

PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT
SUBCHAPTER E. PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY

GENERAL PROVISIONS

Rule 501. Definitions

The following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meaning given to them in this section:

"Board." The Pennsylvania Lawyers Fund for Client Security Board.

"Covered Attorney." An individual defined in Rule 512 (relating to covered attorney).

"Claimant." A person who makes application to the Board for a disbursement from the Fund.

"Dishonest Conduct." Conduct defined in Rule 513 (relating to dishonest conduct).

"Fund." The Pennsylvania Lawyers Fund for Client Security.

"Reimbursable Losses." Losses defined in Rule 514 (relating to reimbursable losses).

Rule 502. Pennsylvania Lawyers Fund for Client Security

- (a) **General Rule.** The Supreme Court shall establish a separate fund to be known as the "Pennsylvania Lawyers Fund for Client Security." The Fund shall consist of such amounts as shall be transferred to the Fund pursuant to this subchapter. The Fund is created by contributions of the members of the Bar to aid in ameliorating the losses caused to clients and others by defalcating members of the Bar acting as attorney or fiduciary. No Claimant or other person shall have any legal interest in such Fund or right to receive any portion thereof, except for discretionary disbursements therefrom directed by the Board or the Supreme Court, all payments from the Fund being a matter of grace and not of right. There shall be no appeal from a decision of the Board. A decision of the Board to grant or deny payment to a Claimant shall not be subject to judicial review by any court. The Supreme Court reserves the right to amend or repeal this subchapter.
- (b) **Additional Assessment.** Every attorney who is required to pay an active annual fee under Rule 219 (relating to annual registration of attorneys) shall pay an additional annual fee of \$60.00 for use by the Fund. Such additional annual fee shall be added to, and collected with and in the same manner as, the basic annual fee. All amounts received pursuant to this subdivision shall be credited to the Fund.
- (c) **Transfers to Fund.** The Administrative Office and Attorney Registration Office shall transfer to the Fund all bequests and gifts hereafter made for use by the 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.

- (d) Audit. The Board shall annually obtain an independent audit of the Fund by a certified public accountant, and shall file a copy of such audit with the Supreme Court.

Rule 503. Pennsylvania Lawyers Fund for Client Security Board

- (a) General Rule. The Supreme Court shall appoint a board to be known as the "Pennsylvania Lawyers Fund for Client Security Board" which shall consist of five members of the bar of this Commonwealth and two non-lawyer public members. One of the members shall be designated by the Court as Chair and another as Vice-Chair. A majority of the members of the Board shall designate a member of the Board to act as Treasurer.
- (b) Terms; Manner of Action. The regular terms of members of the Board shall be for three years, and no member shall serve for more than two consecutive three-year terms. The terms of one-third of the members of the Board, as nearly as may be, shall expire in each year. The terms of members shall commence on April 1. The Board shall act with the concurrence of not less than a majority of the members in office. A majority of the members in office shall constitute a quorum.
- (c) Vacancies. Vacancies shall be filled by appointment by the Supreme Court for any unexpired terms.
- (d) Powers. The Board shall have the power and duty:
 - (1) To appoint hearing committees. Each committee shall consist of three members who are members of the bar of the Supreme Court or who are current members of the Board.
 - (2) To investigate applications by Claimants for disbursements from the Fund.
 - (3) To authorize disbursements from the Fund and to fix the amount thereof.
 - (4) To determine in January of each year, and to report to the Supreme Court, whether the Fund is of sufficient amount to pay adjudicated claims and other anticipated claims.
 - (5) To adopt rules of procedure not inconsistent with these rules. Such rules may provide for the delegation to the Chair or the Vice-Chair of the power to act for the Board on administrative and procedural matters.
 - (6) To exercise the powers and perform the duties vested in and imposed upon the Board by the Supreme Court.
 - (7) With prior approval of the Supreme Court, to give financial assistance to Pennsylvania non-profit corporations whose purpose it is to assist alcohol or drug impaired Pennsylvania lawyers and judges to regain their health and to restore them to professional competence, or such other Supreme Court Committees or Boards as the Court may direct.

