

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: January 10, 2025
From: Client Security Fund (Ankur Doshi, Liaison)
Re: CSF Rules

Action Recommended

Submit the revisions to the CSF Committee's Rules (attached as Exhibit 1) for public comment.

Background

The Client Security Fund Committee (CSF Committee) evaluates claims for reimbursement based on attorney misconduct. They operate under rules promulgated by the Board. The last update to the CSF Committee's Rules was in 2022 (attached as Exhibit 2). The CSF Committee undertook a project in 2024 to add LPs to the CSF Rules. In reviewing the rules, the CSF Committee noted several areas within the rules that could be improved for clarity. It substantially revised the rules, adding LPs and also clarifying sections that had caused discussion at its meetings in the past.

Options

1. Submit the revisions to the CSF Rules for Public Comment.
2. Refer the CSF Rules back to the CSF Committee with comments.

Discussion

The CSF Committee initially undertook a project to revise the CSF Rules with the aim of adding LPs. In reviewing their current rules, several other ambiguities within the rules arose needing clarification. Additionally, the enumeration system used by the CSF Rules are not used within the bar's Rules and Regulations. The CSF Committee reorganized the Rules in a more logical format and revised the numbering system. This action required moving many rules within the ruleset without substantive changes.

Staff recommend submitting these rules for public comment. These rules were approved by the CSF Committee, but not submitted for public comment. CSF is one of the bar's public facing programs and would benefit from obtaining public comment prior to approval. Staff did not see any aspect of the rules that would be controversial.

The following chart highlights the changes to the rules. If a rule is noted with a former CSF rule number, the rule itself has not been changed, but has been moved to the new number.

Rule Number and Title	Change
1.1 Definitions.	Same with addition of LP
1.2 Authority.	Former CSF 6.5
1.3 Rules.	New rule to establish that CSF Rules are authorized by the Board.
1.4 Discretionary Fund.	Former CSF 4.11
1.5 Application.	Former CSF 6.8
1.6 Reporting.	Former CSF 6.9. This rule also removes the note about the issuance of press releases or public statements, as those issues should be handled by OSB Communications. LPs were added to the rule as well.
1.7 Amendment.	Former CSF 6.4
Section 2	
2.1 Eligibility.	First sentence of former CSF 2.1. CSF 2.1 is broken up into multiple rules to make it easier to read. LPs was added to the rule as well.
2.2 Claimant.	Former CSF 2.1.1
2.3 Timeliness.	Former CSF 2.1.8 with edits to clarify that the CSF Committee may waive this requirement per Rule 3.4. LPs were added to the rule as well.
2.4 Jurisdiction of Practice.	Former CSF 2.1.9. LPs were added to the rule as well.
2.5 Dishonest Conduct.	Former CSF 2.1.2. Subsections (3) and (4) are new provisions added specifically to address receipt of unearned fees paid in advance or borrowing of money from a client. Subsection (5) was clarified to indicate when the provision would be triggered. LPs were added to the rule as well.
2.6 Coverage.	Former CSF 2.1.3.
2.7 Financial Institution.	Former CSF 2.1.4.
2.8 Lawyer-Client Relationship.	Former CSF 2.1.5. LPs were added to the rule as well.
2.9 Resultant Act.	Former CSF 2.1.6. Clarification was added to subsection (4) requiring a nexus between dishonest conduct and a disciplinary proceeding to recover from a loss. LPs were added to the rule as well.
2.10 Good Faith Effort.	Former CSF 2.1.7. LPs were added to the rule as well.
Section 3	

