied to an order of formal disability and where the client paid money for legal services which were not performed/rendered.

RULE 14-910(c): No substantive change. The word “attorney” has been changed to “lawyer” for purposes of consistency throughout the Rules.

RULE 14-910(c)(1): No substantive change. The word “attorney” has been changed to “lawyer” for purposes of consistency throughout the Rules.

RULE 14-910(c)(3): No substantive change. The word “attorney” has been changed to “lawyer” for purposes of consistency throughout the Rules.

RULE 14-910(c)(4)(A): No substantive change. The word “attorney” has been changed to “lawyer” for purposes of consistency throughout the Rules.

RULE 14-910(c)(4)(B): No substantive change. The word “attorney” has been changed to “lawyer” for purposes of consistency throughout the Rules.

RULE 14-910(c)(4)(D): No substantive change. The word “attorney” has been changed to “lawyer” for purposes of consistency throughout the Rules.

RULE 14-910(d)(8): No substantive change. The word “attorney” has been changed to “lawyer” for purposes of consistency throughout the Rules.

RULE 14-912(f): No substantive change. The word “attorney” has been changed to “lawyer” for purposes of consistency throughout the Rules.

RULE 14-913(a): No substantive change. The word “attorney” has been changed to “lawyer” for purposes of consistency throughout the Rules.

RULE 14-913(a)(1): Substantive change. This provision is new. Currently, the Rules do not contain a lifetime claim limit per lawyer. The proposed revision provides a lifetime claim limit of \$425,000 per lawyer. The Board determined that in cases of catastrophic losses caused by one lawyer's

misconduct, it was important to more fairly balance the amount of the annual lawyer assessment against *all* aggrieved clients' monetary losses. This change protects the Fund from being decimated due to one lawyer's dishonesty and protects victims of other lawyers who seek reimbursement as well.

RULE 14-913(c): Substantive change. The proposed revisions in this Rule reference the annual lawyer claim limit as well as the proposed lifetime claim limit pertaining to one lawyer and expressly state that when there is a substantial likelihood that claims may exceed those limits, the Board and CSF Committee are invested with considerable discretion as to how payments will be made. Although Rule 14-903(b) provides that the Board has the authority to make final decisions, this more expressly stated flexibility will allow the Board to determine how best to formulate an equitable method of reimbursement in those cases where significant client losses are due to one lawyer's widespread misconduct. That equitable discretion may include *pro rata* or proportional payments, full payment of small claims, etc. Currently, the Rules do not provide for the exercise of equitable discretion in the payment of claims. For example, in cases of several claims against a single dishonest lawyer, claims of \$20,000 or less would receive payment of 100% of the claim amount while claims over \$20,000 would be discounted, receiving only a partial payment of the claim.

RULE 14-913 (ADVISORY COMMITTEE NOTES). Both **substantive and non-substantive changes.** The Board has discretion without Court approval to raise – or lower – the annual per lawyer limit based on a variety of

factors. The Board decided to raise the annual per lawyer limit to \$75,000 from the previous \$50,000 limit currently in place since 2001 primarily to facilitate payment of pending claims associated with the Mathew Graff cases. The non-substantive part of this Rule change is that the word "attorney" has been changed to "lawyer" in several places for purposes of consistency throughout the Rules.

CONCLUSION

The Board considers the Fund to be an important and necessary public service. They understand the value in giving some compensation to aggrieved clients but recognize their fiduciary obligations over funds provided by lawyers and that these funds are limited.

Dated this 17 day of February, 2011.

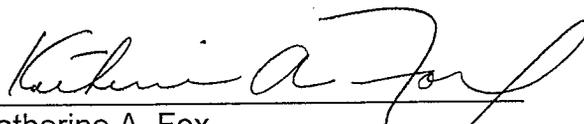

Katherine A. Fox
Utah State Bar General Counsel

EXHIBIT "A"

Article 9. Lawyers' Fund for Client Protection.

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; and
- (f) "Supreme Court" means the Utah Supreme Court.

Rule 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.
- (b) The purpose of the 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 Utah, occurring in the course of the lawyer/client or fiduciary relationship between the lawyer and the claimant.
- (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 Fund 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

under the terms of the former resolution on claims filed prior to the effective date of these rules.

Advisory Committee Notes

Rule 14-902 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.

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

(a) The Committee shall consist of five attorneys, each to function for a period of five 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 rules. Subsequent appointments shall be for a term of three years or the term uniformly determined for all Committee members by the Board. Vacancies shall be filled by appointment by the president of the Bar, with the approval of the Board, for the unexpired term.

(b) The Board shall retain the capacity to make any final determination after considering the recommendations of the Committee. The Board, functioning with regard to the Fund, is under the supervision of the Supreme Court.

Rule 14-904. Funding.

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

(b) All determinations with regards to funding shall be within the discretion of the Board, subject to approval of the Supreme Court.

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

(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 14-905. 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, subject to the direction of the Board.

Rule 14-906. Committee meetings.

(a) The Committee 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 Committee members.

(c) A quorum of any meeting of the Committee shall be three members.

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

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

The Committee shall have the following duties and responsibilities:

- (a) to receive, evaluate, determine and make recommendations to the Board relative to the individual claims;
- (b) to promulgate rules of procedure not inconsistent with these rules;
- (c) to provide a full report, at least annually, to the Board and to make other reports as necessary;
- (d) to publicize its activities to the public and the Bar, subject to approval of the Board ;
- (e) to appropriately utilize Bar staff to assist in the Committee's performance of its functions effectively and without delay;
- (f) to engage in studies and evaluations of programs for client protection and the prevention of dishonest conduct by lawyers; and
- (g) to perform all other acts necessary or proper for the fulfillment of the purposes of the Fund and its effective administration.

Rule 14-908. Conflict of interest.

- (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) A Committee member with a past or present relationship, other than as provided in paragraph (a), 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 14-909. Immunity.

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

Rule 14-910. Eligible claim.

(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) 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 years after discipline has been imposed.

(c) If the subject of the application for 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:

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

(c)(2) the extent to which the lawyer's status overcame the normal prudence of the claimant;

(c)(3) 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;

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

(c)(4)(A) whether the transaction originated with the attorney;

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

(c)(4)(C) the amount of the charge made for legal services, if any, compared to that for a finder's fee, if any; and

(c)(4)(D) 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;

(c)(5) 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.

(d) Exceptions. Except as provided by paragraph (e), the following losses shall not be reimbursed:

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

(d)(2) 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;

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

(d)(4) any business entity controlled by the lawyer or any person or entity described in paragraph (d)(1);

(d)(5) any governmental entity or agency;

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

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

(d)(8) any investment losses, as distinguished from attorney fees, which might reasonably be characterized as:

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(d)(8)(A) any pyramid or ponzie scheme;

(d)(8)(B) any investment in or loan to any offshore entity;

(d)(8)(C) 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

(d)(8)(D) 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.

(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 rules.

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

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

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

(b)(1) the claimant's name and address, home and business telephone, occupation and employer, and social security number for purposes of subrogation and tax reporting;

(b)(2) the name, address and telephone number of the lawyer who has dishonestly taken the claimant's money or property;

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

(b)(4) how much was paid to the lawyer;

(b)(5) the copy of any written agreement pertaining to the claim;

(b)(6) 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;

- (b)(7) the amount of loss and the date when the loss occurred;
- (b)(8) the date when the claimant discovered the loss and how the claimant discovered the loss;
- (b)(9) the lawyer's dishonest conduct and the names and addresses of any persons who have knowledge of the loss;
- (b)(10) identification of 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) the source, if any, from which the loss could be reimbursed, including any insurance, fidelity or surety agreement;
- (b)(12) the description of any steps taken to recover the loss directly from the lawyer or any other source;
- (b)(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 Committee of any reimbursements the claimant receives during the pendency of the claim;
- (b)(14) the existence of facts believed to be important to the Committee's consideration of the claim;
- (b)(15) the manner in which the claimant learned about the Fund;
- (b)(16) the name, address and telephone number of the claimant's present lawyer, if any;
- (b)(17) the claimant's agreement to cooperate with the Committee in reference to the claim, as required by the Utah or Federal Rules of Civil Procedure, in reference to civil actions which may be brought in the name of the Bar, pursuant to a subrogation and assignment clause, which shall also be contained within the claim;
- (b)(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; and

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(b)(19) 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) 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 Committee by providing the same to the Utah State Bar, Lawyers' Fund for Client Protection at the Law and Justice Center, 645 South 200 East, Salt Lake City, Utah 84111.

Rule 14-912. Processing claims.

(a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, 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 chairperson of the Fund may appoint any member of the Committee and/or his/herself to determine the eligibility of claims.

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

(d) The 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 20 days of the receipt thereof to the Committee.

(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 20 days of receiving a notice from the Committee that the Committee will process the claim.

(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 Board. A claim may only be considered if the individual

attorney involved has been disciplined to a threshold level of a public reprimand or is no longer in practice.

(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 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.

(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) The Board shall determine the order and manner of payment and pay those claims it deems meritorious, but unless the Board 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) Both the claimant and the lawyer shall be advised of the status of the Board's consideration of the claim and after having received the recommendation of the Committee, also shall be informed of the final determination.

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

Rule 14-913. Payment of reimbursement.

(a) The Board 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 per claim and \$25,000 total dollars within any given calendar year with regards to an individual attorney.

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

(c) Payment of reimbursement shall be made in such amounts and at such time as the Board approves 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 proper and legally recognized person or authorized entity for the benefit of the claimant.

Advisory Committee Notes

Rule 14-913 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 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, and any payment is a matter of grace.

Rule 14-915. 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 Bar 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 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 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.

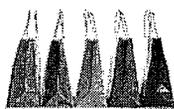
(d) In the event the claimant commences an action to recover unreimbursed losses against the lawyer or any other entity who may be liable for the claimant's loss, the claimant shall be required to notify the Bar of such action.