- (8) To prudently invest, per the direction of the Investment Advisory Board or the Court, such portions of the funds as may not be needed currently to pay losses, and to maintain sufficient reserves as appropriate.
 - (9) To prosecute claims for restitution to which the Fund is entitled.
- (e) Compensation; Expenses. Members of the Board shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.
- (f) Conflict of Interest.
 - (1) A member of the Board who has or has had a client-attorney relationship or a financial relationship with a Claimant or a Covered Attorney shall not participate in the investigation or adjudication of a claim involving that Claimant or Covered Attorney;
 - (2) A member of the Board who has or has had a relationship, other than as provided in subparagraph (1) above, with a Claimant or Covered Attorney, or who has other potential conflicts of interest, shall disclose such relationship to the Board and, if the Board deems appropriate, that Board member shall not participate in the investigation or adjudication of a claim involving that Claimant or Covered Attorney;
 - (3) Claims based upon alleged Dishonest Conduct by members of the Board shall be submitted directly to the Supreme Court. Claims based upon alleged Dishonest Conduct by Counsel to the Board or Staff shall be submitted directly to the Board for disposition.
- (g) Immunity. Members of the Board, members of hearing committees, Counsel to the Board and Staff shall be immune from civil suit for any conduct in the course of their official duties. All communications to the Board, a hearing committee, Counsel to the Board or Staff relating to Dishonest Conduct by a Covered Attorney and all testimony given in a proceeding conducted pursuant to this subchapter shall be absolutely privileged and the person making the communication or giving the testimony shall be immune from civil suit based upon such communication or testimony, except that such immunity shall not extend to any action that violates Rule 402 or Rule 504 (relating to confidentiality).

Note: The provisions of subdivision (g) of the Rule recognize that the submission and receipt of applications by Claimants for disbursements from the Fund, and investigation, hearing, decision and disposition of such claims, are all parts of a judicial proceeding conducted pursuant to the inherent power of the Supreme Court of Pennsylvania. The immunity from civil suit recognized to exist in subsection (g) is that which exists for all participants in judicial proceedings under Pennsylvania law, so long as their statements and actions are pertinent, material and during the regular course of a proceeding. Communications made or revealed in violation of the confidentiality requirements of Rules

402 and 504 are not pertinent to the proceeding and, thus, do not entitle the person who publishes them to absolute immunity.

Rule 504. Confidentiality

- (a) All claims filed with the Fund shall be confidential and shall not be disclosed. This confidentiality requirement extends to all documents and things made and/or obtained, and all investigations and proceedings conducted and/or held by the Fund in connection with the filing of a claim.
- (b) Notwithstanding subsection (a), the Fund, after an award is approved, may disclose the following information:
 - (1) the name of the Claimant (if Claimant has granted permission to disclose);
 - (2) the name of the Covered Attorney;
 - (3) the amount claimed;
 - (4) the amount awarded; and
 - (5) a summary of the claim.
- (c) Nothing in this Rule shall preclude the Fund from utilizing confidential information in the release of statistical data or in the pursuit of the Fund's subrogation rights.
- (d) This Rule shall not be construed to preclude disclosure, at any time during any investigation and/or proceeding, for confidential information requested by the following entities:
 - (1) authorized agencies investigating the qualifications of judicial candidates and any proceedings related thereto;
 - (2) the Judicial Conduct Board and/or its counterpart in other jurisdictions conducting an investigation or proceeding;
 - (3) authorized agencies investigating qualifications for government employment and any proceedings related thereto;
 - (4) federal courts and/or other jurisdictions investigating qualifications for admission to practice law and any proceedings related thereto;
 - (5) Office of Disciplinary Counsel and/or the Disciplinary Board and/or its committees;
 - (6) lawyer discipline agencies and client protection funds in other jurisdictions investigating a disciplinary complaint, client protection claim or qualifications for admission or readmission to practice law and any proceedings related thereto; or
 - (7) law enforcement authorities investigating and/or prosecuting the Covered Attorney for a criminal offense.

- (e) Requests for the release of confidential information by any person or entity, other than those identified in subsection (d), must be made to the Fund through the issuance of a subpoena; requests for same made under the Freedom of Information Act will not be honored.

DISHONEST CONDUCT OF ATTORNEY

Rule 511. Reimbursement of Certain Losses Authorized

The Board in its discretion may authorize a disbursement from the Fund in an amount not exceeding the Reimbursable Loss caused by the Dishonest Conduct of a Covered Attorney.

Rule 512. Covered Attorney

This subchapter covers conduct of a member of the bar of the Supreme Court, including attorneys admitted pro hac vice and formerly admitted attorneys whose clients reasonably believed the former attorney to be licensed to practice when the Dishonest Conduct occurred, an active foreign legal consultant, an active military attorney, or a person holding an active Limited In-House Corporate Counsel License, which conduct forms the basis of the application to the Board. The conduct complained of need not have taken place in this Commonwealth for application to the Board to be considered by the Board and an award granted, except that an award shall not be granted with respect to conduct outside of this Commonwealth of a foreign legal consultant, military attorney or person holding a Limited In-House Corporate Counsel License unless the conduct related to the provision of legal services to a resident of this Commonwealth.

Rule 513. Dishonest Conduct

For the purposes of this subchapter, dishonest conduct means wrongful acts committed by a Covered Attorney in the nature of theft or embezzlement of money or the wrongful taking or conversion of money or property or other things of value.

