

**SECTION .1400 - RULES GOVERNING THE ADMINISTRATION OF THE CLIENT SECURITY FUND OF
THE NORTH CAROLINA STATE BAR**

27 NCAC 01D .1401 PURPOSE; DEFINITIONS

(a) The Client Security Fund of the North Carolina State Bar was established by the Supreme Court of North Carolina pursuant to an order dated August 29, 1984. The fund is a standing committee of the North Carolina State Bar Council pursuant to an order of the Supreme Court dated October 10, 1984, as amended. Its purpose is to reimburse, in whole or in part in appropriate cases and subject to the provisions and limitations of the Supreme Court's orders and these Rules, clients who have suffered financial loss as the result of dishonest conduct of lawyers engaged in the private practice of law in North Carolina, which conduct occurred on or after January 1, 1985.

(b) As used herein the following terms have the meaning indicated.

- (1) "Applicant" shall mean a person who has suffered a reimbursable loss because of the dishonest conduct of an attorney and has filed an application for reimbursement.
- (2) "Attorney" shall mean an attorney who, at the time of alleged dishonest conduct, was licensed to practice law by the North Carolina State Bar. The fact that the alleged dishonest conduct took place outside the state of North Carolina does not necessarily mean that the attorney was not engaged in the practice of law in North Carolina.
- (3) "Board" shall mean the Board of Trustees of the Client Security Fund.
- (4) "Council" shall mean the North Carolina State Bar Council.
- (5) "Dishonest conduct" shall mean wrongful acts committed by an attorney against an applicant in the nature of embezzlement from the applicant or the wrongful taking or conversion of monies or other property of the applicant, which monies or other property were entrusted to the attorney by the applicant by reason of an attorney-client relationship between the attorney and the applicant or by reason of a fiduciary relationship between the attorney and the applicant customary to the practice of law.
- (6) "Fund" shall mean the Client Security Fund of the North Carolina State Bar.
- (7) "Reimbursable losses" shall mean only those losses of money or other property which meet all of the following tests:
 - (A) the dishonest conduct which occasioned the loss occurred on or after January 1, 1985;
 - (B) the loss was caused by the dishonest conduct of an attorney acting either as an attorney for the applicant or in a fiduciary capacity for the benefit of the applicant customary to the private practice of law in the matter in which the loss arose;
 - (C) the applicant has exhausted all viable means to collect applicant's losses and has complied with these Rules.
- (8) The following shall not be deemed "reimbursable losses":
 - (A) losses of spouses, parents, grandparents, children and siblings (including foster and half relationships), partners, associates or employees of the attorney(s) causing the losses;
 - (B) losses covered by any bond, security agreement or insurance contract, to the extent covered thereby;
 - (C) losses incurred by any business entity with which the attorney or any person described in Part (b)(8)(A) of this Rule is an officer, director, shareholder, partner, joint venturer, promoter or employee;
 - (D) losses, reimbursement for which has been otherwise received from or paid by or on behalf of the attorney who committed the dishonest conduct;
 - (E) losses arising in investment transactions in which there was neither a contemporaneous attorney-client relationship between the attorney and the applicant nor a contemporaneous fiduciary relationship between the attorney and the applicant customary to the practice of law. By way of illustration but not limitation, for purposes of this Rule [Part (b)(8)(E) of this Rule], an attorney authorized or permitted by a person or entity other than the applicant as escrow or similar agent to hold funds deposited by the applicant for investment purposes shall not be deemed to have a fiduciary relationship with the applicant customary to the practice of law.
- (9) "State Bar" shall mean the North Carolina State Bar.
- (10) "Supreme Court" shall mean the North Carolina Supreme Court.
- (11) "Supreme Court orders" shall mean the orders of the Supreme Court dated August 29, 1984, and October 10, 1984, as amended, authorizing the establishment of the Client Security Fund of the North Carolina State Bar and approving the rules of procedure of the Fund.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;
Readopted Eff. December 8, 1994.*