3.1 Paid Legal Fees.	Former CSF 2.2. LPs were added to the rule as well.
3.2 Expenses.	Former CSF 2.4.
3.3 Other Services Provided.	Former CSF 2.3, with clarification added that the Committee may determine whether reimbursement is warranted. LPs were added to the rule as well.
3.4 Waiver.	Former CSF 2.6.
Section 4	
4.1 Committee Members.	Former CSF 6.1.
4.2 Meetings.	Former CSF 6.3. Changed to require meeting at least four times a year.
4.3 Public Meetings.	Former CSF 6.6.
4.4 Quorum.	Former CSF 6.2.
4.5 Public Records.	Former CSF 6.6.
4.6 Committee Member Conflict.	Former CSF 6.7. LPs were added to the rule as well.
Section 5	
5.1 Claim Submission.	Former CSF 3.1.
5.2 Statement of Claim.	Former CSF 3.2. LPs were added to the rule as well.
5.3 Disclosure Statement.	Former CSF 3.3. LPs were added to the rule as well.
5.4 Submission of Claims.	Former CSF 4.1. The rule was edited to add the potential for email and webform statement of claims in the future.
5.5 Rejection of Claim.	New Rule allowing the administrator to reject or request resubmission of claims that do not comply with submission requirements.
5.6 Represented Claimants.	Former CSF 2.5.
Section 6	
6.1 Assigning Investigations.	Former CSF 4.2. LPs were added to the rule as well.
6.2 Investigation.	Former CSF 4.3. A new provision was added to note that investigators may evaluate credibility. LPs were added to the rule as well.
6.3 Reports.	Former CSF 4.4.
Section 7	
7.1 Consideration.	Former CSF 4.5.
7.2 Statements of the Parties.	Former CSF 6.6. LPs were added to the rule as well.
7.3 Award Review.	Former CSF 4.6.
7.4 Maximum Award.	Former CSF 4.7. LPs were added to the rule as well.
7.5 Findings.	Former CSF 4.13.
7.6 Providing Assistance.	Former CSF 4.14.
Section 8	
8.1 Denial of Claim.	Former CSF 4.9.

8.2 Review	New Rule that clarifies options for the Board upon review of a claim.
8.3 Final Decision.	New rule establishing that the Board’s decision is final.
Section 9	
9.1 Approval of Award.	Former CSF 4.8. The CSF Committee recommends increasing its final approval ability to \$10,000 from \$5,000.
9.2 Board of Governors Approval of Award.	Former CSF 4.10. The CSF Committee recommends that the Board only review approvals in excess of \$10,000.
9.3 Order of Payment	Former CSF 4.12.
Section 10	
10.1 Assignment.	Former CSF 5.1. New claw back provisions if the claimant recovers from attorney in another manner. LPs were added to the rule as well.
10.2 Receipt of Assignment.	Former CSF 5.1.1-5.1.4. LPs were added to the rule as well.
10.3 Discretion of Administrator.	Former CSF 5.2.

Attachments

Exhibit 1 – Proposed CSF Rules

Exhibit 2 – Current CSF Rules

Client Security Fund Rules

(As approved by the Board of Governors through January 1, 2022)

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Section 1. General Provisions.

1.1 Definitions. For the purpose of these Client Security Fund Rules, the following definitions shall apply:

- (1) “Administrator” means the OSB Chief Executive Officer (CEO), or other person designated by the CEO to oversee the operations of the Client Security Fund.
- (2) “Bar” means the Oregon State Bar.
- (3) “Claimant” means one who files a claim with the Fund.
- (4) “Client” means the individual, partnership, corporation, or other entity who, at the time of the act or acts complained of, had an established lawyer/LP-client relationship with the lawyer or LP.
- (5) “CSF” or “Fund” shall mean the Client Security Fund formed under by the Bar under ORS 9.625.
- (6) “Committee” means the Client Security Fund Committee.
- (7) “Dishonest conduct” has the meaning prescribed in CSF Rule 2.5.
- (8) “Lawyer” means the person named in a statement of claim as the attorney whose dishonest conduct caused the loss, and who, at the time of the act or acts complained of, was an active member of the Oregon State Bar.
- (9) “LP” means the person named in a statement of claim as the licensed paralegal whose dishonest conduct caused the loss, and who, at the time of the act or acts complained of, was an active member of the Oregon State Bar.
- (10) “Statement of Claim” means the form designated by the administrator pursuant to CSF Rule 3.1.

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1.2 Authority. The Bar's Board of Governors delegates its authority under ORS 9.655 and ORS 9.665 to the Committee to investigate, review, and act on a claim. The Committee and its members are deemed to be representatives of the Board of Governors.

1.3 Rules. These Rules shall be known as the Client Security Fund Rules, or Rules. These Rules shall go into effect upon approval by the Bar's Board of Governors.

1.4 Discretionary Fund. Per ORS 9.665, awards from the Fund are discretionary. The Committee or the Board of Governors may deny claims in whole or in part for any reason.

1.5 Application. These Rules apply to all claims pending at the time of their enactment.

1.6 Reporting. The administrator shall prepare an annual report to the Bar membership. The annual report shall include the name of the lawyer or LP, 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 or LP for the conduct giving rise to the loss. If the claimant has previously initiated criminal or civil action against the lawyer or LP, the annual report may also include the claimant's name. The annual report 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.

