

1 **Rule 14-910. Eligible claim.**

2 (a) The loss must be caused by the dishonest conduct of the lawyer or the
3 licensed paralegal practitioner and shall have arisen out of the course of a
4 lawyer/client, licensed paralegal practitioner/client, or fiduciary relationship
5 between the lawyer or the licensed paralegal practitioner and the claimant and
6 by reason of that relationship.

7 (b) The claim for reimbursement shall be filed within one year after the date
8 of the final order of discipline.

9 (b)(1) In cases of the lawyer's or licensed paralegal practitioner's death, the
10 claim for reimbursement shall be filed within one year of the lawyer's or
11 licensed paralegal practitioner's date of death.

12 (b)(2) In cases of the lawyer's or licensed paralegal practitioner's formal
13 disability, the claim for reimbursement shall be filed within one year of the date
14 of the order of disability.

15 (c) If the subject of the application for reimbursement from the Fund is or
16 arises out of loss occasioned by a loan or an investment transaction with a
17 lawyer or licensed paralegal practitioner, each loss will not be considered
18 reimbursable from the Fund unless it arose out of and in the course of the
19 attorney/client relationship or licensed paralegal practitioner/client relationship;
20 and but for the fact that the dishonest lawyer or licensed paralegal practitioner
21 enjoyed an attorney/client or licensed paralegal practitioner/client relationship
22 with the claimant, such loss could not have occurred. In considering whether
23 that standard has been met the following factors will be considered:

24 (c)(1) the disparity in bargaining power between the lawyer or the licensed
25 paralegal practitioner and the client in their respective educational
26 backgrounds in business sophistication;

27 | (c)(2) the extent to which the lawyer's or the licensed paralegal
28 | practitioner's status overcame the normal prudence of the claimant;

29 | (c)(3) the extent to which the lawyer or licensed paralegal practitioner, by
30 | virtue of the attorney/client or licensed paralegal practitioner/client relationship
31 | with the claimant, became privy to information as to the client's financial
32 | affairs. It is significant if the lawyer or licensed paralegal practitioner knew of
33 | the fact that the client had available assets or was expecting to receive assets
34 | which were ultimately wrongfully converted by the lawyer or licensed paralegal
35 | practitioner;

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

39 | (c)(4)(A) whether the transaction originated with the lawyer or licensed
40 | paralegal practitioner;

41 | (c)(4)(B) the reputation of the lawyer or licensed paralegal practitioner as to
42 | scope and nature of his/her practice and/or business involvement;

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

45 | (c)(4)(D) the number of prior transactions of either a similar or different
46 | nature in which the client participated, either with the lawyer or licensed
47 | paralegal practitioner involved or any other lawyer, licensed paralegal
48 | practitioner, person or business organization;

49 | (c)(5) the extent to which the lawyer or licensed paralegal practitioner failed
50 | to make full disclosure to the client in compliance with the Utah Rules of
51 | Professional Conduct, including disclosure of the lawyer's or licensed

52 | paralegal practitioner's financial condition and his/her intended use of the
53 funds.

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

56 (d)(1) loss incurred by spouses, children, parents, grandparents, siblings,
57 | partners and associates of the lawyer or licensed paralegal practitioner;

58 (d)(2) losses covered by any bond, surety, agreement or insurance
59 contract to the extent covered thereby, including any loss to which any
60 bonding agent, surety or insurer is subrogated to the extent of that subrogated
61 interest;

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

65 | (d)(4) any business entity controlled by the lawyer, licensed paralegal
66 practitioner or any person or entity described in paragraph (d)(1);

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

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

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

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

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

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

76 (d)(8)(C) any investment in or loan to an entity that claims that a benefit to
77 the investor would be the evasion, avoidance, reduction or other sheltering of
78 taxes that would be otherwise assessed on the investment; or

79 (d)(8)(D) any investment that promises such a high rate of return that a
80 reasonable and prudent person would suspect that the venture is of unusually
81 high risk.

82 (e) In cases of extreme hardship or special and unusual circumstances, the
83 Committee may, in its discretion, recognize a claim which would otherwise be
84 excluded under these rules.

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