

Client Security Fund Rules

*(As approved by the Board of Governors through April 25, 2014)*

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**Section 1. Definitions.**

For the purpose of these Rules of Procedure, the following definitions shall apply:

- 1.1 “Administrator” means the OSB Executive Director or other person designated by the Executive Director to oversee the operations of the Client Security Fund.
- 1.2 “Bar” means the Oregon State Bar.
- 1.3 “Committee” means the Client Security Fund Committee.
- 1.4 “Fund” means the Client Security Fund.
- 1.5 “Lawyer” means one who, at the time of the act or acts complained of, was an active member of the Oregon State Bar and maintained an office for the practice of law in Oregon.
- 1.6 “Client” means the individual, partnership, corporation, or other entity who, at the time of the act or acts complained of, had an established attorney-client relationship with the lawyer.
- 1.7 “Claimant” means one who files a claim with the Fund.
- 1.8 “Dishonest conduct” means a lawyer’s willful act against a client’s interest by defalcation, by embezzlement, or by other wrongful taking.

**Section 2. Reimbursable Losses.**

A loss of money or other property of a lawyer’s client is eligible for reimbursement if:

- 2.1 The claim is made by the injured client or the client’s conservator, personal representative, guardian ad litem, trustee, or attorney in fact.
- 2.2 The loss was caused by the lawyer’s dishonest conduct.
  - 2.2.1 In a loss resulting from a lawyer’s refusal or failure to refund an unearned legal fee, “dishonest conduct” shall include (i) a lawyer’s misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee or (ii) a lawyer’s wrongful failure to maintain the advance payment in a lawyer trust account until earned.
  - 2.2.2 A lawyer’s failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.
  - 2.2.3 Reimbursement of a legal fee will be allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee’s judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.

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2.2.4 In the event that a client is provided equivalent legal services by another lawyer without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.

2.3 The loss was not covered by any similar fund in another state or jurisdiction, or by a bond, surety agreement or insurance contract, including losses to which any bonding agent, surety or insurer is subrogated.

2.4 The loss was not to a financial institution covered by a “banker’s blanket bond” or similar insurance or surety contract.

2.5 The loss arose from, and was because of:

2.5.1 an established lawyer-client relationship; or

2.5.2 the failure to account for money or property entrusted to the lawyer in connection with the lawyer’s practice of law or while acting as a fiduciary in a matter related to the lawyer’s practice of law.

2.6 As a result of the dishonest conduct, either:

2.6.1 The lawyer was found guilty of a crime;

2.6.2 A civil judgment was entered against the lawyer, or the lawyer’s estate, and that judgment remains unsatisfied; or

2.6.3 In the case of a claimed loss of \$5,000 or less, the lawyer was disbarred, suspended, or reprimanded in disciplinary proceedings, or the lawyer resigned from the Bar.

2.7 A good faith effort has been made by the claimant to collect the amount claimed, to no avail.

2.8 The claim was filed with the Bar within two years after the latest of the following: (a) the date of the lawyer’s conviction; or (b) in the case of a claim of loss of \$5,000.00 or less, the date of the lawyer’s disbarment, suspension, reprimand or resignation from the Bar; or (c) the date a judgment is obtained against the lawyer, or (d) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event shall any claim against the Fund be considered for reimbursement if it is submitted more than six (6) years after the date of the loss.

2.9 A claim approved by the Committee shall not include attorney’s fees, interest on a judgment, prejudgment interest, any reimbursement of expenses of a claimant in attempting to make a recovery or prevailing party costs authorized by statute, except that a claim may include the claimant’s actual expense incurred for court costs, as awarded by the court.

2.10 Members of the Bar are encouraged to assist claimants without charge in preparing and presenting a claim to the Fund. Nevertheless, a member of the Bar may contract with a claimant for a reasonable attorney fee, which contract must be disclosed to the Committee at the time the claim is filed or as soon thereafter as an attorney has been retained. The Committee may disapprove an attorney fee that it finds to be unreasonable. No attorney shall charge a fee in excess of the amount the Committee has determined to be reasonable, and the

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attorney fee shall be paid from, and not in addition to the award. In determining a reasonable fee, the Committee may refer to factors set out in ORS 20.075.

2.11 In cases of extreme hardship or special and unusual circumstances, the Committee may approve or recommend for payment a claim that would otherwise be denied due to noncompliance with one or more of these rules.

### **Section 3. Statement of Claim for Reimbursement.**

3.1 All claims for reimbursement must be submitted on the form prepared by the Bar.

3.2 The claim form shall require, as minimum information:

3.2.1 The name and address of the lawyer alleged to have engaged in “dishonest conduct.”

3.2.2 The amount of the alleged loss.

3.2.3 The date or period of time during which the alleged loss occurred.

3.2.4 A general statement of facts relative to the claim, including a statement regarding efforts to collect any judgment against the lawyer.

3.2.5 The name and address of the claimant and a verification of the claim by the claimant under oath.

3.2.6 The name of the attorney, if any who is assisting the claimant in presenting the claim to the Client Security Fund Committee.

3.3 The Statement of Claim shall contain substantially the following statement: ALL DECISIONS REGARDING PAYMENTS FROM THE CLIENT SECURITY FUND ARE DISCRETIONARY. Neither the Oregon State Bar nor the Client Security Fund are responsible for the acts of individual lawyers.

### **Section 4. Processing Statements of Claim.**

4.1 All statements of claim shall be submitted to Client Security Fund, Oregon State Bar, 16037 SW Upper Boones Ferry Rd., P. O. Box 1689, Tigard, Oregon 97281-1935.

