What Keeps Me Up At Night: Relevant Rules

NCPO National Conference, September 2025

Judd Esty-Kendall

I. Maine Lawyer's Fund for Client Protection Rules

RULE 10. ELIGIBLE CLAIMS

(a) Claims to Be Considered. The Trustees will consider for reimbursement:

(1) **Claims for losses caused by the dishonest conduct of a member of the Maine Bar within the practice of his or her profession or acting as a fiduciary** who has resigned, died, been adjudged insane, been disbarred, suspended or otherwise disciplined, been convicted of embezzlement or misappropriation of money or other property of his or her client, or whose whereabouts is unknown;
(2) Claims certified to the Trustees by the Board of Overseers of the Bar for consideration pursuant to this Rule;
(3) Any other claims for losses due to the dishonest conduct of a member of the Maine Bar that the Trustees, in their discretion pursuant to subdivision (e) of this rule, deem appropriate for consideration in that such consideration will advance the purposes of the Fund.

(b) Time Limit. 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 but in no event later than ten years from the date of the dishonest conduct.

(c) Dishonest Conduct" Defined. As used in these Rules, "dishonest conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value.

(d) Exclusions. Except as provided by subdivision (e) of this rule, the following losses shall not be reimbursable:

(1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of the lawyer or lawyers causing the losses;
(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby;
(3) Losses to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;
(4) Losses incurred by any financial institution or insurance company;
(5) Losses incurred by any business entity controlled by the lawyer or by any person or entity described in paragraphs (1), (2), or (3) of this subdivision;
(6) Losses incurred by any governmental entity or agency;
(7) **Losses arising from the activities of a lawyer not having an office or residence in Maine, where those activities do not have substantial contacts with Maine.**

RULE 13. PAYMENT OF REIMBURSEMENT

(a) Maximum Payable. The maximum amount of reimbursement that is payable by the Fund shall be $50,000 per claim and $200,000 per lawyer.

RULE 14. REIMBURSEMENT FROM FUND IS A MATTER OF GRACE

Reimbursement from the Fund is a matter of grace. No person shall have the right to reimbursement from the Fund whether as claimant, third-party beneficiary or otherwise. The decisions and actions of the Board of Trustees are not reviewable on any ground in any court or other tribunal.

II. **Rules of The Supreme Court of New Hampshire Rule 55. Public Protection Fund**

(1) Purpose. The purposes of the Public Protection Fund are to provide a public service and to promote public confidence in the administration of justice and the integrity of the legal profession **by providing some measure of reimbursement to victims who have lost money or property caused by the defalcation of lawyers admitted to practice law in this jurisdiction occurring in New Hampshire and in the course of the client-lawyer or fiduciary relationship** between the lawyer and the claimant.

(4) Payments from the Fund. Payments from the fund will be made only after the lawyer in question has been suspended or disbarred from practice; has resigned while under disciplinary investigation; or if the lawyer has died or been judged mentally incompetent before the suspension, disbarment, or resignation proceedings have been commenced or concluded. As a condition of payment from the fund, the claimant shall execute a subrogation agreement in favor of the fund against the offending lawyer and the offending lawyer's law firm and against third parties to the extent of the amount recovered by claimant from the fund. Payments from the fund shall be made only after exhaustion of all available assets, insurance, and sureties of the offending lawyer and the offending lawyer's law firm. Payments from the fund shall be made only to victims who have lost money or property as the result of the defalcation of the lawyer, and no payments shall be made to any assignee, subrogee, or successor of such victim. The heirs or legatees of deceased victims may be eligible for payment from the fund. Except with respect to claims where the amount determined by the committee to be due the claimant is less than $2,500, **payments from the fund shall be made only at the end of each fund year**. Except with respect to claims where the amount determined by the committee to be due the claimant is less than $2,500, **payments from the fund with respect to an individual lawyer shall not be made until all claims have been finalized with respect to that lawyer**. **The maximum amount of reimbursement to all claimants against the fund in respect to all conduct of any one lawyer shall be $500,000 in the aggregate. In determining whether the maximum reimbursement described in the immediately preceding sentence (but not the sentence immediately following this sentence) has been reached, claims where the amount determined by the committee to be due the claimant is less than $2,500 shall be excluded from the calculation. The maximum amount of reimbursement to any one claimant, or all claimants, against the fund in any fund year as defined in paragraph (6) shall be $250,000 and $1,000,000, respectively, in the aggregate**. The maximum amount which may be paid on a claim shall be the dollar value of the money or property lost by lawyer defalcation and shall not include interest on the amount lost or money spent attempting to collect the loss. **If payable claims against a lawyer exceed $500,000, then all payable claims against that lawyer, except claims where the amount determined by the committee to be due the claimant is less than $2,500, shall be reduced in proportion to their relative value in order to reduce total**

