

# RULES OF THE MINNESOTA CLIENT SECURITY BOARD

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July 1, 2020

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## I. RULES GOVERNING THE CLIENT SECURITY BOARD

### RULE 1.01 MEMBERSHIP OF THE BOARD

The Supreme Court shall appoint seven members to the Client Security Board. Five shall be lawyers actively practicing in the state, three of whom shall be nominees of

the Minnesota State Bar Association, and two shall be public members. The Board shall elect a Chair from its members.

#### RULE 1.02 TERMS OF OFFICE

Two members of the Board shall be appointed for one year, two members for two years and three members for three years, and thereafter appointments shall be for three-year terms. The terms of public members shall be staggered. Any vacancy on the Board shall be filled by appointment of the Supreme Court for the unexpired term. No member may serve more than two consecutive three-year terms, in addition to any additional shorter term for which the person was originally appointed.

#### RULE 1.03 REIMBURSEMENT

Members shall serve without compensation, but shall be paid their regular and necessary expenses.

#### RULE 1.04 MEETINGS

The Board shall meet at least annually, and at other times as scheduled by the Chair. A quorum shall consist of four members.

#### RULE 1.05 IMMUNITY

The Board and its staff are absolutely immune from civil liability for all acts in the course of their official duties.

#### RULE 1.06 DUTIES OF THE BOARD

The Board is authorized:

- a. To administer and operate the Minnesota Client Security Fund, pursuant to statutes, court rules and internal procedures;
- b. To make final determinations on disbursement from the Fund;
- c. To recommend to the Supreme Court limits for the amount payable per claim against the Fund, and for total reimbursement for claims arising from one lawyer's misconduct;
- d. To undertake investigation of claims, coordinating with the Office of Lawyers Professional Responsibility;
- e. To recommend to the Supreme Court means available to cover extraordinary losses in excess of the assets of the Fund;

- f. To annually establish an administrative budget which may be paid from the Fund;
- g. To enforce subrogation and lien rights of the Fund;
- h. To sue in the name of the Fund for restitution of payments made pursuant to claims;
- i. To cooperate in educational activities for theft prevention and risk management, and for remedial services for problem lawyers;
- j. To certify the financial condition of the Fund;
- k. To employ and compensate consultants, legal counsel and employees;
- l. To adopt internal rules of procedure not inconsistent with these rules, and make recommendations to the Supreme Court on rule changes.

#### RULE 1.07 CONFLICT OF INTEREST

- a. A member of the Board who has or had a lawyer-client relationship or financial relationship with a claimant or the lawyer subject to the claim shall not participate in the investigation or adjudication of the matter.
- b. A member of the Board who is a member or of counsel in the same law firm or company as the lawyer subject to the claim shall not participate in the matter.

#### RULE 1.08 DUTIES OF THE DIRECTOR

The Board may recommend to the Supreme Court a Director, who shall serve at the pleasure of the Court, to perform duties assigned to the Board, including but not limited to:

- a. Screening claims, coordinating investigations with the Lawyers Professional Responsibility Board, and presenting claims at Board hearings;
- b. Coordinating enforcement of liens, restitution and subrogation rights of the Fund;
- c. Maintaining records of the Board, suitable for audit of the Fund;
- d. Keeping current on legal and procedural developments of the client security funds in other states;

- e. Performing other duties as assigned by the Board.

## RULE 1.09 CONFIDENTIALITY

Claims, proceedings, records, and reports involving claims for reimbursement are confidential except as provided below.

a. After authorization of the reimbursement, the Board shall publicize the nature of the claim, the amount of reimbursement and the name of the lawyer. The name and the address of the claimant shall not be publicized by the Board unless specific permission has been granted by the claimant.

b. This Rule shall not be construed to deny access to relevant information by professional disciplinary, law enforcement, or client security agencies in furtherance of their duties. The Board may also use such relevant information as is necessary to pursue subrogation rights pursuant to Rule 3.17.

c. Statistical information such as the number of claims presented to the Board, the number and amount of claims paid, the restitution collected from each attorney, the subrogation lawsuits filed, and the amount in the Fund shall be public information.

## RULE 1.10 ANNUAL REPORT

At least once a year and at such other times as the Supreme Court may order, the Board shall file with the Court a written report reviewing in detail the administration of the Fund, its operation, its assets and liabilities.

## II. RULES GOVERNING THE FUND

### RULE 2.01 ESTABLISHMENT OF THE FUND

There is created a Minnesota Client Security Fund to aid those persons directly injured by the dishonest conduct of any lawyer during an attorney-client or fiduciary relationship.