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

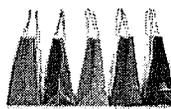
Rule 14-916. Confidentiality.

Claims, proceedings and reports involving claims for reimbursement are confidential until the Committee recommends and final determination is made by the Board, authorizing reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Board 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 Bar, unless specific permission has been granted by the claimant.

EXHIBIT “B”



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Model Rules for Lawyers' Funds for Client Protection

RULE 1 - PURPOSE AND SCOPE

A. 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 licensed or otherwise authorized to practice law in the courts of this jurisdiction occurring in the course of the client-lawyer or other fiduciary relationship between the lawyer and the claimant.

B. For purposes of these Rules, "lawyer" shall include a person:

- (1) licensed to practice law in this jurisdiction, regardless of where the lawyer's conduct occurs;
- (2) admitted as in-house counsel;
- (3) admitted *pro hac vice*;
- (4) admitted as a foreign legal consultant;
- (5) admitted only in a non-United States jurisdiction but who is authorized to practice law in this jurisdiction; or
- (6) recently suspended or disbarred whom clients reasonably believed to be licensed to practice law when the dishonest conduct occurred.

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.

Comment

[1] Paragraph A expresses the general purpose of a Lawyers' Fund for Client Protection: promoting public confidence in the administration of justice and the integrity of the legal profession. The term "dishonest conduct" is defined in Rule 10.

[2] The definition of lawyer, found in Paragraph B, includes not only persons licensed or otherwise authorized to practice law in the jurisdiction, but also lawyers practicing law in the jurisdiction by virtue of in-house counsel admission, *pro hac vice* admission, foreign legal consultant admission, authorization for temporary practice of law by a foreign lawyer and by former or suspended lawyers reasonably believed by clients to have been authorized to practice law. Lawyers admitted as in-house counsel, *pro hac vice*, or as foreign legal consultants should both pay into the Fund as provided under Rule 3 and have their conduct covered by the Fund.

[3] The Fund is part of this jurisdiction's system of lawyer regulation. The Fund therefore has jurisdiction to recognize claims filed against lawyers licensed to practice law in this jurisdiction regardless of where the lawyer's conduct occurs. This is consistent with the jurisdictional authority set forth in Rule 8.5 (a) of the ABA *Model Rules of Professional Conduct*. "A lawyer admitted in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs." Pursuant to Paragraph B, if necessary, this Fund is authorized to "follow" the lawyer and compensate eligible claimants who have suffered losses as a result of the lawyer's dishonest conduct.

[4] It is particularly equitable to require that this Fund, into which lawyers have paid annual assessments, have the primary responsibility to compensate clients who have suffered losses. Such lawyers would include those admitted as in-house counsel, by *pro hac vice* admission and foreign legal consultants. Lawyers admitted only in a non-United States jurisdiction may have their conduct covered by the Fund because the highest court in this jurisdiction has authorized them to provide legal services on a temporary basis in this jurisdiction.

[5] Rule 10(E) provides for an equitable balancing test to determine whether the Fund, another jurisdiction's Fund, or both Funds should pay claims filed against lawyers not admitted or authorized to practice law exclusively in this jurisdiction.

[6] Paragraph C, drawn from the Comment to Rule 1.15 of the ABA *Model Rules of Professional Conduct*, recognizes that lawyers individually and the bar collectively, have the obligation to participate in a Lawyers' Fund for Client Protection.

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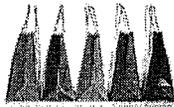
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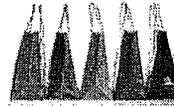
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Model Rules for Lawyers' Funds for Client Protection

RULE 2 ESTABLISHMENT

- A. There is established the Lawyers' Fund for Client Protection ("Fund") to reimburse claimants for losses caused by dishonest conduct committed by lawyers admitted to practice in this state.
- B. There is established, under the supervision of the highest court in this jurisdiction ("Court"), the Lawyers' Fund for Client Protection Board of Trustees ("Board"), 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 Board after [date] and the Board shall not pay claims for losses incurred as a result of dishonest conduct committed prior thereto.

Comment

The practice of law is so directly connected to the exercise of judicial power and the administration of justice that the right to define and regulate it belongs to the judicial department. It is the court that bears the responsibility for establishing qualifications for practice and for seeing that lawyers subject to its jurisdiction adhere to the standards of conduct the Court mandates.

Paragraph B links the establishment of a Fund to the Court's power to regulate the practice of law. The Court has the inherent power to establish a Fund and require lawyers admitted to practice in this jurisdiction to contribute to it. The Court not only has the power but also the duty to provide a system for reimbursement to clients whose lawyers have mishandled their funds.

The limitation imposed in Paragraph C is necessary to prevent the possibility of an immediate bankrupting of the Fund caused by the payment of claims for dishonest conduct committed before the Fund was established. The provision sets a time certain after which losses will be reimbursable.

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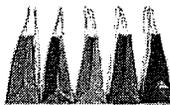
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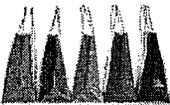
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Model Rules for Lawyers' Funds for Client Protection
RULE 3 FUNDING

- A. The Court shall provide for funding by the lawyers admitted and licensed to practice law in the jurisdiction 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.

Comment

Paragraph A suggests that the single most important factor in establishing and maintaining an effective client reimbursement program is ensuring adequate and continuous funding through a reliable source. The Court, pursuant to its power to regulate lawyers and the practice of law, has the power to impose a fee to support the regulatory system. In the exercise of its authority, the Court may assess lawyers an annual fee to finance systems that implement the Court's regulatory authority.

Paragraph B is the enforcement mechanism for the failure to pay the assessment. See Paragraph A of Rule 16 for restitution and subrogation enforcement standards.

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Model Rules for Lawyers' Funds for Client Protection

RULE 4 FUND

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 Board.

Comment

Under Rule 3, the fees assessed by the Court against the jurisdiction's lawyers are to be used for a stated purpose, the Fund.

Matters and expenses for which the Fund may be used should be considered and delineated by the Board in written policies to ensure that claimants receive the maximum benefit possible from available sources. Segregating any accounts in the name of the Fund is fundamental in preventing the use of monies by other entities for purposes unrelated to reimbursement and client protection.

Administrative expenses will be incurred by operating a Fund even though trustees traditionally serve on the Board without compensation. The cost of administering the Fund, e.g., expenses of Trustees, hearing of claims, record keeping, and salaries for staff and other overhead, should be paid out from the Fund.

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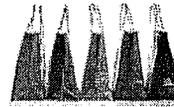
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Model Rules for Lawyers' Funds for Client Protection
RULE 5 COMPOSITION AND OFFICERS OF THE BOARD

- A. The Board shall consist of five lawyers and two nonlawyers appointed by the Court for initial terms as follows:
1. two lawyers for one year;
 2. one nonlawyer for two years;
 3. two lawyers 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 Court may limit the number of successive terms that Trustees may serve on the Board.

- 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 Court for any unexpired terms.
- D. The Board shall select a Chair, Secretary, Treasurer and such other officers as the Board deems appropriate.
- E. The Treasurer shall be bonded in such manner and amount as the Board shall determine.

Comment

A Board composed of lawyers and nonlawyers results in balanced evaluation of claims within the full context of the client-lawyer relationship. Participation by nonlawyers also enhances the credibility of the reimbursement process in the eyes of the public. Trustees should reflect all segments of the profession and the general population.

A Board of seven members is small enough to accomplish the work of the Fund, yet not so large as to discourage active involvement by each member or to be cumbersome. Terms of office are staggered to encourage continuity of experience and the development of policy and precedent. Depending on local policy or experience, the Court may limit successive appointments of the Trustees.

The Trustees should serve without compensation, *pro bono publico*, but should be reimbursed for expenses incurred in the discharge of their office.

Since direct and full responsibility for the administration and management of the Fund and its assets is vested in the Board, it should select its own officers.

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Model Rules for Lawyers' Funds for Client Protection

RULE 6 BOARD MEETINGS

- A. The Board shall meet as frequently as necessary to conduct the business of the Fund and to timely process claims.
- B. B. The Chair shall call a meeting at any reasonable time or upon the request of at least two Trustees.
- C. C. A quorum for any meeting of the Board shall be four Trustees. A motion shall pass upon the affirmative vote of four Trustees.
- D. D. Minutes of meeting shall be taken and permanently maintained by the Secretary.

Comment

Regular and frequent meetings of the Board throughout the year are necessary to ensure that the Fund has the ability to respond promptly and effectively. The Board should meet at least quarterly if any claims are pending. Telephone conferences should be encouraged where necessary. Claims should be handled in as expeditious a manner as possible consistent with their just resolution.

Next - RULE 7 DUTIES AND RESPONSIBILITIES OF THE BOARD

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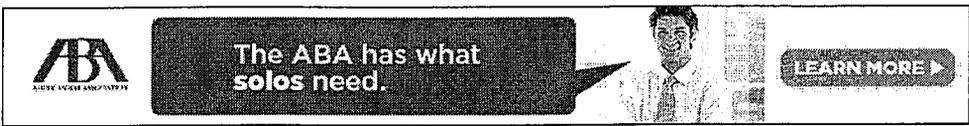
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Model Rules for Lawyers' Funds for Client Protection

RULE 7 DUTIES AND RESPONSIBILITIES OF THE BOARD

The Board 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 prudently invest such portions of the funds as may not be needed currently to pay losses, and to maintain sufficient reserves as appropriate;
- 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 potential claimants, the public and the bar;
- F. to employ adequate staff to assure the Board's effective and efficient performance of its functions;
- G. to retain and compensate consultants, administrative staff, investigators, actuaries, agents, legal counsel and other persons as necessary;
- H. to prosecute claims for restitution to which the Fund is entitled;
- I. to engage in studies and programs for client protection and prevention of dishonest conduct by lawyers; and
- J. to promote effective communication between lawyer disciplinary authorities and the Fund, and
- K. to perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the Fund.