Rule 514. Reimbursable Losses

- (a) General Rule. For the purposes of this subchapter reimbursable losses consist of those losses of money, property or other things of value which meet all of the following requirements:
 - (1) The loss was caused by the Dishonest Conduct of a Covered Attorney when acting:
 - (i) as an attorney-at-law;
 - (ii) in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or
 - (iii) as an escrow agent or other fiduciary, having been designated as such by a client in the matter in which the loss arose or having been so selected as a result of a client-attorney relationship.

- (2) The loss was that of money, property or other things of value which came into the hands of the Covered Attorney by reason of having acted in the capacity described in paragraph (1) of this subdivision. Consequential or incidental damages, such as lost interest, or attorney fees or other costs incurred in seeking recovery of a loss, may not be considered in determining the Reimbursable Loss.
 - (3) The loss, or the reimbursable portion thereof, was not covered by any insurance or by any fidelity or similar bond or fund, whether of the Covered Attorney, or the Claimant or otherwise.
 - (4) The loss was not incurred by:
 - (i) the spouse or other close relative, partner, associate, employer or employee of the Covered Attorney, or a business entity controlled by the Covered Attorney, or any entity controlled by any of the foregoing;
 - (ii) an insurer, surety or bonding agency or company, or any entity controlled by any of the foregoing;
 - (iii) any government unit;
 - (iv) any financial institution that may recover under a "banker's blanket bond" or similar commonly available insurance or surety contract;
 - (v) a business organization having twenty or more employees; or
 - (vi) an individual or business entity suffering a loss arising from personal or business investments not arising in the course of the client-attorney relationship.
 - (5) In cases of extreme hardship or special and unusual circumstances, and subject to the provisions of paragraph (b), the Board may, in its discretion, and consistent with the purpose of the Fund, recognize a claim which would otherwise be excluded under this subchapter.
 - (6) 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.
 - (7) A payment from the Fund, by way of subrogation or otherwise, will not benefit any entity specified in paragraph (4) of this subdivision.
- (b) **Maximum Recovery.** The maximum amount which may be disbursed from the Fund to any one Claimant with respect to the Dishonest Conduct of any one Covered Attorney shall be \$100,000. The maximum amount which may be disbursed from the Fund as a result of any one Covered Attorney shall be \$1,000,000. The Board may request the Supreme Court of Pennsylvania to exceed the \$1,000,000 maximum when the Board determines, in the exercise of its discretion, that exceeding the maximum is necessary to adequately compensate all victims of the Dishonest Conduct of the Covered Attorney and exceeding the maximum will not unduly burden the Fund.

- (c) No lawyer shall accept any payment for assisting a Claimant with the filing of a claim with the Fund, unless such payment has been approved by the Board.

PAYMENT OF CLAIMS

Rule 521. **Investigation and Payment of Claims**

- (a) **Cooperation with Disciplinary Board.** At the request of the Board, the Disciplinary Board of the Supreme Court of Pennsylvania shall make available to the Board all reports of investigations and records of formal proceedings conducted under these rules with respect to any attorney whose conduct is alleged to amount to Dishonest Conduct causing Reimbursable Loss to a Claimant, and shall otherwise cooperate fully with the Board. The Board shall cooperate fully with the Disciplinary Board of the Supreme Court of Pennsylvania and shall preserve the confidential nature of any information which is required to be kept confidential under these rules.
- (b) **Hearing Committees.** The Board may utilize a hearing committee to conduct any hearings under this subchapter for the purpose of resolving factual issues. Imposition of discipline under Rule 204 (relating to types of discipline) or otherwise shall not be a prerequisite for favorable action by the Board with respect to a claim against the Fund, but the Covered Attorney involved shall be given notice of and an opportunity to contest any claim made with respect to his or her alleged Dishonest Conduct.
- (c) **Subpoenas.**
 - (1) At any stage of an inquiry being conducted in accordance with Rule 221, the Board or a designated representative on behalf of the Board shall have the right to require production of records by issuance of a subpoena(s). The attorney whose account is the subject of the inquiry under Rule 221 shall have the right, upon written request and payment of appropriate duplicating costs, to receive copies of the records produced.
 - (2) At any stage of an investigation and/or proceeding under this subchapter, the Board, a Claimant and a contesting Covered Attorney shall have the right to summon witnesses and/or require production of records by issuance of subpoenas.
 - (3) Subpoenas authorized by this subparagraph (c) shall be obtained by filing with any Prothonotary of the Supreme Court of Pennsylvania a statement calling for the issuance of the subpoena. On the same day that the statement is filed with the Prothonotary, the party seeking the subpoena shall send by certified mail a copy of the statement to either the Executive Director or the Covered Attorney as the case may be. Upon the filing of the statement, the Prothonotary shall forthwith issue the subpoena and it shall be served by certified mail, return receipt or by personal service. A subpoena issued under this subparagraph (c) shall not be returnable until at least 10 days after the date of its issuance.