### RULE 2.02 FINANCING

The Fund shall be financed from:

- a. Lawyer restitution and subrogation for claims paid;
- b. Gifts and contributions;
- c. Upon order of the Supreme Court, assessments of licensed lawyers.

RULE 2.03 ORDERING, REINSTATEMENT AND  
CANCELLATION OF ASSESSMENTS

The Supreme Court may order, reinstate or cancel the collection of assessments after review of the financial condition of the Fund certified by the Client Security Board in its annual report.

RULE 2.04 FAILURE TO PAY ASSESSMENT

Upon failure to pay the assessment when due, the lawyer's right to practice law in the state shall be automatically suspended.

RULE 2.05 DISBURSEMENTS FROM THE FUND

- a. Upon written authorization of the Board, claims may be paid from the Fund.
- b. The Board shall annually prepare an administrative budget to be approved by the Supreme Court, from which the Board may pay necessary expenses.
- c. The Fund shall be invested as provided by law.

**III. RULES GOVERNING THE CLAIM PROCESS**

RULE 3.01 CLAIMS PAYMENT DISCRETIONARY

Reimbursements of losses by the Board are discretionary, and not a matter of right. No person shall have a right in the Fund as a third party beneficiary or otherwise either before or after allowance of a claim.

RULE 3.02 FILING CLAIMS

The Board shall consider a claim filed on forms provided by the Board if:

- a. The claimant experienced a loss of money or property, excluding loss of profit, consequential damages, interest, and costs of recovery; and
- b. The loss of the claimant arose out of and during the course of a lawyer-client relationship of a matter in this state, or a fiduciary relationship between the lawyer and the claimant which arose out of a lawyer-client relationship in this state; and
- c. The loss was caused by the dishonest conduct of the lawyer and the claim was not based on negligence; and

d. There is no reasonably available collateral source for reimbursement to the claimant, such as insurance, surety, bond, or some other fund; and

e. Reasonable efforts have been made by the claimant to exhaust administrative and civil remedies; and

f. The lawyer was licensed to practice law in this state at the time of the misconduct or was licensed within three years prior to the misconduct; and

g. Less than three years have elapsed between the filing of the claim and the date the claimant knew or should have known of the dishonest conduct; and

h. The dishonest conduct occurred on or after January 1, 1964.

i. 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, including but not limited to:

(1) Refusal or failure to refund an advance fee when the lawyer performed no work whatever, or an insignificant portion of the services that he or she agreed to perform. All other instances of a lawyer failing to return an unearned fee or the disputed portion of a fee are outside the scope of the Fund.

(2) Obtaining money or property from a client representing that it was to be used for investment purposes when no such investment was made. The failure of an investment to perform as represented to, or anticipated by, the applicant is outside the scope of the Fund.

j. For purposes of these Rules, including but not limited to those acts set out in Rule 3.02(i), all payments made by the lawyer to the client following the dishonest conduct, however denominated by the lawyer, shall be treated as restitution of principal.

### RULE 3.03 PRIVILEGED COMPLAINTS

A claim filed pursuant to these Rules is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the claimant.

### RULE 3.04 SCREENING CLAIMS

The Chair shall designate a Board member or the Director to screen a claim and to advise the lawyer named in the claim that ~~he~~ the lawyer has 20 days to respond to the Board in writing. The lawyer shall receive a copy of the claim, by first class mail sent to the lawyer's last known address.

#### RULE 3.05 CLAIM INVESTIGATION

If a claim is sufficient, the Director shall promptly request the Office of Lawyers Professional Responsibility to furnish a report on any investigation matter.

#### RULE 3.06 RIGHTS OF LAWYER SUBJECT TO CLAIM

A lawyer subject to a claim shall be entitled to receive a copy of the claim, to respond to the claim in writing to the Board, and to request an evidentiary hearing as provided by Rule 3.12.

#### RULE 3.07 LAWYER COOPERATION

It shall be the duty of a lawyer subject to a claim to cooperate and comply with the reasonable requests of the Board and the Board's investigator by furnishing papers, documents or objects, providing a full written explanation, and appearing at conferences and hearings. The lawyer's failure to respond or cooperate may be reported to the Office of Lawyers Professional Responsibility for possible discipline under this rule.

#### RULE 3.08 SUBPOENA

With the approval of the Board Chair, the Director may subpoena and take testimony of any person believed to possess information concerning a claim.

#### RULE 3.09 JURISDICTION

The district court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the investigation of a claim.