Comment

In determining the order and manner of payment of claims, the Board should have the discretion to pay in subsequent years all or part of claims that were not fully reimbursed in a prior year.

Investing monies that are not needed to cover current claims permits a reasonable return without risking the integrity of the Fund. The Board should adopt specific guidelines for the investment of funds. Investments should be of appropriate duration to maintain liquidity of assets and enable the Board to promptly pay losses. The nature of the investments may be specifically limited to bonds, notes or securities issued or guaranteed by a state or federal agency, interest bearing accounts or certificates of deposit.

Paragraphs D and E require public information programs. The Board has the affirmative obligation to publicize its activities to both bench and bar. Similarly it is incumbent on the Board to publicize itself to the general public. The fulfillment of both obligations is extremely important to the success of the Fund in achieving its purposes.

As suggested in Paragraph I, the Board also should study and, if appropriate, adopt other potential programs, such as trust account overdraft notification, payee notification, and random audits, to help reduce defalcation.

The Fund's assets should not be unduly diminished by employing investigative or other personnel whose work would duplicate the efforts of others responsible for investigating lawyers' professional conduct. See Rule 12C regarding the cooperative effort anticipated between the Board and the lawyer discipline agency. Moreover, the Fund shall establish mechanisms to encourage lawyer disciplinary authorities to notify complainants about the existence of the Fund.

The Board should make an attempt to prosecute all claims for restitution. Restitution is one way of replenishing the Fund's assets. See also, Rule 16 which focuses on subrogation and other methods of restitution.

The Trustees and staff should also participate in seminars and continuing legal educational programs dealing with client protection.

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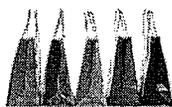
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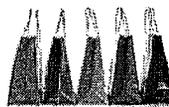
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Model Rules for Lawyers' Funds for Client Protection

RULE 8 CONFLICT OF INTEREST

- A. A Trustee who has or has had a client-lawyer 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 Paragraph A, with a claimant or the lawyer whose alleged conduct is the subject to the claim, or who has other potential conflicts of interest, shall disclose such relationship to the Board and, if the Board deems appropriate, that Trustee shall not participate in any proceeding relating to such claim.

Comment

The Board must be sensitive to the perceptions of both the public and the legal profession in its determination of claims. Disqualification of members of the Board tainted by real or apparent conflicts of interest helps to ensure confidence in the impartiality in the proceeding. Potential conflicts of interest that should be disclosed include relations with other parties, such as with potential third-party sources of recovery.

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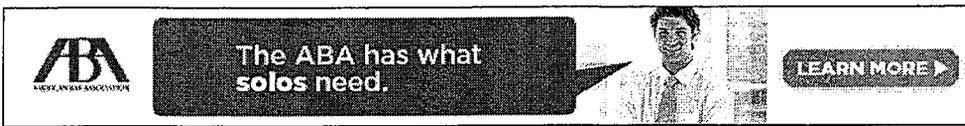
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Model Rules for Lawyers' Funds for Client Protection

RULE 9 IMMUNITY

The Trustees, employees and agents of the Board 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.

Comment

Immunity from civil liability encourages lawyers and nonlawyers to serve on the Board, and protects their independent judgment in the evaluation of claims. Immunity also protects the fiscal integrity of the Fund, and encourages claimants and lawyers to participate in seeking reimbursement for eligible losses.

As a matter of public policy, immunity should attach to the Fund's activities and proceedings in the same way that absolute immunity attaches in lawyer disciplinary proceedings.

In the absence of court rule or statute, immunity may not be available in proceedings involving voluntary funds. Insurance may therefore be required to protect Trustees, staffs, claimants, and the volunteer lawyers who assist claimants in processing their claims.

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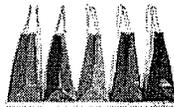
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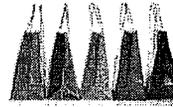
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Model Rules for Lawyers' Funds for Client Protection

RULE 10 ELIGIBLE CLAIMS

A. The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship between the lawyer and the claimant.

B. The claim shall have been filed no later than five 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 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, including but not limited to:

- (1) Failure to refund unearned fees received in advance as required by [Rule 1.16 of the ABA *Model Rules for Professional Conduct*]; and
- (2) The borrowing of money from a client without intention to repay it, or with disregard of the lawyer's inability or reasonably anticipated inability to repay it.

D. Except as provided by Paragraph E of this Rule, the following losses shall not be reimbursable:

- (1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;
- (2) Losses covered by a 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 incurred by any financial institution that are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;
- (4) Losses incurred by any business entity controlled by the lawyer(s), any person or entity described in Subparagraph D (1), (2) or (3) of this Rule;
- (5) Losses incurred by any governmental entity or agency;
- (6) Losses arising from business or personal investments not arising in the course of the client-lawyer relationship; and
- (7) Consequential or incidental damages, such as lost interest, or lawyer's fees or other costs incurred in seeking recovery of a loss.

E. In determining whether it would be more appropriate for this Fund or another Fund to pay a claim, the Board should consider the following factors:

- (1) the Fund(s) into which the lawyer is required to pay an annual assessment or into which an appropriation is made on behalf of the lawyer by the bar association;
- (2) the domicile of the lawyer;
- (3) the domicile of the client;
- (4) the residence(s) of the lawyer;
- (5) the number of years the lawyer has been licensed in each jurisdiction;
- (6) the location of the lawyer's principal office and other offices;
- (7) the location where the attorney-client relationship arose;
- (8) the primary location where the legal services were rendered;
- (9) whether at the time the legal services were rendered, the lawyer was engaged in the unauthorized practice of law as defined by the jurisdiction in which the legal services were rendered; and
- (10) any other significant contacts.

F. The Board may enter into an agreement with the Fund of another jurisdiction to reimburse a portion of the loss suffered by a claimant whose claim may be eligible for payment under both Funds. The Board may take into consideration the other Fund's rules on payment of claims for reimbursement prior to entering into such an agreement.

G. In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion and consistent with the purpose of the Fund, recognize a claim that would otherwise be excluded under these Rules.

H. In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the claim.

Comment

[1] Set forth in Paragraph A is the basic criteria for compensability of losses. An eligible claim must include: (1) a demonstrable loss; (2) caused by the dishonest conduct of a lawyer; and (3) within or arising out of a client-lawyer or fiduciary relationship.

[2] Fiduciary relationships are included because lawyers traditionally serve in that capacity as executors, conservators and guardians *ad litem*. Rejection of claims based upon technical distinctions between this sort of service and a client-lawyer relationship would not serve the purpose or mission of the Fund.

[3] Paragraph C adds to the Rules a definition of "dishonest conduct." The basic concept is one of conversion or embezzlement. Subparagraphs (1) and (2) make clear that if the essential nature of the transaction was conversion, dishonest conduct will be found even where the lawyer took money in the guise of a fee, a loan or an investment. Indeed, employing such a ruse is part of the dishonesty. Subparagraph (1) sets forth a standard for the handling of difficult unearned fee claims in accordance with Rule 1.16 of the ABA *Model Rules of Professional Conduct*. It is not intended to encompass bona fide fee disputes. Where money received by a lawyer was clearly

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neither earned nor returned, however, the client feels violated, hardship can result, and the Board may find dishonest conduct. Subparagraph (2) anticipates overreaching by a lawyer, in the context of a loan to the lawyer by the client, to such an egregious extent as to be tantamount to theft. Similarly, use by the lawyer of a purported "investment" to induce a client to turn over money should not preclude a finding of dishonest conduct where the "investment" is worthless, non-existent and so forth.

[4] Paragraph C must be read in light of Paragraph A. In focusing on dishonest conduct, it must be kept in mind that such conduct must occur within or as a result of a client-lawyer or fiduciary relationship in order to be compensable.

[5] A five-year limitation on the filing of claims from the date the claimant knew or should have known of the dishonest conduct is contained in Paragraph B. Under Paragraph E, the Board should provide liberal leeway for extension, however, especially in light of the extent to which the Fund publicizes itself. It is not knowledge of the dishonest conduct but the lack of knowledge of the existence or purpose of the Fund that is the problem for many prospective claimants.

[6] Paragraph D describes claims that are not reimbursable. Subparagraphs (1), (4), and (5) declare certain classes of potential claimants to be ineligible for policy reasons. Subparagraphs (2) and (3) imply that recourse should be sought from certain third parties such as title insurance companies and banks cashing checks over forged endorsements prior to seeking it from the Fund. Such third parties lack the client-lawyer relationship necessary to prosecute a claim in their own right. Should such third parties fail or refuse to pay, the Fund should promptly pay the claim, take an assignment from the claimant, and pursue the third parties in its own right.

[7] Subparagraph D (6) addresses the most difficult of Fund claims. Claims in which lawyers steal from their clients in the guise of "investments" should be paid, but transactions having nothing to do with the lawyer's license to practice are not compensable. Claims with facts somewhere between the two extremes often arise, and the issue is whether there is "enough of" a client-lawyer relationship. Funds have found a "but for" test helpful: "But for the lawyer enjoying a client-lawyer relationship with the claimant, such loss could not have occurred." Factors considered in applying this test include (1) disparity in sophistication and bargaining power between lawyer and claimant; (2) extent to which client-lawyer relationship overcame the normal prudence of claimant; (3) extent to which lawyer became privy to claimant's financial information as claimant's lawyer; (4) whether the transaction originated with lawyer; (5) reputation of lawyer as to law practice or business involvements; (6) amount charged by lawyer for legal services as opposed to finder's fees; and (7) number, nature, and timing of prior transactions between claimant and lawyer.

