

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 214

Adding Part V of the
Alaska Bar Rules--Client
Security Fund.

IT IS ORDERED:

The Alaska Bar Rules are amended by adding Part V, Client Security Fund, consisting of Rules 45 through 60, inclusive, to read as follows:

PART V CLIENT SECURITY FUND

Rule 45. Definitions.

- (a) The "Board" is the Board of Governors of the Alaska Bar Association.
- (b) The "Fund" is the Client Security Fund of the Alaska Bar Association.
- (c) The "Committee" is the Client Security Fund Committee.
- (d) The term "lawyer" as used in this part and the rules contained therein means an active member of the Alaska Bar Association domiciled in Alaska at the time of the act or omission which is the basis of the application of the fund. The act or omission complained of need not have taken place within the State of Alaska in order for an application to the fund to be made or granted.
- (e) The words "dishonest conduct" or "dishonest act" as used herein means wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.
- (f) "Reimbursable Losses" are only those losses of money, property or other things of value which meet all of the following tests:
 - (1) The loss was caused by the dishonest conduct of a lawyer when
 - (i) acting as a lawyer, or
 - (ii) acting in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or

- (iii) acting as an escrow holder or other fiduciary, having been designated as such by a client in the matter in which the loss arose or having been so appointed or selected as a result of the client-attorney relationship.
- (2) The loss was that of money, property, or other things of value which came into the hands of the lawyer by reason of having acted in the capacity described in paragraph (f)(1) of this rule.
- (3) The dishonest conduct occurred on or after the effective date of this part.
- (4) The following shall not be an applicant:
 - (i) The spouse or other close relative, partner, associate or employee of the lawyer, or
 - (ii) An insurer, surety or bonding agency or company or
 - (iii) Any business entity controlled by (1) the lawyer, (2) any person described in paragraph (i) hereof, or (3) any entity described either in paragraph (ii) hereof or in turn controlled by the lawyer or a person or entity described in paragraphs (i) or (ii) hereof, or
 - (iv) A governmental entity or agency.
- (5) The loss, or reimbursable portion thereof was not covered by any insurance or by any fidelity or surety bond fund, whether of the lawyer or the applicant or otherwise.
- (6) Either
 - (i) the lawyer
 - (aa) has died or has been adjudicated mentally incompetent;
 - (bb) has been disciplined, or has voluntarily resigned from the practice of law in Alaska;
 - (cc) has become a judgment debtor of the applicant or has been adjudicated guilty of a crime which judgment or judgments shall have been predicated upon dishonest conduct while acting as specified in paragraph (f)(1) of this rule and which

judgment or judgments remain unsatisfied in whole or in part; or

(ii) the Board has determined it to be an appropriate case for consideration under these rules.

Rule 46. Applications for Reimbursement.

(a) The Board shall prepare a form of application for reimbursement; in its discretion the Board may waive the requirement that a claim be filed on such form.

(b) The form shall be executed under penalty of perjury and shall require, as minimum information:

- (1) The name and address of the lawyer.
- (2) The amount of the alleged loss.
- (3) The date or period of time during which the alleged loss was incurred.
- (4) The date upon which the alleged loss was discovered.
- (5) Name and address of the applicant.
- (6) The general statement of facts relative to the application.
- (7) A statement that the applicant has read these rules and agrees to be bound by them.
- (8) A statement that the loss was not covered by any insurance, indemnity or bond, or if so covered, the name and address of the insurance or bonding company, if known, and the extent of such coverage and the amount of payment, if any, made.

(c) The form or application shall contain the following statement in bold type:

"THE ALASKA BAR ASSOCIATION HAS NO LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS. PAYMENTS FROM THE CLIENT SECURITY FUND SHALL BE MADE IN THE SOLE DISCRETION OF THE ALASKA BAR ASSOCIATION."

Rule 47. Filing of Applications and Preliminary Consideration.

(a) An application for reimbursement shall be filed with the Anchorage office of the Alaska Bar Association and shall forthwith be transmitted by such office to the Chairman of the Committee with a copy being simultaneously transmitted to each member of the Board. The Executive Director of the Alaska Bar Association shall designate a State Bar staff attorney or attorneys or a member of the Committee to assist the Committee and the Board in their consideration thereof.

(b) Whenever the attorney designated pursuant to Rule 48(a) reports that in his opinion a prima facie case for reimbursement loss is not shown, such report shall be transmitted to the Committee and if approved by a majority of the committee, constitutes rejection of the application. Any such report shall state the reasons for the opinion and may rely on information outside the application, including further information from the applicant, provided that such information is identified in the report.

(c) In all other cases the attorney designated pursuant to Rule 48(a) shall refer the application to the Committee.

Rule 48. The Committee.

