

January 1960

## Rules of Procedure of the Lawyers' Fidelity Fund Committee of the Colorado Bar Association

Dicta Editorial Board

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### Recommended Citation

Rules of Procedure of the Lawyers' Fidelity Fund Committee of the Colorado Bar Association, 37 Dicta 390 (1960).

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# RULES OF PROCEDURE OF THE LAWYERS' FIDELITY FUND COMMITTEE OF THE COLORADO BAR ASSOCIATION

## I. STATEMENT OF PURPOSES

The purposes of the Lawyers' Fidelity Fund are:

A. To furnish a means of protecting the reputation of lawyers in general from the consequences of dishonest acts of a very few.

B. To furnish a means of reimbursement to clients for financial losses occasioned by dishonest acts of lawyers:

- (1) To the extent that the Fund is capable of making reimbursement; and
- (2) If in the opinion of the Committee the client is entitled to reimbursement.

In establishing the Lawyers' Fidelity Fund the Colorado Bar Association did not create, nor acknowledge, any legal responsibility for the acts of individual lawyers in their practice of law. Therefore, all reimbursements of losses by the Lawyers' Fidelity Fund shall be made solely at the discretion of the Committee and not as a matter of legal right capable of enforcement by any claimant.

## II. RULES OF PROCEDURE

### *Definitions*

For the purpose of these rules of procedure, the following definitions shall apply:

- (1) The "Committee" shall mean the Lawyers' Fidelity Fund Committee.
- (2) The "Fund" shall mean the Lawyers' Fidelity Fund.
- (3) "Lawyers" shall include only those lawyers admitted to practice law within the State of Colorado, domiciled and actively practicing law within said State.
- (4) "Reimbursable Losses" shall include only those losses of money or other property of clients of lawyers which meet the following tests:
  - (a) That the loss shall have been caused by the dishonest act of a lawyer.
  - (b) That the lawyer shall have died, been adjudged mentally ill, been disbarred or suspended from practice.
  - (c) That the dishonest act shall have been committed within the State of Colorado, or as a part of a contract of employment, the major portion of which was to be performed within said state.

The following shall be excluded from "Reimbursable Losses":

- (a) Losses of wives and other close relatives, partners, servants and employees of lawyers; and
- (b) Losses the proof of which, either as to factual existence

or as to amount, is dependent upon inventory computation or profit and loss computation.

- (5) "Dishonest Acts" shall mean wrongful acts committed by lawyers against clients in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of property of such clients, or the failure to remit moneys or property when due such clients.

### III. MANNER OF MAKING APPLICATION FOR REIMBURSEMENT

Applications to the Fund for reimbursement for loss suffered by clients as the result of dishonest acts of lawyers shall be in writing and shall be addressed and delivered to the Chairman of the Committee. Said applications shall be in such form as the applicant may deem suitable for presenting the facts of his case, but shall contain the following minimum information:

- A. The name of the "Lawyer."
- B. The amount of the "Reimbursable Loss"; and
- C. The date or period of time during which the loss was incurred, together with a sufficient statement of facts to show that the loss is in fact a "Reimbursable Loss" as hereinbefore defined.

All applications shall be supported by submission of such documentary evidence as may be available and shall be signed by the applicant.

### IV. PROCESSING AND ALLOWANCE OF APPLICATIONS

Applications submitted to the Committee shall be referred by the Chairman to any member or members of the Colorado Bar Association for investigation and recommendations as to the validity of the claim included in the application. Such members shall be reimbursed for reasonable out-of-pocket expenses incurred by them in making such investigations.

The reports of investigation and the recommendations thus made shall be submitted to the Committee as a whole. The Committee, during the month of December of each calendar year, in its sole discretion shall determine the amount of loss for which any client shall be reimbursed and in making such determination the Committee shall consider, *inter alia*, the following.

- (1) The negligence, if any, of the client which contributed to the loss,
- (2) The comparative hardship the client has suffered by the loss,
- (3) The total amount of applications for reimbursement which has been submitted by the clients of any one lawyer or association of lawyers, and
- (4) The total amount of applications for reimbursement which has been processed by the Committee during said calendar year, with due regard to the total assets of the fund, provided, however, that no claim filed after November 31, shall be payable out of funds available for that calendar year, but may be considered by the Committee during the succeeding calendar year.

(5) No reimbursement shall be made to any client unless approved by a majority of the Committee.

#### V. SUBROGATION FOR REIMBURSEMENTS MADE

In the event reimbursement is made to a client, the Fund shall be subrogated in said amount and may bring such action as it deems advisable against the lawyer, his assets or his estate, either in the name of the client or in the name of the Colorado Bar Association. The client shall be required to execute a subrogation agreement in said regard.

The client shall be entitled to bring an action for recovery of losses directly against the lawyer, his assets or his estate if the Committee has not done so within six month of execution of the subrogation agreement. Any amounts recovered from the lawyer, either by the Committee or the client, in excess of the amount to which the fund is subrogated, less the Committee's actual costs of such recovery, shall be paid to or retained by the client as the case may be.

#### VI. MEETINGS OF THE COMMITTEES

The Committee shall meet from time to time upon call of the Chairman, provided that the Chairman shall call a meeting at any reasonable time at the request of at least two members of the Committee.

#### VII. GENERAL PROVISIONS

No publicity shall be given to the rules of procedure, to applications for reimbursement, payments made by the Committee or to any action of the Committee without the express prior approval of the Board of Governors of the Colorado Bar Association.

These rules may be changed at any time by a majority vote of the Committee if said changes are approved by the Board of Governors of the Colorado Bar Association.

These rules have been adopted subject to the approval of the Board of Governors of the Colorado Bar Association this 10th day of September, 1960.

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