[8] Paragraph E sets forth factors to be considered by the Board when deciding whether this Fund, another jurisdiction's Fund, or both Funds should pay a claim where more than one Fund has jurisdiction over a lawyer. This situation might arise where a lawyer is licensed in two or more jurisdictions; a lawyer is licensed in only one jurisdiction and has engaged in the authorized multijurisdictional practice of law in another jurisdiction; or a lawyer is licensed in only one jurisdiction and has engaged in the unlicensed practice of law in another jurisdiction.

[9] Paragraph F recognizes that there may be situations where it is appropriate for the Board to enter into an agreement with the Fund of another jurisdiction to reimburse a portion of the loss suffered by a claimant whose claim may be eligible for payment under both Funds. However, since Funds have different maximum dollar amounts of reimbursement for individual losses, the Fund with a higher maximum amount should not be required in every case to contribute more than the other Fund, or to contribute the maximum amount. Such a requirement could result in an undue burden on the Fund. The Board may take into consideration the other Fund's rules and its own rules on payment of claims for reimbursement, as well as the factors in Paragraph (E), prior to entering into such an agreement.

[10] Paragraphs G and H reiterate the critical importance of vesting in the Board the discretion to do justice in each claim considered, without needlessly following technical rules. These paragraphs recognize that it is impossible to predict every factual circumstance that will be presented to the Board.

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Model Rules for Lawyers' Funds for Client Protection

RULE 11 PROCEDURES AND RESPONSIBILITIES FOR CLAIMANTS

- A. The Board 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. a copy of any written agreement pertaining to the claim;
 - 6. copies of any checks, money orders, receipts, or other proofs of payment;
 - 7. the form of the claimant's loss (e.g. money, securities or other property);
 - 8. the amount of loss and the date when the loss occurred;
 - 9. the date when the claimant discovered the loss, and how the claimant discovered the loss;
 - 10. the lawyer's dishonest conduct and the names and addresses of any persons who have knowledge of the loss;
 - 11. the name of the person, if any, to whom the loss has been reported (e.g. district attorney, police, disciplinary agency, or other person or entity) and a copy of any complaint and description of any action that was taken;
 - 12. the source, if any, from which the loss can be reimbursed including any insurance, fidelity or surety agreement;
 - 13. the description of any steps taken to recover the loss directly from the lawyer, or any other source;
 - 14. 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;
 - 15. the existence of facts believed to be important to the Fund's consideration of the claim;
 - 16. the manner in which the claimant learned about the Fund;
 - 17. the name, address and telephone number of the claimant's present lawyer;
 - 18. the claimant's agreement to cooperate with the Board in reference to the claim or as required by Rule 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.
 - 19. the claimant's agreement to repay Fund if the claimant is subsequently reimbursed from another source;
 - 20. 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
 - 21. A 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. 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 Board in the manner and place designated in the Board's rules.

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Comment

The Board is required to develop a claim form for claimants to establish their eligibility for reimbursement. The form should be comprehensive enough to minimize the investigative burden of the Board, yet not so detailed as to discourage eligible claimants from applying for reimbursement.

The enumeration in Paragraph B has been developed from claim forms in current use in several jurisdictions. Local need may require the enumeration to be supplemented by the Board. See *a/so*, Paragraph A of Rule 18, which addresses confidentiality.

Paragraph C assigns the ultimate burden of establishing eligibility for reimbursement upon the claimant. No formal or technical quantum of proof is imposed on the claimant or the Board. In many cases, of course, the lawyers' dishonest conduct will already have been established in a lawyer discipline action upon the "clear and convincing evidence" standard or, "beyond a reasonable doubt" in a criminal proceeding involving the same facts which constitute the claim for reimbursement. (See, Rule 18C of the *ABA Model Rules for Lawyer Disciplinary Enforcement*.)

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Model Rules for Lawyers' Funds for Client Protection

RULE 12 PROCESSING CLAIMS

- A. Whenever it appears that a claim is not eligible for reimbursement pursuant to Rule 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. 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, shall be evidence that the lawyer committed such dishonest act or conduct.
- C. The lawyer disciplinary agency shall be promptly notified of the claim and required to furnish a report of its investigation of the matter to the Board. The lawyer disciplinary agency shall allow the Fund's representative access to its records during an investigation of a claim. The Board shall evaluate whether the investigation is complete and determine whether the Board 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 Board may conduct its own investigation when it deems it appropriate.
- E. The lawyer shall be notified of the claim and given an opportunity to respond to the claim. A copy of the claim shall be provided to the lawyer, or the lawyer's representative. The lawyer or representative shall have 20 days in which to respond.
- F. The Board may request that testimony be presented to complete the record. Upon request, the claimant or lawyer, or their representatives, will be given an opportunity to be heard.
- G. The Board may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not 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 four 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 type of evidence upon 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 Board shall determine the order and manner of payment and pay all approved claims, but unless the Board directs 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.

Comment

Rule 12 addresses the procedure for consideration of claim in concert with the disciplinary process. The overall scheme presented is one of cooperation between the Fund and disciplinary authorities pursuant to Paragraph C, while avoiding duplication of effort in Paragraph B but respecting the different needs and autonomous functioning of the respective bodies identified in Paragraphs D and G.

The Rule also seeks to set forth a framework which balances the Fund's duty to address the claimant's allegations efficiently with the need to present the respondent lawyer with an opportunity to defend pursuant to Paragraphs E, F and H.

The overriding policy implicit in Rule 12 is that the Board exercises its discretion so as to make the best possible decision as expeditiously as possible in each claim presented. The Board may conduct any investigation it deems appropriate under Paragraph D, including the taking of testimony pursuant to Paragraph F. Paragraph J provides that the order and manner of payment of claims is likewise within the Board's discretion. Paragraph H requires the Board to articulate to each side the rationale for its determination on a given claim. Under Paragraph I, technical rules of evidence shall not be employed to hinder the Board from accomplishing its mission.

Note that under Paragraph H the affirmative vote of at least four Trustees is required in order to dispose of a claim, just as it is for any matter before the Board under Rule 6C. Thus, for example, if the minimum necessary for a quorum is present, any motion that cannot garner unanimous support will fail. A "majority of the quorum present" will not suffice. This Paragraph does not prevent determinations of claims by mail ballot.

Ideally the initial investigation should be done by the lawyer disciplinary agency personnel to avoid duplication of effort and inconsistent findings of both entities. The financial integrity of the Fund is preserved by using existing resources. Investigation by the Board should be utilized to gather additional evidence or to provide evidence in those jurisdictions where the discipline agency is unable to timely reveal the results of the investigation.

As noted in the Comment to Rule 11, in many matters, a criminal conviction or a finding during disciplinary proceedings will establish "dishonest conduct" for purposes of the Board's determination of the claim. A discipline or other agency may, however, lack jurisdiction or have little incentive to act where the lawyer is unlikely to engage in further misconduct. This dilemma is illustrated by lawyers who have died, become mentally or physically incapacitated, fled the jurisdiction, or been disciplined for other reasons. The Board may then be required under Paragraph G to make a finding of dishonest conduct solely for the purpose of the Fund's proceeding.

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The Fund should have professional staff to assist the Board in investigating claims. Volunteers often cannot devote the same time and attention as staff members.

The Fund's investigations should be augmented by subpoena power, consistent with the local rules of civil procedure. While a claimant has the burden of providing satisfactory evidence of a reimbursable loss under Paragraph C of Rule 11, the Board should be given the opportunity to make the best possible decision on each matter before it.

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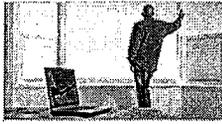
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Model Rules for Lawyers' Funds for Client Protection

RULE 13 REQUEST FOR RECONSIDERATION

The claimant or respondent may request reconsideration in writing within 30 days of the denial or determination of the amount of a claim. If the claimant or respondent fails to make a request or the request is denied, the decision of the Board is final and there is no further right or appeal.

Comment

This Rule establishes a procedure to provide an opportunity for reconsideration of a claim. It permits claimants or respondents further consideration without creating a right of appeal or judicial review. The opportunity for reconsideration also provides a safeguard against dismissal of a claim not fully presented earlier.

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Model Rules for Lawyers' Funds for Client Protection

RULE 14 PAYMENT OF CLAIMS FOR REIMBURSEMENT

- A. The Board may from time to time fix a maximum amount on reimbursement that is payable by the Fund.
- B. Payment of reimbursement shall be made in such amounts and at such times as the Board deems appropriate and may be paid in lump sum or installment amounts.
- C. If a claimant is a minor or an incompetent, the reimbursement may be paid to any person or entity authorized to receive the reimbursement for the benefit of the claimant.

Comments

Full reimbursement is the goal of a Fund, and adequate financing is essential to its achievement. Realistically, however, this ideal must be tempered with a Fund's need to provide all eligible claimants with meaningful, if not total, reimbursement for their losses.

A maximum limitation on reimbursement permits the assets of a developing Fund to accumulate while an historical "claims presented" record is established. It also serves to protect established Funds from catastrophic losses. Toward that end, Paragraph A authorizes the Board to fix a maximum limitation on reimbursement, whether for individual losses, or for the aggregate for all losses sustained by the clients of an individual lawyer.

An aggregate limitation is permitted under Paragraph A, but it is not encouraged. An aggregate limitation has the potential of unfairness and is inconsistent with the goal of providing full reimbursement to all eligible claimants. Unless clearly required by a new and developing Fund, it should not be utilized. When utilized, the Board should aim for its elimination as soon as the Fund's fiscal conditions permit.

Maximum limitations, whether individual or aggregate, should be reviewed periodically in light of the Fund's actual experience in providing reimbursement to eligible claimants for their documented losses.

Paragraph B assigns responsibility for the determination of the actual amount of each reimbursement to the discretion of the Board.

Paragraph B also grants the Board flexibility in paying reimbursement. Depending on a Fund's financial and administrative needs, periodic payment dates can be established, and reimbursement can be paid in lump sums or in installments.