(a) The Board of Governors shall appoint a committee of five members. The term of office of each member shall be three years or for such lesser period as the Board of Governors shall determine. Meeting of and hearings conducted by said Committee may be held at such place and at such time as may be fixed by the committee. The Committee shall review all reports filed by the attorney designated pursuant to Rule 48(a) and shall perform such other functions as provided in these rules or requested by the Board.

(b) A quorum at any meeting of the Committee shall be three members. No action shall be taken by the Committee in the absence of a quorum; but at any such meeting any matter may be considered by the members present without the taking of any action with respect thereto.

(c) The chairman of the Committee shall be elected by the majority vote of the Committee at a meeting called for that purpose by the President of the Alaska Bar Association or by the Chairman of the Committee. The term of the Chairman shall extend until the next annual meeting of the Committee and until his successor is elected and qualified. Should a vacancy occur in the office of the Chairman, such vacancy shall be filled by like vote of the members of the Committee meeting next following the occurrence of the vacancy.

Rule 49. Authority of Committee and Board.

Upon consideration of applications for reimbursement the Board, or the Committee may:

- (a) Take and hear evidence pertaining to the application.
- (b) Administer oaths and affirmations.
- (c) Compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the application.
- (d) Upon application to and approval by the Executive Director, the Committee may engage the services of an investigator, accountant or other expert necessary to investigate and process the application.

Rule 50. Evidence and Burden of Proof.

The proceedings had upon the applications need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions; provided, however, that certified or duly authenticated copies of the record, including a transcript of testimony therein, of

(a) any disciplinary proceeding against the lawyer of which he had notice conducted by the Alaska Bar Association or any body authorized to conduct disciplinary proceedings against attorneys in any state or the District of Columbia.

(b) any proceeding conducted pursuant to Rules 16, 28, 29, Alaska Bar Rules.

(c) any proceeding resulting in the conviction of the lawyer of a crime, or

(d) any contested civil action or special proceeding to which a lawyer is a party or in whose behalf the action is prosecuted or defended, may constitute sufficient evidence to support a finding. The applicant bears the burden of proof upon the issues of reimbursable loss and the extent thereof and all facts shall be established by a preponderance of the evidence.

Rule 51. When Testimony is to be Reported and Transcribed.

The testimony of all witnesses appearing before the Committee or the Board shall be recorded; but a transcript of said testimony shall not be prepared unless (1) the Committee recommends that an application be approved in which case an original and two copies of the transcript shall accompany said Committee report filed pursuant to Rule 52(b), or (2) ordered by the Board or its Chairman.

Rule 52. Consideration by Committee.

(a) Upon receipt of an application the Committee shall conduct such investigations and hold such hearings as it determines necessary to establish whether the application should be granted.

(b) All reports filed by the attorney selected pursuant to Rule 48(a) are advisory only and shall be placed upon the calendar of the Committee for consideration. Written notice that the report has been placed upon the said calendar and a copy of said report shall be sent by the attorney selected pursuant to Rule 48(a) to to the lawyer or his personal representative, guardian or conservator. The notice shall be mailed at least twenty days prior to the meeting at which the Committee will consider the application.

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(c) Before the Committee recommends to the Board that any payment be made from the Fund with respect to any application, the lawyer or his personal representative, guardian or conservator shall be given the opportunity to file a written statement with the Committee in support of or in opposition to the report of the attorney selected pursuant to Rule 48(a) or an application for the presentation of additional evidence which statement or application must be filed within ten days after mailing of the notice and report.

(d) At the conclusion of the Committee's consideration of an application pursuant to this Rule, it shall promptly make and transmit to the Anchorage office of the Alaska Bar Association a report consisting of a brief statement of the proceedings had, clear and concise findings of fact adopted by the Committee following said consideration, a brief statement of its conclusions based thereon and such recommendation to the Board as the Committee determines to be warranted thereby.

Rule 53. Consideration by the Board.

(a) All reports filed by the Committee pursuant to Rule 52(d) are advisory only and shall be placed upon the calendar of the Board for consideration.

(b) The Board has the sole and final authority to determine whether and to what extent any application for reimbursement shall be granted and shall determine the order, manner (which may be in installments), and amount of payment of each application. The Board may postpone consideration of any application until after any disciplinary action or any court proceeding pending or contemplated has been completed.

(c) Before the Board directs that payment from the Fund be made it must find that a reimbursable loss as defined in these rules has been established and the extent of the said loss.

(d) The loss to be paid to any individual claimant as the result of any dishonest act or omission in any one transaction, matter or proceeding involving any one lawyer shall not exceed the lesser

of the following sums: (a) \$10,000, or (b) 10% of the Fund at the time the award is made. The total amount to be paid to all claimants in any one year shall not exceed 50% of the total amount of the Fund as of January 1 of the calendar year in which the awards are made.