- (4) A subpoena issued under this rule shall clearly indicate on its face that the subpoena is issued in connection with a confidential investigation under these rules and, that it is regarded as contempt of the Supreme Court or grounds for discipline under the Rules of Disciplinary Enforcement for a person subpoenaed to in any way breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney. The subpoena procedures of this rule shall be subject to the protective requirements of confidentiality provided in Rule 504.
- (5) Any challenge to the validity of a subpoena issued under this rule shall be heard by a hearing committee or the full Board. A determination by such committee or the Board may be appealed to the Supreme Court under subparagraph (8) within ten days after service of the determination on the party bringing the appeal.
- (6) Witnesses before a hearing committee or the Board shall be examined under oath or affirmation.
- (7) With the approval of a hearing committee or the Board, testimony may be taken by deposition or by commission if the witness is not subject to service of subpoena or is unable to attend or testify at the proceeding because of age, illness or other compelling reason. A complete record of the testimony so taken shall be made and preserved.
- (8) Enforcement of subpoenas; appeal of challenges to subpoenas:
 - (i) The Board, through a designated representative, or a Covered Attorney may petition the Supreme Court to enforce a subpoena or to review a determination under subparagraph (5) on the validity of a subpoena. No challenge to the validity of a subpoena will be considered by the Court unless previously raised as provided in subparagraph (5).
 - (ii) Upon receipt of a petition for enforcement of a subpoena, the Court shall issue a rule to show cause upon the person to whom the subpoena was directed, returnable within ten days, why the person should not be held in contempt. If the period of response has passed without a response having been filed, or after consideration of any response, the Court shall issue an appropriate order.
 - (iii) A petition for review of a determination made under subparagraph (5) must set forth in detail the grounds for challenging the determination. Upon timely receipt of a petition for review, the Court shall issue a rule to show cause upon the party to the proceeding who is not challenging the determination, returnable within ten days, why the determination should not be reversed. If the period for response has passed without a response having been filed, or after consideration of any response, the Court shall issue an appropriate order.

- (9) Any rule of the Supreme Court or any statute providing for discovery shall not be applicable in a proceeding under these rules, which proceeding shall be governed by these rules alone.
- (d) Factors to Be Considered. In exercising its discretion under Rule 511 (relating to reimbursement of certain losses authorized) the Board may consider, among other things:
- (1) The amount available and likely to become available to the Fund for payment to Claimants.
 - (2) The size and number of claims which are likely to be presented in the foreseeable future.
 - (3) The total amount of losses caused by Dishonest Conduct by any one Covered Attorney or associated group of Covered Attorneys.
 - (4) The degree of hardship the Claimant has suffered by the loss.
- (e) The Claimant or Covered Attorney may request a reconsideration of the denial or approval of an award. Such request for a reconsideration shall be made in writing and shall be received by the Fund within 30 days of the date of the notification of the Board's denial or approval of an award. If the Claimant or Covered Attorney fails to make such a request, or the request is denied, the decision of the Board is final and there is no further right of appeal.
- (f) Conditions. In addition to such other conditions and requirements as it may impose, the Board shall:
- (1) require each Claimant, as a condition of payment, to execute such instruments, to take such action, and to enter into any agreements, including assignments of claims and subrogation agreements, as may be feasible in order to maximize the possibility that the Fund will be appropriately reimbursed for payments made from it. Amounts recovered pursuant to any such arrangements shall be paid to the Fund;
 - (2) require each Claimant, as a condition of payment, to file a formal complaint with the Disciplinary Board of the Supreme Court of Pennsylvania against the Covered Attorney and to cooperate in the fullest with the Disciplinary Board or other authorities in connection with other investigations of the alleged Dishonest Conduct; and
 - (3) require a Claimant who has commenced an action to recover unreimbursed losses against the Covered Attorney, or another entity or third party who may be liable for the Claimant's loss, to notify the Board of such action.

REINSTATEMENT

Rule 531. Restitution a Condition for Reinstatement

The Board shall file with the Supreme Court a list containing the names of all formerly admitted attorneys with respect to the Dishonest Conduct of which the Board has made unrecovered disbursements from the Fund. No person will be reinstated by the Supreme Court under Rule 218 (relating to reinstatement), Rule 219 (relating to annual registration of attorneys), Rule 301(h) (relating to proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated), Pennsylvania Rules for Continuing Legal Education, Rule 111(b) (relating to noncompliance with continuing legal education rules) or who has been suspended from the practice of law for any period of time, including, but not limited to suspensions under Rule 208(f) (relating to emergency temporary suspension) and 219(f) (relating to administrative suspension) until the Fund has been repaid in full, plus 10% per annum interest, for all disbursements made from the Fund with respect to the Dishonest Conduct of such person.

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