Similarly, where losses involve minors and incompetents, Paragraph C permits the Board to pay the reimbursement directly to a parent or legal representative, for the benefit of the claimant.

▼ [Next- RULE 15 REIMBURSEMENT FROM THE FUND IS DISCRETIONARY](#)

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Model Rules for Lawyers' Funds for Client Protection

RULE 15 REIMBURSEMENT FROM THE FUND IS DISCRETIONARY

No person shall have the legal right to reimbursement from the Fund. There shall be no appeal from a decision of the Board.

Comment

Although these Rules establish procedures for the processing of claims seeking reimbursement from the Fund, they are not intended to create either substantive rights to reimbursement, compensation, damages or restitution for a lawyer's dishonest conduct, or procedural rights subject to judicial review with respect to determination of claims.

The Fund is not a guarantor of honesty and integrity in the practice of law. Dishonest conduct by a member of the bar imposes no separate legal obligation on the profession collectively, or on the Fund, to compensate for a lawyer's misconduct. The Fund is a lawyer-financed public service, and payments by the Board is discretionary.

▼ [Next - RULE 16 RESTITUTION AND SUBROGATION](#)

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Model Rules for Lawyers' Funds for Client Protection

RULE 16 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 Board may bring such action as it deems advisable to enforce such obligation.
- B. 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 arrangement for restitution shall be cause for suspension, disbarment, or denial of an application for reinstatement.
- C. As a condition of reimbursement, and to the extent of the reimbursement provided by the Fund, a claimant shall be required to provide the Fund with a 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.
- D. Upon commencement of an action by the Board 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.
- E. In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another entity that may be liable for the claimant's loss, the claimant shall be required to notify the Board of such action.
- F. The claimant shall be required to agree to cooperate in all efforts that the Board undertakes to achieve restitution for the Fund, and to repay the Fund if claimant is subsequently reimbursed from another source an amount that exceeds the difference between the principal misappropriated and the Fund award. Such repayment shall not exceed the amount of the Fund award.

Comment

As fiduciaries of the Fund, the Board has the obligation to seek restitution, in appropriate cases, for reimbursement paid to claimants. Successful restitution efforts can enlarge the Fund's financial capacity to provide reimbursement to eligible claimants, and also reduce the need to increase assessments on lawyers to finance the operations of the Fund.

The Board may seek restitution by direct legal action against the lawyer, as well as by the enforcement of rights provided by subrogation and assignment against the lawyer, the lawyer's estate, or any other person or entity who may be liable for the claimant's loss.

Paragraph A is a statement of the Fund's right to seek restitution from the lawyer whose dishonest conduct resulted in a payment of reimbursement. Paragraph A creates an obligation on the dishonest lawyer to reimburse the Fund for all payments made by the Fund to the lawyer's clients. Under Paragraph B, the making of restitution to the Fund by the dishonest lawyer is a condition precedent to the lawyer's continued practice of law.

Paragraph C requires the Board to establish a subrogation policy that requires claimants who receive reimbursement from the Fund to contractually transfer to the Fund their rights against the lawyer and any other person or entity that may be liable for the loss which the Fund reimbursed. This ordinary transfer of rights by subrogation is to extent of the reimbursement provided by the Fund.

Paragraphs D and E provide for appropriate notice and joinder of parties in subrogation actions by the Fund, or by a claimant, where the claimant has received less than full reimbursement from the Fund.

Paragraph F requires a claimant agree to cooperate with the Fund in its efforts to secure restitution.

The provisions of Paragraphs C, D, E, and F will ordinarily be incorporated in the Fund's subrogation agreement with the claimant.

Subrogation agreements should be carefully drawn to maximize the Board's creditor rights. In appropriate cases, subrogation should be supplemented with a full or partial assignment of specific rights possessed by a claimant, such as a payee's rights as a party to a negotiable instrument, or as a judgment creditor.

The Board should seek the enactment of local law, if necessary, to enhance the Fund's creditors rights. One example is a statutory grant of subrogation rights once the Fund reimburses a claimant's loss. A statutory right of subrogation can effectively supplement contractual subrogation, and may eliminate the need for individual agreements.

Another enhancement that local law might provide a Fund is an automatic lien upon payment of restitution. The lien can serve a two-fold purpose: enabling the Board to intercept restitution which the lawyer is obligated to pay a claimant and preventing claimants from receiving double payments for their losses.

Although most collection efforts directly against the lawyer will not be immediately successful as a practical matter, it is important that the Fund acquire the claimant's rights when it pays reimbursement. A transfer of rights has the potential for a later recoupment of restitution, and to prevent a claimant's double recovery for the same loss.

Lawyer disciplinary agencies, increasingly require lawyers to make restitution to Funds, or to clients, as a condition of discipline or for reinstatement to practice. See, *ABA Model Rules for Lawyer Disciplinary Enforcement* (1999).

The Board, through the exercise of subrogation and assignments rights, can also recover restitution from collateral sources, including law partners.

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Model Rules for Lawyers' Funds for Client Protection

RULE 17 JUDICIAL RELIEF

- A. The Board may make application to the appropriate court for relief to protect the interests of claimants or the Fund where:
1. the assets of clients 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 lawyer 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 disciplined, missing, incapacitated and deceased lawyers.

Comment

Occasionally a situation arises in which the protection of clients and the Fund requires the appointment of a custodial receiver to wind down the practice and to preserve assets. Rule 17 makes explicit the Board's authority to seek just such a remedy as is available under state law. It is anticipated that the Rule would be adapted to seeking equitable remedies in each jurisdiction.

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Model Rules for Lawyers' Funds for Client Protection

RULE 18 CONFIDENTIALITY

- A. Claims, proceedings and reports involving claims for reimbursement are confidential until the Board authorizes reimbursement to the claimant, except as provided below, unless provided otherwise by law. After payment of the reimbursement, the Board shall 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 Board 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 Board shall authorize, or the release of statistical information that does not disclose the identity of the lawyer or the parties, or the use of such information as is necessary to pursue the Fund's subrogation rights under Rule 16.

Comment

The need to protect wrongly accused lawyers and to preserve the independence of the Board's deliberations should be balanced with the strong public interest in protecting legal consumers and promoting public confidence in the administration of justice.

Publication of awards by the Board demonstrates the legal profession's responsiveness to clients and its commitment to self-regulation. Responsible public information programs are essential to achieving the purposes of the Fund. The public, bar, and judicial leaders, and the news media should be kept informed of the activities of the Board and the status of its reimbursement efforts.

The Board must also be sensitive to the privacy concerns of claimants, and of the constitutional rights of lawyers who may be the subject of criminal proceedings. Deferring publicity may therefore be appropriate where there is a pending criminal prosecution against a lawyer. Securing a claimant's consent to the release of information concerning a claimant's loss and reimbursement may also be a desirable practice, particularly for a voluntary fund which may not be protected by the immunity that is afforded a court-established Fund under Rule 9.

It is within the discretion of the Board to determine which public agencies should be provided access to claim files. Lawyer discipline, law enforcement, and agencies considering nominations to public offices may have a legitimate need for information contained in the Fund's records that would otherwise be confidential.

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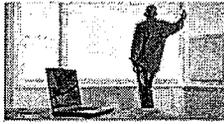
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Model Rules for Lawyers' Funds for Client Protection

RULE 19 COMPENSATION FOR REPRESENTING CLAIMANTS

No lawyer shall accept any payment for assisting a claimant with prosecuting a claim, unless such payment has been approved by the Board.

Comment

Proceedings to determine claims are not necessarily adversarial in nature, and Fund employees should be available to assist claimants in understanding and preparing claims forms. The Bar should be encouraged to assist claimants as a particularly appropriate form of *pro bono* service, and appreciation for such work ought to be expressed.

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EXHIBIT “C”

Client Security Fund History

| Year | Amount |
|-----------|--------|
| 1987 | \$50 |
| 1988 | \$50 |
| 1989 | \$50 |
| 1990 | \$50 |
| 1990-91 | \$50 |
| 1991-92 | \$50 |
| 1992-93 | \$50 |
| 1993-94 | \$50 |
| 1994-95 | \$ 7 |
| 1995-96 | \$10 |
| 1996-97 | \$ 0 |
| 1997-98 | \$10 |
| 1998-99 | \$10 |
| 1999-2000 | \$ 5 |
| 2000-01 | \$ 0 |
| 2001-02 | \$10 |
| 2002-03 | \$10 |
| 2003-04 | \$10 |
| 2004-05 | \$10 |
| 2005-06 | \$10 |
| 2006-07 | \$20 |
| 2007-08 | \$20 |
| 2008-09 | \$20 |
| 2009-10 | \$20 |
| 2010-11 | \$10 |

EXHIBIT “D”

CLIENT SECURITY FUND DATA

| CLAIM AMOUNT | ATTORNEY | PAYEE | AMOUNT PAID | DATE |
|---------------------|-----------------------------------------------------|--------------------------------------------------------|-------------|----------|
| 1. \$5,333 | Lynn C. Spafford | Ross D. Howard | \$5,000.00 | 02/01/96 |
| 2. \$20,437 | Lynn C. Spafford | Jesus Hernandez | \$10,000.00 | 03/27/96 |
| 3. \$1,114 | Lynn & Earl Spafford | Daniella Preda | \$1,114.00 | 05/28/96 |
| 4. \$12,000 | Lynn Spafford | Chelae Petroni | \$5,000.00 | 01/14/97 |
| | Earl Spafford | Chelae Petroini | \$5,000.00 | 01/14/97 |
| 5. \$20,833 | Lynn Spafford | Sandra Christensen | \$5,000.00 | 01/14/97 |
| | | (for minor child Joshua Christensen) | | |
| | Earl Spafford | same as above: | \$5,000.00 | 01/14/97 |
| 6. \$15,000 | Earl Spafford | Amanda Walker | \$5,000.00 | 02/12/97 |
| | Lynn Spafford | Amanda Walker | \$5,000.00 | 02/12/97 |
| 7. \$15,000 | Earl Spafford | Steven Mark Harton | \$5,000.00 | 02/12/97 |
| | Lynn Spafford | Steven Mark Harton | \$5,000.00 | 02/12/97 |
| 8. \$1,000. | Earl Spafford/ Lynn Spafford/ & Paul Schwenke | Carol Ann Roles (for minor child) | \$500.00 | 03/11/97 |
| 9. \$16,666 + | Lynn Spafford | Sabrina Hawkins | \$10,000.00 | 06/11/97 |
| | | (for minor child-Monica Matlock) | | |
| 10. \$5,000 | Lynn Spafford | Patrick Murray | \$333.00 | 10/28/97 |
| 11. \$9,600 | Lynn Spafford | David Murray | \$3,930.00 | 10/28/97 |
| 12. <u>\$10,000</u> | Lynn Spafford | Kristi Larsen & Dex Larsen & Provident Insurance | \$3,500.00 | 8/25/99 |
| \$131,983 | | | | |

Note: Claims may have exceeded amounts paid. There is a cap of \$10,000 per claim and a \$25,000 ceiling pay out per lawyer per year.