Rule 54. Payments at Discretion of State Bar.

All payments from the Fund shall be a matter of grace and not of right and shall be in the sole discretion of the Alaska Bar Association. No client or member of the public shall have any right in the Fund as a third party beneficiary or otherwise.

Rule 55. Assignment of Applicant's Rights and Subrogation.

Payments on approved applications shall be made from the Fund only upon condition that the Alaska Bar Association receives, in consideration for any payment from the Fund, a pro tanto assignment from the applicant of the applicant's right against the lawyer involved, or his personal representative, his estate or assigns. The collection of the aforementioned assignments shall be handled by the Executive Director of the Alaska Bar Association or a staff attorney thereof, under the supervision of the Board of Governors or in such other manner as may from time to time be directed by the Board of Governors. In order to effect collection of said assignment, the Executive Director or other attorney prosecuting the collection, may disclose such information concerning the application and the consideration thereof by the Alaska Bar Association as in his discretion is necessary; provided, however, that without prior approval of the Board of Governors, the Executive Director shall not disclose information which refers to the existence of any non-public disciplinary matter or proceeding. Upon commencement of an action by the Alaska Bar Association, pursuant to its subrogation rights, it shall give written notice thereof to the reimbursed applicant at his last known address. The reimbursed applicant may then join in such action to press a claim for his loss in excess of the amount of the above reimbursement, but any recovery shall first be applied to offset the reimbursement.

Rule 56. Applicant May Be Advised.

The applicant may be advised of the status of the Alaska Bar Association's consideration of his application and shall be advised of the final determination of the Alaska Bar Association upon the same. In written communications to the applicant the lawyer's name shall not appear unless and until the Board has directed that a payment be made to the applicant from the Fund.

Rule 57. Rejection of the Application; Finality.

The applicant may apply to the Board for further consideration of the application within one month after the mailing of the notice of rejection by the Committee; otherwise such rejection is final and no further consideration shall be given by the Alaska Bar Association to said application or another based upon the same alleged facts.

Rule 58. Confidential Nature of Proceeding and Records.

(a) The Committee and the Board, during consideration of an application, may have access to Alaska Bar Association disciplinary files and records, if any, pertaining to the alleged loss notwithstanding the provisions of Rule 31, Alaska Bar Rules. Any information or documents obtained by the Board or the Committee from said files or records shall be used solely for the purpose of determining the validity of the application, but otherwise shall constitute confidential information as provided in Rule 31.

(b) The files and records pertaining to all applications for reimbursement from the Fund and all investigations or proceedings conducted in connection therewith are the property of the Alaska Bar Association and are confidential and no information concerning them and the matters to which they relate shall be given to any persons except upon order of the Board of Governors or as in these rules provided.

(c) Unless otherwise ordered by the Board, the proceeding conducted before the Committee and the Board shall not be public.

Rule 59. Other Rules.

Except where otherwise specifically provided in this part, Rules 15 and 18 shall be applicable to this part; and in such cases the reference to "disciplinary proceedings" shall encompass client security fund proceedings, and the reference to "members of hearing committees" shall apply to the Client Security Fund Committee.

Rule 60. General Provisions.

(a) With the exception of reports of the Committee to the Alaska Bar Association, no publicity shall be given to the Rules of Procedure, to applications for reimbursement, payments made to the Board, or to any action of the Committee, without the expressed prior approval of the Board of Governors of the Alaska Bar Association.

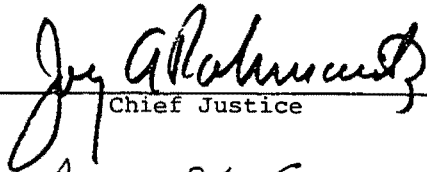
(b) These rules may be changed at any time by a majority vote of the Committee at a duly held meeting at which a quorum is present, subject, however, to the approval of a majority vote of the Board of Governors of the Alaska Bar Association and the adoption of the change by the Supreme Court of the State of Alaska.


DATED: May 23, 1975 .

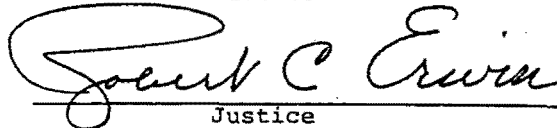
EFFECTIVE DATE: January 1, 1976 .

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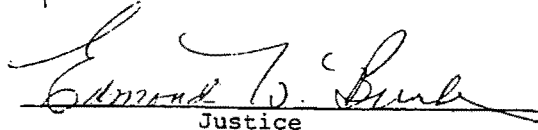
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Justice


Justice


Justice


Justice