

OSB Client Security Fund

Introduction

The Oregon State Bar Client Security Fund was created in 1967 to help reimburse clients who lose money or property as a result of dishonest conduct by their lawyer. Oregon lawyers developed the program and fund it with a mandatory assessment paid by all active members of the Bar. The Fund is one way the Bar and its members compensate for the misdeeds of a few lawyers. Awards from the Client Security Fund are discretionary and are not a matter of right.

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Eligible Claims

The Client Security Fund will consider a monetary award to reimburse a client for money or property taken by an Oregon lawyer if:

- at the time of the loss, the lawyer was providing legal services to the client or acting as a fiduciary in connection with the lawyer's practice of law;
- the lawyer engaged in dishonest contact with regard to the client's funds;
- as a result of the dishonest conduct, the lawyer was found guilty of a crime; a civil judgment was obtained against the lawyer; or, if the loss is \$5,000 or less, the lawyer was disbarred, suspended, reprimanded or resigned from the bar;
- the claimant has made a reasonable attempt to recover the amount claimed without success, and
- the claim is filed with the bar within two years after the latest of: the lawyer's conviction, judgment date, or date of disbarment, suspension, reprimand or resignation; or the date the claimant knew or should have known of the loss. No claim will be considered if submitted more than six years after the loss.

Notwithstanding these rules, the Fund can waive the requirement for conviction, judgment or attempts to recover in situations of extreme hardship or special and unusual circumstances

Losses Not Covered

The following types of losses are not covered:

- losses that are the result of lawyer negligence or malpractice;
- losses from business or investment relationships between lawyer and client, including loans to the lawyer;
- damages resulting from the lawyer's dishonesty (other than the value of the lost money or property), ;

- Interest on the misappropriated money or property;
- attorney fees or costs incurred to obtain a judgment from the lawyer or otherwise attempt recovery of the misappropriated money or property;
- losses covered by an insurance or surety contract or bond.

Filing a Claim

Claims for reimbursement must be submitted on a notarized Application for Reimbursement. The form is available online. It can be completed online, but the completed application must be printed, signed and mailed to the Bar by the claimant, not a third party.

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Claims must be presented by the injured client or the client's legal successor (conservator, personal representative, guardian ad litem, trustee, or attorney in fact). **A third party who has paid the lawyer's fees may not make claim directly, but the client can who submits the claim can authorize reimbursement to the third party.**

Claimants do not need a lawyer to submit the claim; however, bar members are encouraged to assist claimants without charge in preparing or presenting claims. A claimant who would like assistance in presenting a claim may ask the bar to supply the name of a volunteer lawyer.

Claim Processing

Applications for Reimbursement are initially reviewed by the Fund administrator. If the application is complete and on its face appears to be eligible, it is assigned for investigation to a member of the CSF Committee, who makes a report with recommendations to the CSF Committee. The Committee may approve claims of less than \$5,000; if a claim of \$5,000 or more is recommended for payment, the CSF Committee forwards it to the OSB Board of Governors for final approval. Payments from the Client Security Fund are discretionary and are not a matter of right. If the Committee decides against reimbursement, the claimant may request review by the Board of Governors. The Board's decision on review is final.

Processing Time

Every effort is made to process each claim as quickly as possible. However, the thorough investigation and orderly processing of claims usually takes at least three months, but may take considerably longer, depending upon the nature of the investigation and the meeting schedules of the CSF Committee and the Board of Bar Governors. Delays are sometimes the result of pending legal or disciplinary proceedings.

Claimant Responsibilities

Claimants must provide all necessary information and documentation to prove that their claims are eligible for reimbursement. Claimants must show evidence of their efforts to recover the lost money or property from the lawyer and may be required to seek recovery from others who may be liable for the loss, such as a bonding or insurance company, a bank that honors a forged instrument, or the partners of the defalcating lawyer, before the CSF will consider the claim.

Other Options

The Client Security Fund was created for a specific purpose and does not cover all monetary disputes between lawyers and clients. The Fund does not cover losses due to a lawyer's negligence; it also does not resolve disputes over the reasonableness of a lawyer's fee. If a problem is not covered by the Fund, there may be other Oregon State Bar resources or programs that can help, including:

- Client Assistance Office (reviews all inquiries and complaints about lawyer conduct and refers them to Disciplinary Counsel's Office if appropriate; may be able to provide some assistance in minor disputes between clients and lawyers over file release and communication issues);
- Professional Liability Fund (malpractice insurance carrier for Oregon lawyers) ;
- Fee Arbitration Program (voluntary program for resolving fee disputes between lawyer and client);
- Lawyer Referral Service (referrals to lawyers in private practice).

Frequently Asked Questions

How is the Fund financed?

The Fund is financed by a mandatory annual assessment of all active Oregon lawyers. No tax dollars and no part of the bar's general fund are used. The nature of the Fund demonstrates the genuine desire of Oregon lawyers to maintain the reputation and integrity of the legal profession by compensating clients for the dishonest actions of a few of its members.

How can I prove my loss?

The best way to prove a loss is to provide copies of (1) cancelled checks or receipts showing payment of fees or receipt of other money by the lawyer on the client's behalf, (2) a written fee agreement, (3) correspondence with the lawyer or any other papers showing how much money the lawyer received and, (4) in cases involving unearned fees, documents reflecting what work was done (or not done) by the lawyer. Any other documents that reflect the lawyer's disposition of the client funds is also helpful.

How much can I recover?

The amount of an award from the Client Security Fund will depend on the type and amount of the loss. No reimbursement will exceed the amount of fees actually paid or money actually received by the lawyer on the client's behalf. The maximum award for any claim is \$50,000.

Does the Fund seek to recover payments made?

In exchange for a reimbursement award, the Fund takes an assignment of the claimant's rights against the lawyer or others who may be liable for the loss. The Fund vigorously pursues collection against defalcating lawyers and collateral sources where appropriate.

What if I disagree with the fees charged by my lawyer?

The Oregon State Bar has a separate voluntary fee arbitration program for resolving fee disputes. The Client Security Fund may reimburse the unearned portion of a fee if there is evidence that the lawyer provided no legal services to the client, that the services provided were of insignificant value, or if there is a decision of a court or other fact-finder that some part of the fee was unearned.

What efforts must I make to collect from my lawyer or third parties?

Required efforts to collect from the lawyer or third parties will depend upon the particular circumstances of the claim. Ordinarily, a civil judgment against the lawyer and a reasonable, but unsuccessful, effort to collect the judgment will be required. This requirement may be waived on a showing that efforts to collect from the lawyer will be an undue hardship on the claimant. Also, no judgment is required if the claim is for less than \$5,000 and the lawyer has been disciplined for the same conduct, or if the claimant has been awarded restitution in a criminal case.

What if I am running out of time to file my claim?

You may file a claim for reimbursement even if you have not yet finished all collection efforts. Depending on the circumstances, the Committee may defer resolution of the matter or reject the claim with permission for you to re-file at a later time.

For more information about the Client Security Fund, please contact:

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