4.2 The Administrator shall cause each statement of claim to be sent to a member of the Committee for investigation and report. Such member shall be reimbursed by the State Bar for reasonable out of pocket expenses incurred by said attorney in making such investigation. A copy of the statement of claim shall be sent by regular mail to the lawyer who is the subject of the claim at the lawyer’s last known address. Before transmitting a statement of claim for investigation, the Administrator may request of the claimant further information with respect to the claim.

4.3. A Committee member to whom a statement of claim is referred for investigation shall conduct such investigation as seems necessary and desirable to determine whether the claim is for a “reimbursable loss” and is otherwise in compliance with these rules in order to guide the Committee in determining the extent, if any, to which the claimant shall receive an award from the Fund.

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4.4 Reports with respect to claims shall be submitted by the Committee member to whom the claim is assigned for investigation to the Administrator within a reasonable time after the referral of the claim to that member. Reports submitted shall contain criteria for payment set by these rules and shall include the recommendation of the member for the payment of any amount on such claim from the Fund.

4.5 The Committee shall meet from time to time upon the call of the chairperson. At the request of at least two members of the Committee and with reasonable notice, the chairperson shall promptly call a meeting of the Committee.

4.6 At any meeting of the Committee, claims may be considered for which an investigation has been completed. In determining each claim, the Committee shall be considered the representative of the Board of Governors and, as such, shall be vested with the authority conferred by ORS 9.655.

4.7 Records of the Client Security Fund are public records within the meaning of the Public Records Law and meetings of the Committee are public meetings within the meaning of the Public Meetings Law. The claimant, the claimant's attorney, the lawyer or the lawyer's attorney may attend meetings and, at the discretion of the chair, present their respective positions on a claim.

4.8 No award shall be made to any claimant if the claim has not been submitted and reviewed pursuant to these rules. No award shall be made to any claimant unless approved by a majority of a quorum of the Committee.

4.9 The Committee shall determine the amount of loss, if any, for which any claimant shall receive an award from the Fund. The Committee may give final approval to an award of less than \$5,000 and shall submit regular reports to the Board reflecting all awards finally approved by the Committee since the last Board meeting.

4.10 The Committee's denial of a claim shall be final unless a claimant's written request for review by the Board of Governors is received by the Executive Director of the Bar within 20 days of the Committee's decision. The 20 days shall run from the date the Committee's decision is sent to the claimant by mail, exclusive of the date of mailing.

4.11. Claims for which the Committee finds an award should be for \$5,000 or more shall be submitted to the Board for approval, and decisions of the Committee which are reviewed by the Board shall be considered under the criteria stated in these rules. The Board shall approve or deny each claim presented to it for review, or it may refer a claim back to the Committee for further investigation prior to making a decision.

4.12 Awards from the Fund are discretionary. The Board may deny claims in whole or part for any reason. The Board may determine the order and payment of awards; may defer or pro-rate awards based on CSF funds available in any calendar year; and may allow a further award in any subsequent year to a claimant who received only partial payment of an award. In exercising its discretion, the Board shall be guided by the following objectives:

4.12.1 Timely and complete payment of approved awards;

4.12.2 Maintaining the integrity and stability of the Fund; and

4.12.3 Avoiding frequent or significant fluctuations in the member assessment.

4.13 A finding of “dishonest conduct” by the Committee or the Board shall be for the sole purpose of resolving a claim and shall not be construed to be a finding of misconduct for purposes of discipline or otherwise.

4.14 The Committee may recommend to the Board of Governors that information obtained by the Committee about a lawyer’s conduct be provided to the appropriate District Attorney or to the Oregon Department of Justice when, in the Committee’s opinion, a single serious act or a series of acts by the lawyer might constitute a violation of criminal law or of a civil fraud or consumer protection statute.

### **Section 5. Subrogation for Reimbursements Made.**

5.1.1 As a condition of receiving an award, a claimant shall be required to provide the Bar with a pro tanto transfer of the claimant’s rights against the lawyer, the lawyer’s legal representative, estate or assigns, and of the claimant’s rights against the person or entity who may be liable for the claimant’s loss.

5.1.2 Upon commencement of an action by the Bar as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant’s unreimbursed losses.

5.1.3 In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another person or entity who may be liable for the claimant’s loss, the claimant shall be required to notify the Bar of such action.

5.1.4 The claimant shall be required to agree to cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.

5.2 A claimant shall not release the lawyer from liability or impair the Bar’s assignment of judgment or subrogated interest without the prior approval of the Board of Governors.

5.3 The Administrator shall be responsible for collection of Fund receivables and shall have sole discretion to determine when such efforts would be futile. The Administrator may undertake collection efforts directly or may assign subrogated claims to a collection agency or outside counsel. The Administrator may authorize the expenditure of money from the Client Security Fund for reasonable costs and expenses of collection.

### **Section 6. General Provisions.**

6.1 These Rules may be changed at any time by a majority vote of a quorum of the Committee subject to approval by the Board of Governors of the Oregon State Bar. A quorum is a majority of the entire Committee membership.

6.2 No award from the Fund on any one claim shall exceed \$50,000.

6.3 A member of the Committee who has or has had a lawyer-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or review of a claim involving the claimant or lawyer.

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6.4 These Rules shall apply to all claims pending at the time of their enactment.

6.5 The Administrator shall prepare an annual report to the membership and may from time to time issue press releases or other public statements about the Fund and awards that have been made. The annual report and any press releases and other public statements shall include the name of the lawyer, the amount of the award, the general nature of the claim, the lawyer's status with the bar and whether any criminal action has been instituted against the lawyer for the conduct giving rise to the loss. If the claimant has previously initiated criminal or civil action against the lawyer, the press release or public statement may also include the claimant's name. The annual report, press release or other public statement may also include general information about the Fund, what claims are eligible for reimbursement, how the Fund is financed, and who to contact for information.