

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 722

Amendments to Alaska Bar
Rules, Part V, Relating
to the Client Security
Fund, including changes
to Rules 45, 48, 51, 52,
53, 58, 59, 60.

IT IS ORDERED:

1. Bar Rule 45 is amended to read as follows:

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 claim shall have been filed no later than three years after the claimant knew or should have known of the dishonest conduct of the lawyer.

(5) 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.

(v) A collection agency.

(6) 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.

(7) 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.

(8) Reimbursable losses do not include interest on such losses or attorney fees incurred in attempts to recover them.

2. Rule 48 is amended to read as follows:

The Committee.

(a) The Committee shall consist of six members of the Alaska Bar Association, appointed by the President, subject to ratification by the Board. The terms of all persons who are members of the Committee on January 1, 1980 shall expire on June 30, 1980, and the terms of all succeeding members of the Committee shall commence on July 1, 1980. On that date, the appointment of two members shall be for a one year term, the appointment of two members shall be for a two year term, and the appointment of two members shall be for a three year term. Thereafter, each appointment shall be for a three year term.

(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 Chairperson of the Committee shall be appointed by the President for a term of one year commencing July 1 and

thereafter may serve in that office until his or her successor is appointed. The Chairperson may be reappointed as Chairperson. Should a vacancy occur in the office of the Chairperson, the President shall appoint a new Chairperson.

(d) A member of the Committee who has or has had a lawyer-client relationship or 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.

3. Rule 51 is amended to read as follows:

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 47(b), or (2) ordered by the Board or its Chairman.

4. Rule 52 is amended to read as follows:

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. Hearings will be conducted informally. Both the applicant and the lawyer shall be afforded opportunities to present argument and evidence, and to cross-examine opposing witnesses. The Committee may request the attorney selected pursuant to Rule 47(a) to present argument and evidence, if the Committee believes this will assist it in reaching its decision.

(b) The Committee may delegate responsibility for holding a hearing to a subcommittee of one or more of its members. The subcommittee shall prepare a proposed report containing the information required by Rule 52(d), which shall be promptly

considered by the Committee. The Committee shall (1) approve and adopt the proposed report, or (2) remand the proposed report to the same or a different subcommittee for the taking of further evidence or for preparation of a new proposed report, or (3) consider the matter de novo on the basis of the record made at hearing.

(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 or her personal representative, guardian or conservator shall be given the opportunity to file (1) a written statement with the Committee in support of or in opposition to the report of the attorney selected pursuant to Rule 47(a), or (2) an application for the presentation of additional evidence. The 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.

5. Rule 53 is amended to read as follows:

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 aggregate maximum amount which all claimants may recover arising from an instance or course of dishonest conduct of any one lawyer is \$50,000. 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.

6. Rule 58 is amended to read as follows:

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 22(b), 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 22(b).

(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.

7. Rule 59 is amended to read as follows:

Other Rules.

Except where otherwise specifically provided in this part, Rules 14 and 17 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.

8. Rule 60 is amended to read as follows:

General Provisions.

(a) Discipline Counsel shall refer potential claimants to the Client Security Fund at the completion of discipline proceedings when appropriate. Copies of the Client Security Fund Rules and any pamphlet which describes the Fund and procedures involved in filing a claim may be made available to the public.

(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.

EFFECTIVE DATE: December 15, 1986

DATED: July 10, 1986


CHIEF JUSTICE RABINOWITZ


JUSTICE WARREN MATTHEWS


JUSTICE EDMOND BURKE


JUSTICE ALLEN COMPTON


JUSTICE DANIEL MOORE