

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

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

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

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

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

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

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

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

28 (c)(3) the extent to which the lawyer or licensed paralegal practitioner, by virtue of
29 the attorney/client or licensed paralegal practitioner/client relationship with the claimant,

30 became privy to information as to the client's financial affairs. It is significant if the
31 lawyer or licensed paralegal practitioner knew of the fact that the client had available
32 assets or was expecting to receive assets which were ultimately wrongfully converted
33 by the lawyer or licensed paralegal practitioner;

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

37 (c)(4)(A) whether the transaction originated with the lawyer or licensed paralegal
38 practitioner;

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

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

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

47 (c)(5) the extent to which the lawyer or licensed paralegal practitioner failed to make
48 full disclosure to the client in compliance with the Utah Rules of Professional Conduct,
49 including disclosure of the lawyer's or licensed paralegal practitioner's financial
50 condition and his/her intended use of the funds.

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

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

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

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

60 (d)(4) any business entity controlled by the lawyer, licensed paralegal ~~or practitioner~~
61 or any person or entity described in paragraph (d)(1);

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

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

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

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

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

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

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

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

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