EXHIBIT “E”

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Ex-attorney gets prison sentence

Ashley
by Langston

Feb 03, 2010 | 288 views | 0 | 3



Matthew T. Graff

CEDAR CITY – Former attorney Matthew Terry Graff was sentenced Friday in Fifth District Court after many former clients spoke about the way he had victimized them at very vulnerable times in their lives.

He was sentenced to two concurrent terms and one consecutive term of one to 15 years in prison and ordered to pay full restitution.

Graff pled guilty Oct. 30 for two second-degree felonies of unlawful dealing of property by a fiduciary in Iron County and one second-degree felony of communications fraud in Washington County.

Third District Court Judge Robert Faust, who was assigned to the Fifth District Court for Graff's case, said before the sentencing hearing he had read the victim impact statements, the

pre-sentence investigation report and sentencing recommendation, and letters from victims and Graff's family.

At the hearing Cedar City Police Detective Mike Bleak said in the course of his investigation he had taken well over 100 complaints, 30 to 40 of which were legitimate criminal complaints. The rest were civil complaints. Complaints were also still being taken.

He said most of the complaints were that Graff had either collected on the clients' behalf and then paid them only a small portion or none of their money, and some were that people had retained him, paying \$2,500 or more, and then never heard from him again. In other cases, clients were told their medical bills had been paid and later found they hadn't, Bleak said. Many are now in collections or otherwise in financial trouble.

Bleak said some of the money went toward moving Graff's girlfriend into a home in St. George, flying her to Hawaii, and getting her breast augmentation, and some of it went to a very expensive birthday party he threw for his wife in Las Vegas, but vast amounts are still unaccounted for.

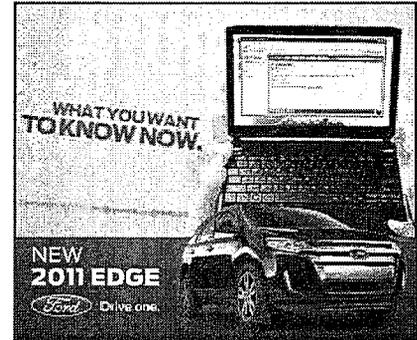
Since the investigation began Graff has shown that he is not remorseful and has not changed, Iron County Attorney Scott Garrett said.

Bleak said before Graff was arrested he told two of his victims, Easton Vigil and Matthew Tillery, that he would get them their money, but they shouldn't talk to the police. When he was released, he was told not to contact any of the victims, but there have been several reports of him contacting victims directly or through a third party, and telling them that he would determine how the restitution money would be divided, and they should cooperate with him, Bleak said.

Police also believe he has represented himself as a personal injury attorney in Washington state since he surrendered his law license and even since he pled guilty in October, he said.

Graff's attorney, Gregory Skordas, said he did not believe it was possible for the victims to be compensated and Graff to be punished. He said if Graff went to prison, it was unlikely the victims would ever get much restitution, but if he was given parole they would receive 25 cents on their dollar within 30 days, and another quarter of what they were owed in 60 days.

Thursday
November 11, 2010



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Victims Tillery and Vigil both lost their wives in August 2008 in the Moab plane crash that killed 10 locals – nine of them from Southwest Skin and Cancer.

Tillery spoke at the sentencing hearing and said it has been difficult to deal with the stress of the case when he should be mourning. Graff took away the last way his wife could help their sons, and if they had received the money their house would be paid off and not in foreclosure, and his boys could have a college fund. Graff's actions were "unexcusable and unforgivable," he said.

Bruce Hughes, a local certified public accountant, said he was one of the people with a civil complaint against Graff.

"I represent the group that will not ever receive restitution," he said.

He said he is pessimistic any of the victims in the criminal case would receive any significant amount of money, whether Graff was in jail or out working, and he thought time behind bars was appropriate.

Another victim, Dave Crawford, said he believed if Graff was not sent to prison that many more victims would accumulate in the next year. He also questioned how Graff would get money to pay them back, saying that manipulating people is what Graff knows how to do, and how he makes money.

Deputy Washington County Attorney Eric Gentry said lawyers are constantly fighting the perception they are dishonest and shady, and Graff's crimes justified that perception. Gentry quoted from the pre-sentence investigation report, saying that Graff took advantage of his victims during the most vulnerable times of their lives. He blatantly disregarded the attorney's oath to satisfy an "ongoing lifestyle that may be surmised as criminal thinking," Gentry quoted.

Even if Graff repays his victims, they will never be made whole, he said. For some, the amounts Graff took were small, but were the difference between solvency or insolvency, and keeping their home or losing it.

"This is a case where justice simply cannot be done," he said.

The severe, calculated, and recurring betrayal of trust sets Graff's case apart from all other cases, Gentry said.

Garrett said Graff had left a wake of devastation in Iron, Washington and Beaver Counties.

"This whole community is hurting and this whole community is outraged," he said.

Graff also spoke to the judge, saying he had nothing but sorrow and apologies for his actions.

"I am completely ashamed," he said.

"I was a bad person," he added. "I did bad things."

He said he wants to make things right and pay the victims what is due, and he will commit all his resources and energy to pay them back.

Faust said he knew there was no sentence he could impose that would make things right for everyone involved, and he was moved by Graff's victims and the pain and suffering they had endured. He said he felt Graff was beginning to understand the devastation he had caused, but did not have a complete understanding of it.

Faust also said Graff's actions since he was charged have been disturbing.

"We have to judge people not on what they say but on what they do," he said.

After Graff was taken into custody, there was discussion as to whether the approximately \$219,000 being held by the court since Graff bailed out of jail would be divided between Tillery and Vigil, the first victims to come forward, or whether it would be dispensed to all the victims according to their percentage of the whole amount owed.

Several victims present said they wanted it to go to Vigil and Tillery, but since many victims were not there it was agreed Garrett would contact all of them within a week and ask what they would like done.

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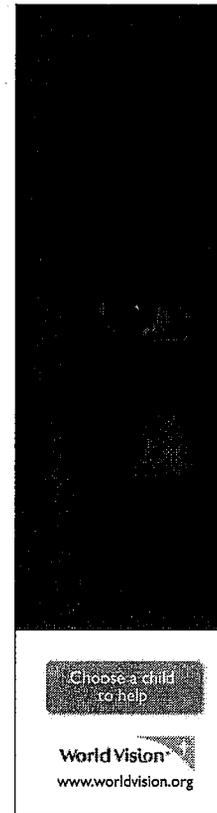


EXHIBIT “F”

Help for Former Graff Clients Available

As a service to the former clients of Matthew T. Graff & Associates, Steven Sullivan of Robert J. DeBry & Associates has collected names of attorneys who are willing to provide help under the terms set out below. Many thanks to Steve for spearheading the formulation of guidelines for participation, and for soliciting help from members of the bar. Thanks also to the volunteers shown below who constitute the panel of attorneys willing to take on cases in these circumstances.

GUIDELINES FOR PARTICIPATING ATTORNEYS:

- Panel members will take on at least one case pro bono (without payment) within the limitations set out below.
- Panel members will commit to providing twenty hours pro bono services on accepted cases. The lawyer will review the case and in the event more than twenty hours may be required to bring the case to a conclusion, an agreement with the client will be entered as to how fees will be handled for work beyond the first twenty hours.
- Panel members agree, in any case accepted having time sensitive issues of a jurisdictional nature, to take needed action timely to silence all such issues.
- Panel members must have malpractice insurance in force through his or her own law firm.
- Panel members have the right to review the proposed case and accept or reject the situation, but will at least provide advice and counsel to the client as to how the client might proceed.
- Panel members who accept one or more cases, under the terms set out above, will also be placed on a list of lawyer names that will be distributed at the discretion of the Trustee to former clients of Matt Graff. The lawyer may accept or reject any potential clients contacting the lawyer and the lawyer may charge customary fees to such individuals.

EXHIBIT "G"

FILED

MAR 25 2010

5th DISTRICT COURT
IRON COUNTY
DEPUTY CLERK *[Signature]*

SCOTT F. GARRETT (#2687)
Iron County Attorney
82 North 100 East, Suite 201
P.O. Box 428
Cedar City, Utah 84720
Telephone: (435) 865-5310
Fax: (435) 865-5329

IN THE FIFTH JUDICIAL DISTRICT COURT,
IN AND FOR IRON COUNTY, STATE OF UTAH

| | | |
|----------------------|---|-----------------------------------|
| STATE OF UTAH, |) | ORDER RELEASING FUNDS ON A |
| |) | PRO RATA BASIS |
| Plaintiff, |) | |
| vs. |) | |
| MATTHEW TERRY GRAFF, |) | Criminal No. 091500288 |
| Defendant. |) | Judge Robert Faust |

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the funds being held as restitution funds by the Fifth District Court in the amount of \$219,021.90 be distributed on a pro rata basis amongst the victims as identified and outlined in Exhibit "A" attached hereto and incorporated herein by this reference. These amounts shall be considered partial restitution to the victims in this matter, with additional funds received being released on the same percentage basis.