payments as a result of that lawyer's conduct to $500,000. If payable claims in a single fund year exceed $1,000,000, then all payable claims for that fund year shall be reduced in proportion to their relative value in order to reduce total payments for that year to $1,000,000. That portion of payable claims excluded from payment by reason of the dollar limitations described in this section shall not be paid in any subsequent fund year.

III. ABA Model Rules for Lawyers' Funds for Client Protection - Rule 10

E. In determining whether it would be more appropriate for this Fund or another Fund to pay a claim, the Board should consider the following factors:

(1) the Fund(s) into which the lawyer is required to pay an annual assessment or into which an appropriation is made on behalf of the lawyer by the bar association;
(2) the domicile of the lawyer;
(3) the domicile of the client;
(4) the residence(s) of the lawyer;
(5) the number of years the lawyer has been licensed in each jurisdiction;
(6) the location of the lawyer's principal office and other offices;
(7) the location where the attorney-client relationship arose;
(8) the primary location where the legal services were rendered;
(9) whether at the time the legal services were rendered, the lawyer was engaged in the unauthorized practice of law as defined by the jurisdiction in which the legal services were rendered; and
(10) any other significant contacts.

F. The Board may enter into an agreement with the Fund of another jurisdiction to reimburse a portion of the loss suffered by a claimant whose claim may be eligible for payment under both Funds. The Board may take into consideration the other Fund's rules on payment of claims for reimbursement prior to entering into such an agreement.

ABA Model Rules for Lawyers' Funds for Client Protection – Comments to Rule 10

[8] Paragraph E sets forth factors to be considered by the Board when deciding whether this Fund, another jurisdiction's Fund, or both Funds should pay a claim where more than one Fund has jurisdiction over a lawyer. This situation might arise where a lawyer is licensed in two or more jurisdictions; a lawyer is licensed in only one jurisdiction and has engaged in the authorized multijurisdictional practice of law in another jurisdiction; or a lawyer is licensed in only one jurisdiction and has engaged in the unlicensed practice of law in another jurisdiction.

[9] Paragraph F recognizes that there may be situations where it is appropriate for the Board to enter into an agreement with the Fund of another jurisdiction to reimburse a portion of the loss suffered by a claimant whose claim may be eligible for payment under both Funds. However, since Funds have different maximum dollar amounts of reimbursement for individual losses, the Fund with a higher maximum amount should not be required in every case to contribute more than the other Fund, or to contribute the maximum amount. Such a requirement could result in an undue burden on the Fund. The Board may take into consideration the other Fund's rules and its own rules on payment of claims for reimbursement, as well as the factors in Paragraph (E), prior to entering into such an agreement.

Hypothetical/Fact Pattern

Attorney A is licensed in NH and Maine. A's office is in NH. A resides across the border in nearby Maine. A secured a large judgment for two elderly clients and is now fiduciary for the resulting investment account, managed through a NH bank. Both account owners live in NH. A embezzles $500,000 from the account, and both owners make claims for $250,000 to New Hampshire's Public Protection Fund.

NH has claim limits of $250,000 per claimant, $500,000 per attorney, and $1,000,000 per year for total claims.

Maine has claim limits of $50,000 per claimant and $200,000 per attorney

Additional overlay assumptions:

1. Assume NH has a total of $2M in payable claims for that fiscal year.

2. Assume that A also has a satellite office in his home in Maine.

3. Assume that A has been licensed in New Hampshire for 30 years, but only 10 in Maine.

4. Assume that one of the account owners lives in NH and one in Maine.

5. Assume that the two elderly clients initially retained A at a meeting at his satellite office in Maine.