#### RULE 3.10 ACTION AFTER INVESTIGATION

No later than 120 days from the date of the notification to the Office of Lawyers Professional Responsibility, whether or not the Director has received a report from the Lawyers Professional Responsibility Board, the Chair shall determine whether additional investigation should be conducted, a hearing should be held, or a determination may be immediately rendered.

#### RULE 3.11 PANELS



The Chair may divide the Board into panels, each consisting of not less than three Board members and at least one of whom is a nonlawyer, and shall designate a Chair for each panel. A panel may be assigned to consider a matter and make a recommendation to the entire Board, or may conduct a hearing under Rule 3.12 in lieu of a hearing before the entire Board.

#### RULE 3.12 REQUEST FOR HEARING

If the claimant or the lawyer subject to the claim requests an evidentiary hearing, the Chair may order such a hearing, defer the matter for further investigation or until any proceedings of the Lawyers Professional Responsibility Board have been completed, or deny the request.

#### RULE 3.13 HEARING

If an evidentiary hearing under Rule 3.12 is ordered, both the claimant and the lawyer and their representatives may appear. The hearing shall be recorded and preserved for five years.

#### RULE 3.14 DETERMINATION

- a. Payment of a claim from the Fund shall be made only on affirmative vote of four members.
- b. In determining the amount of any payment, the Board may consider:
  - (1) Monies available and likely to become available to the Fund for payment of claims;
  - (2) Size and number of claims presented and likely to be presented in the future;
  - (3) The amount of a claimant's loss compared with losses sustained by others;
  - (4) The comparative hardship suffered by a claimant because of a loss;
  - (5) The total amount of losses caused by the dishonest conduct of any one lawyer;
  - (6) The culpability or negligence of the claimant contributing to the loss;

(7) The extent to which there is a collateral source for reimbursement to the claimant;

(8) The effort made by the claimant to exhaust administrative and civil remedies;

(9) Other factors as appear to be just and proper.

c. The maximum amount that may be paid to any claimant for a single claim is \$150,000. In exceptional circumstances, the Board may allow a greater or lesser amount based on the factors set forth in subdivision (b) of this rule.

d. The Board may, in its discretion, award interest on any award at the rate of interest payable under Minnesota § 549.049 from the date of filing the claim. In determining the amount of interest, if any, the Board may consider:

(1) The length of time between filing the claim and its disposition;

(2) The existence of third-party litigation; and

(3) Other factors outside the control of the Board.

#### RULE 3.15 DENIAL

If the Board determines that the criteria of Rule 3.02 have not been met, the Board may deny the claim. The Board may authorize payment of that portion of a claim proved, although the entire amount of a claim is undetermined. The Board may defer payment of a claim in order to await completion of investigations of related claims, or for payment in subsequent fiscal years. The claimant and the lawyer shall be notified in writing of the Board's determination.

#### RULE 3.16 RECONSIDERATION

If a claim has been reduced or denied by the Board, a claimant may request reconsideration of the determination within 30 days by submitting a written request to the Board. A claimant may not seek reconsideration if the full claim is allowed but a lesser amount has been authorized for payment under Rule 3.14(b) or (c), or on the basis that the Board did not award interest under Rule 3.14(d).

#### RULE 3.17 SUBROGATION

A claim paid pursuant to these Rules shall be repaid to the Fund by the lawyer. The Board shall obtain a subrogation agreement from the claimant. The Board may

bring an action against the lawyer, the lawyer's assets, the lawyer's estate, the lawyer's law firm or partner(s) or any other person(s) or entities against which subrogation rights may be enforced, or may file liens against the property of the lawyer in the name of the Fund, in an amount equal to the sum paid the claimant plus the Board's attorney fees and costs. The claimant shall be notified of any action and may join in the action to press a claim for the loss in excess of the amount paid by the Fund, but the Fund shall have first priority to any recovery in the suit.

#### **RULE 3.18 NOTIFICATION OF CLAIM PAID**

- a. The Board shall advise the Office of Lawyers Professional Responsibility of any claim paid, the amount paid, and the name of the lawyer.
- b. Upon request of the lawyer, the Board may advise a lawyer admission or discipline authority of another jurisdiction the status of any file on the lawyer.

### **IV. RULE GOVERNING EDUCATION**

#### **RULE 4.01 EDUCATION**

The Board or the Director shall conduct research, analyze statistics, and categorize claims to determine whether there are methods and programs that would minimize lawyer misconduct resulting in claims against the Fund. The Board shall make recommendations to the Court of any such programs.