DATED this 25th day of March, 2010.

BY THE COURT:

[Signature]
ROBERT FAUST
District Court Judge



RECEIVED

MAR 26 2010

Iron County Attorney's Office

Matthew T. Graff Restitution

| Bradshaw, Estate of Colleen | \$85,508.01 | 3.46% | \$7,574.18 |
|-----------------------------|-----------------------|--------|---------------------|
| Bradshaw, Estate of Randall | \$85,508.01 | 3.46% | \$7,574.18 |
| Carrick, Joseph | \$89,879.03 | 3.63% | \$7,961.35 |
| Cox, Arda | \$55,244.22 | 2.23% | \$4,893.46 |
| Cox, Roger | \$58,153.48 | 2.35% | \$5,151.15 |
| Evans, Estate of Joseph | \$32,721.48 | 1.32% | \$2,898.42 |
| Green, Bridger | \$6,667.00 | 0.27% | \$590.55 |
| Green, Christy | \$15,021.18 | 0.61% | \$1,330.55 |
| Green, Korbin | \$6,667.00 | 0.27% | \$590.55 |
| Green, Shaylee | \$12,557.94 | 0.51% | \$1,112.36 |
| Griffin, Joseph | \$64,996.75 | 2.63% | \$5,757.32 |
| Holeman, Sharla | \$26,001.30 | 1.05% | \$2,303.16 |
| Jimerson, John | \$3,500.00 | 0.14% | \$310.02 |
| Johnson, Patsy | \$61,652.33 | 2.49% | \$5,461.07 |
| Martin, Estate of Bradley | \$23,334.50 | 0.94% | \$2,066.94 |
| Matheson, Alice | \$69,465.63 | 2.81% | \$8,153.17 |
| Miner, Captain Peter | \$8,627.92 | 0.35% | \$764.25 |
| Myers, Clay | \$50,085.14 | 2.03% | \$4,436.47 |
| Nielsen, Adrian | \$7,500.00 | 0.30% | \$664.34 |
| Robb, Jason | \$9,000.00 | 0.36% | \$797.21 |
| Rouse, Dwayne | \$13,300.44 | 0.54% | \$1,178.13 |
| Rouse, Kathleen | \$6,667.00 | 0.27% | \$590.55 |
| Rouse, Walter | \$6,662.00 | 0.27% | \$590.11 |
| Rouse, Virginia | \$20,002.33 | 0.81% | \$1,771.78 |
| Snyder, Gerald McCord | \$6,642.00 | 0.27% | \$588.34 |
| Stratton Family | \$15,066.61 | 0.61% | \$1,334.58 |
| Swindlehurst, Kent | \$1,735.17 | 0.07% | \$153.70 |
| Tillery, Marci M. | \$702,635.00 | 28.42% | \$62,238.39 |
| Van De Venter, Lakita | \$9,426.15 | 0.38% | \$834.95 |
| Vigil, Easton | \$348,595.00 | 14.10% | \$30,878.04 |
| Wallace, Barton | \$7,965.40 | 0.32% | \$705.56 |
| Yarborough, Andre | \$26,047.45 | 1.05% | \$2,307.25 |
| Total Iron County | \$1,938,835.48 | | \$171,562.09 |
| Alphin, Michael | \$20,570.04 | 0.83% | \$1,822.06 |

EXHIBIT "A"

| | | | |
|----------------------------|----------------|---------|--------------|
| Anderson, Marie | \$31,264.80 | 1.26% | \$2,769.39 |
| Bunker, Paul | \$140,000.00 | 5.66% | \$12,401.00 |
| Crawford, David | \$45,660.67 | 1.89% | \$4,133.13 |
| Hansen, Jim | \$58,666.67 | 2.37% | \$5,196.61 |
| Iskandaryan, Sona | \$75,500.00 | 3.05% | \$6,687.68 |
| Johndrow, Mika | \$3,850.00 | 0.16% | \$341.03 |
| Khachaturyan, Tigran | \$20,000.00 | 0.81% | \$1,771.57 |
| Read, Laura | \$7,500.00 | 0.30% | \$664.34 |
| Stanley, Marva | \$1,281.31 | 0.05% | \$113.50 |
| Tiatia, Ropati | \$82,500.00 | 3.34% | \$7,307.73 |
| White, Nancy | \$48,000.00 | 1.94% | \$4,251.77 |
| Total Washington County | \$535,793.49 | | \$47,459.81 |
| Percentage Total | | 100.00% | |
| Grand Total | \$2,472,628.97 | | \$219,021.90 |

EXHIBIT “H”

| Date | Claimant | Attorney | Total Loss | Amount of Claim | Outstanding Claims | Recommended Award | Status |
|----------|----------|------------------|--------------|-----------------|--------------------|-------------------|-----------------------------|
| 06/05/09 | Y.B. | Matthew T. Graff | \$2,500.00 | \$2,500.00 | | \$2,500.00 | Pending Commission approval |
| 06/05/09 | H.S. | Matthew T. Graff | \$500.00 | \$500.00 | | \$0.00 | Closed. Claim denied. |
| 06/06/09 | S.H. | Matthew T. Graff | \$23,961.51 | \$20,000.00 | | \$20,000.00 | Pending Commission approval |
| 06/11/09 | D.S. | Matthew T. Graff | \$2,190.00 | \$2,190.00 | | \$2,190.00 | Pending Commission approval |
| 06/12/09 | L.V. | Matthew T. Graff | \$16,500.00 | \$16,500.00 | | \$9,000.00 | Pending Commission approval |
| 06/12/09 | P.E. | Matthew T. Graff | \$2,500.00 | \$2,500.00 | | \$1,435.00 | Pending Commission approval |
| 06/16/09 | M.T. | Matthew T. Graff | \$560,000.00 | \$20,000.00 | \$20,000.00 | | |
| 06/17/09 | L.P. | Matthew T. Graff | \$500.00 | \$500.00 | \$500.00 | | |
| 06/17/09 | J.S. | Matthew T. Graff | \$2,000.00 | \$2,000.00 | | \$2,072.00 | Pending Commission approval |
| 06/17/09 | A.J. | Matthew T. Graff | \$2,000.00 | \$2,000.00 | \$2,000.00 | | |
| 06/18/09 | G.S. | Matthew T. Graff | \$3,000.00 | \$3,000.00 | \$3,000.00 | | |
| 06/18/09 | B.R. | Matthew T. Graff | \$500.00 | \$500.00 | \$500.00 | | |
| 06/19/09 | E.C. | Matthew T. Graff | \$1,989.00 | \$1,989.00 | \$1,989.00 | | |
| 06/22/09 | J.E. | Matthew T. Graff | \$15,000.00 | \$15,000.00 | \$15,000.00 | | |

| Date | Claimant | Attorney | Total Loss | Amount of Claim | Outstanding Claims | Recommended Award | Status |
|-------------|-----------------|------------------|-------------------|------------------------|---------------------------|--------------------------|---------------|
| 06/22/09 | M.H. & C.H. | Matthew T. Graff | \$1,500.00 | \$1,500.00 | \$1,500.00 | | |
| 06/26/09 | P.M | Matthew T. Graff | \$9,990.00 | \$9,990.00 | \$9,990.00 | | |
| 06/26/09 | J.J. | Matthew T. Graff | \$3,500.00 | \$3,500.00 | \$3,500.00 | | |
| 06/26/09 | S.W. | Matthew T. Graff | \$1,500.00 | \$1,500.00 | \$1,500.00 | | |
| 06/30/09 | E.Y. & M.Y. | Matthew T. Graff | \$3,061.00 | \$3,061.00 | \$3,061.00 | | |
| 07/11/09 | M.C. | Matthew T. Graff | \$9,500.00 | \$9,500.00 | \$9,500.00 | | |
| 07/16/09 | A.M. | Matthew T. Graff | \$80,000.00 | \$20,000.00 | \$20,000.00 | | |
| 07/17/09 | M.S. | Matthew T. Graff | \$6,069.00 | \$6,069.00 | \$6,069.00 | | |
| 07/20/09 | G.F. | Matthew T. Graff | \$1,500.00 | \$1,500.00 | \$1,500.00 | | |
| 07/27/09 | Z.G. | Matthew T. Graff | \$10,000.00 | \$10,000.00 | \$10,000.00 | | |
| 07/30/09 | K.H. | Matthew T. Graff | \$7,500.00 | \$7,500.00 | \$7,500.00 | | |
| 07/30/09 | E.N. | Matthew T. Graff | \$2,500.00 | \$2,500.00 | \$2,500.00 | | |
| 08/15/09 | G.J. | Matthew T. Graff | \$125,000.00 | \$20,000.00 | \$20,000.00 | | |
| 08/24/09 | J.S. | Matthew T. Graff | \$2,500.00 | \$2,500.00 | \$2,500.00 | | |
| 08/28/09 | S.T. | Matthew T. Graff | \$3,000.00 | \$3,000.00 | \$3,000.00 | | |
| 09/18/09 | J.G. | Matthew T. Graff | \$100,000.00 | \$20,000.00 | \$20,000.00 | | |
| 09/16/09 | K.D. | Matthew T. Graff | \$3,000.00 | \$3,000.00 | \$3,000.00 | | |

| Date | Claimant | Attorney | Total Loss | Amount of Claim | Outstanding Claims | Recommended Award | Status |
|-------------|-----------------|------------------|-------------------|------------------------|---------------------------|--------------------------|---------------|
| 09/18/09 | J.H. | Matthew T. Graff | \$58,000.00 | \$20,000.00 | \$20,000.00 | | |
| 11/03/09 | R.T. & C.T. | Matthew T. Graff | \$60,000.00 | \$20,000.00 | \$20,000.00 | | |
| 11/17/09 | R.M | Matthew T. Graff | \$11,500.00 | \$11,500.00 | \$11,500.00 | | |
| 11/17/09 | C.M. | Matthew T. Graff | \$91,500.00 | \$20,000.00 | \$20,000.00 | | |
| 11/17/09 | P.J. | Matthew T. Graff | \$92,000.00 | \$20,000.00 | \$20,000.00 | | |
| 11/19/09 | D.C. | Matthew T. Graff | \$7,000.00 | \$7,000.00 | \$7,000.00 | | |
| 02/12/10 | W.C. | Matthew T. Graff | \$58,153.00 | \$20,000.00 | \$20,000.00 | | |
| 03/24/10 | W.R. | Matthew T. Graff | \$6,662.00 | \$6,662.00 | \$6,662.00 | | |
| 03/24/10 | A.Y. | Matthew T. Graff | \$50,000.00 | \$20,000.00 | \$20,000.00 | | |
| 03/24/10 | V.R. | Matthew T. Graff | \$20,000.00 | \$20,000.00 | \$20,000.00 | | |
| 03/29/10 | R.M. & E.M. | Matthew T. Graff | \$35,000.00 | \$20,000.00 | \$20,000.00 | | |
| 03/29/10 | J.C. | Matthew T. Graff | \$90,000.00 | \$20,000.00 | \$20,000.00 | | |
| 03/29/10 | E.S. & C.S. | Matthew T. Graff | \$15,000.00 | \$15,000.00 | \$15,000.00 | | |
| 04/05/10 | E.V. | Matthew T. Graff | \$348,595.00 | \$20,000.00 | \$20,000.00 | | |
| 04/12/10 | K.B. | Matthew T. Graff | \$85,508.00 | \$20,000.00 | \$20,000.00 | | |
| 04/12/10 | S.K. | Matthew T. Graff | \$626.00 | \$626.00 | \$626.00 | | |
| 08/09/10 | J.C. | Matthew T. Graff | \$2,000.00 | \$2,000.00 | \$2,000.00 | | |
| | | | \$2,034,804.51 | \$477,087.00 | \$430,897.00 | 37,197.00 | |

EXHIBIT “I”

Article 9. Lawyers' Fund for Client Protection.

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; and
- (f) "Supreme Court" means the Utah Supreme Court.

Rule 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.
- (b) The purpose of the 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 Utah, occurring in the course of the lawyer/client or fiduciary relationship between the lawyer and the claimant.
- (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 Fund 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

under the terms of the former resolution on claims filed prior to the effective date of these rules.

Advisory Committee Notes

Rule 14-902 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.

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

(a) The Committee shall consist of five ~~attorneys~~ lawyers, each to function for a period of five 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 rules. Subsequent appointments shall be for a term of three years or the term uniformly determined for all Committee members by the Board. Vacancies shall be filled by appointment by the president of the Bar, with the approval of the Board, for the unexpired term.

(b) The Board shall retain the capacity to make any final determination after considering the recommendations of the Committee. The Board, functioning with regard to the Fund, is under the supervision of the Supreme Court.

Rule 14-904. Funding.

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

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(b) All determinations with regards to funding shall be within the discretion of the Board, subject to approval of the Supreme Court.

(c) ~~The Bar shall have the authority to assess its members until such time that the Fund reaches the level of \$200,000; thereafter, the assessment shall be made only as necessary to maintain a minimum balance in the Fund of \$200,000 for purposes of maintaining the Fund at sufficient levels to pay eligible claims in accordance with these rules. The Committee shall report annually to the Commission on a timely basis as to known prospective claims as well as total claims paid to date so that an appropriate assessment can be made for the upcoming fiscal year. After the assessment at the beginning of the fiscal year is determined, the Fund balance shall be set in an amount of not less than \$200,000.~~

(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.

(e)(1) In discipline cases where a lawyer receives a public reprimand and the Fund pays an eligible claim, the lawyer's license to practice shall be administratively suspended for non-payment until reimbursement to the Fund has been made by the lawyer.

Rule 14-905. 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, subject to the direction of the Board.

Rule 14-906. Committee meetings.

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

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

(c) A quorum of any meeting of the Committee shall be three members.

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

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

The Committee shall have the following duties and responsibilities:

(a) to receive, evaluate, determine and make recommendations to the Board relative to the individual claims;

(b) to promulgate rules of procedure not inconsistent with these rules;

(c) to provide a full report, at least annually, to the Board and to make other reports as necessary;

(d) to publicize its activities to the public and the Bar, subject to approval of the Board ;

(e) to appropriately utilize Bar staff to assist in the Committee's performance of its functions effectively and without delay;

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

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

Rule 14-908. Conflict of interest.

(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) A Committee member with a past or present relationship, other than as provided in paragraph (a), 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 14-909. Immunity.

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

Rule 14-910. Eligible claim.

(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) The claim for reimbursement 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 years after discipline has been imposed within one year after the date of the final order of discipline.~~

(b)(1) In cases of the lawyer's death, the claim for reimbursement shall be filed within one year of the lawyer's date of death.

(b)(2) In cases of the lawyer's formal disability, the claim for reimbursement shall be filed within one year of the date of the order of disability.

(c) If the subject of the application for 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~~lawyer~~ 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:

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

(c)(2) the extent to which the lawyer's status overcame the normal prudence of the claimant;

(c)(3) the extent to which the attorneylawyer, 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 attorneylawyer knew of the fact that the client had available assets or was expecting to receive assets which were ultimately wrongfully converted by the attorneylawyer;

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

(c)(4)(A) whether the transaction originated with the attorneylawyer;

(c)(4)(B) the reputation of the attorneylawyer as to scope and nature of his/her practice and/or business involvement;

(c)(4)(C) the amount of the charge made for legal services, if any, compared to that for a finder's fee, if any; and

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

(c)(5) 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.

(d) Exceptions. Except as provided by paragraph (e), the following losses shall not be reimbursed:

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

(d)(2) 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;

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

(d)(4) any business entity controlled by the lawyer or any person or entity described in paragraph (d)(1);

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(d)(5) any governmental entity or agency;

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

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

(d)(8) any investment losses, as distinguished from ~~attorney~~lawyer fees, which might reasonably be characterized as:

(d)(8)(A) any pyramid or ponzie scheme;

(d)(8)(B) any investment in or loan to any offshore entity;

(d)(8)(C) 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

(d)(8)(D) 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.

(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 rules.

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

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

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

(b)(1) the claimant's name and address, home and business telephone, occupation and employer, and social security number for purposes of subrogation and tax reporting;

(b)(2) the name, address and telephone number of the lawyer who has dishonestly taken the claimant's money or property;

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

(b)(4) how much was paid to the lawyer;

(b)(5) the copy of any written agreement pertaining to the claim;

(b)(6) 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;

(b)(7) the amount of loss and the date when the loss occurred;

(b)(8) the date when the claimant discovered the loss and how the claimant discovered the loss;

(b)(9) the lawyer's dishonest conduct and the names and addresses of any persons who have knowledge of the loss;

(b)(10) identification of 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) the source, if any, from which the loss could be reimbursed, including any insurance, fidelity or surety agreement;

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

(b)(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 Committee of any reimbursements the claimant receives during the pendency of the claim;

(b)(14) the existence of facts believed to be important to the Committee's consideration of the claim;

(b)(15) the manner in which the claimant learned about the Fund;

(b)(16) the name, address and telephone number of the claimant's present lawyer, if any;

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(b)(17) the claimant's agreement to cooperate with the Committee in reference to the claim, as required by the Utah or Federal Rules of Civil Procedure, in reference to civil actions which may be brought in the name of the Bar, pursuant to a subrogation and assignment clause, which shall also be contained within the claim;

(b)(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; and

(b)(19) 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) 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 Committee by providing the same to the Utah State Bar, Lawyers' Fund for Client Protection at the Law and Justice Center, 645 South 200 East, Salt Lake City, Utah 84111.

Rule 14-912. Processing claims.

(a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, 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 chairperson of the Fund may appoint any member of the Committee and/or his/herself to determine the eligibility of claims.

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

(d) The 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 20 days of the receipt thereof to the Committee.

(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 20 days of receiving a notice from the Committee that the Committee will process the claim.

(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 Board. A claim may only be considered if the individual ~~attorney~~ lawyer involved has been disciplined to a threshold level of a public reprimand or is no longer in practice.

(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 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.

(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) The Board shall determine the order and manner of payment and pay those claims it deems meritorious, but unless the Board 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) Both the claimant and the lawyer shall be advised of the status of the Board's consideration of the claim and after having received the recommendation of the Committee, also shall be informed of the final determination.

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

Rule 14-913. Payment of reimbursement.

(a) The Board 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 per claim and \$25,000 total dollars within any given calendar year with regards to an individual ~~attorney~~lawyer.

(a)(1) There shall be a lifetime claim limit of \$425,000 per lawyer.

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

(c) Payment of reimbursement shall be made in such amounts and at such time as the Board approves and may be paid in lump sum or installment amounts. In the event that the Committee determines that there is a substantial likelihood that claims against the lawyer may exceed either the annual or lifetime claim limits, claims may be paid on a pro rata basis or otherwise as the Board and the Committee determine is equitable under the circumstances.

(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.

Advisory Committee Notes

Rule 14-913 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~~lawyer claim limit of \$25,000 on December 1, 2000.

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

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

The Board voted to raise the yearly per lawyer cap to \$75,000 on October 29, 2010.

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Rule 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, and any payment is a matter of grace.

Rule 14-915. 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 Bar 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 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 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) 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 Bar of such action.

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

Rule 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, authorizing reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Board 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 Bar, unless specific permission has been granted by the claimant.