1.7 Amendment. These Rules may be amended by a majority vote of the entire membership of the Committee, subject to approval by the Board of Governors of the Bar.

Section 2. Reimbursable Losses.

2.1 Eligibility. A loss of money or other property of a lawyer's or LP's client is eligible for reimbursement if such loss complies with all the provisions of this Section.

2.2 Claimant. The claim must be made by the injured client or the client's conservator, personal representative, guardian ad litem, trustee, or attorney in fact.

2.3 Timeliness. The statement of claim must have been filed with the Bar within two years after the latest of the following:

- (1) the date of the lawyer's or LP's conviction;
- (2) in the case of a claim of loss of \$5,000 or less, the date of the lawyer's or LP's disbarment, suspension, reprimand, or resignation from the Bar;
- (3) the date a judgment is obtained against the lawyer or LP; or

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- (4) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss.

Absent a waiver by the Committee per Rule 3.4, the Committee shall not approve a claim for reimbursement if the statement of claim is submitted more than six years after the date of the loss.

2.4 Jurisdiction of Practice. The loss must have arisen from the lawyer's or LP's practice of law in Oregon. In determining whether the loss arose from the lawyer's or LP's practice of law in Oregon, the Committee may consider all relevant factors including the parties' domiciles, the location of the lawyer's or LP's office, the location where the lawyer-client/LP-client relationship was formed, and the location where legal services were rendered.

2.5 Dishonest Conduct. The loss must have been caused by the lawyer's or LP's dishonest conduct. For purposes of this rule, dishonest conduct includes:

- (1) a lawyer's or LP's willful act against a client's interest by defalcation, embezzlement, or other wrongful taking;
- (2) a lawyer's or LP's misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee;
- (3) failure to refund unearned fees received in advance as required by Rule of Professional Conduct 1.16(d) regardless of whether a fee agreement termed the advance as earned on receipt;
- (4) the borrowing of money from a client without intention to repay it, with disregard of the lawyer's or LP's inability or reasonably anticipated inability to repay it; or
- (5) a lawyer's or LP's failure to deposit and maintain an advance payment in a lawyer/LP trust account as required by the Rules of Professional Conduct.

A lawyer's or LP's failure to perform or complete a legal engagement does not constitute, in itself, evidence of misrepresentation, false promise, or dishonest conduct.

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2.6 Coverage. The loss is 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.

2.7 Financial Institution. The loss is not incurred by a financial institution covered by a “banker’s blanket bond” or similar insurance or surety contract.

2.8 Lawyer-Client Relationship. The loss is from and was because of an established lawyer/LP-client relationship; or the failure to account for money or property entrusted to the lawyer or LP in connection with the lawyer’s or LP’s practice of law or while acting as a fiduciary in a matter related to the lawyer’s or LP’s practice of law.

2.9 Resultant Act. To qualify for reimbursement, one of the following resultant acts must have also occurred in relation to the dishonest conduct.

- (1) The lawyer or LP must have been found guilty of a crime as a result of the dishonest conduct.
- (2) A civil judgment was entered against the lawyer or LP as a result of the dishonest conduct, which remains unsatisfied.
- (3) The claimant holds an allowed claim against the lawyer’s or LP’s probate or bankruptcy estate as a result of the dishonest conduct, which remains unsatisfied.
- (4) In the case of a claimed loss of \$5,000 or less, the lawyer or LP was disbarred, suspended, or reprimanded in disciplinary proceedings in part, as a result of the dishonest conduct that caused the claimed loss; or the lawyer or LP resigned from the Bar during the disciplinary investigation of the dishonest conduct that caused the claimed loss.

2.10 Good Faith Effort. The Claimant must have made a good faith effort to collect the loss claimed against the lawyer or LP, to no avail.

Chapter 3 – Limitations and Exceptions

3.1 Paid Legal Fees. Reimbursement of a loss claiming a legal fee paid to a lawyer or LP will be allowed only if

- (1) the lawyer or LP provided no legal services to the client in the engagement; or
- (2) the legal services that the lawyer or LP actually provided were, in the Committee’s judgment, minimal or insignificant; or

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- (3) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting or other evidence acceptable to the Committee that establishes that the client is owed a refund of a legal fee.

No award reimbursing a legal fee may exceed the actual fee that the client paid the lawyer or LP.

3.2 Expenses. A claim approved by the Committee may not include attorney's fees paid by the Claimant to recover the loss, 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.

3.3 Other Services Provided. If a Claimant is provided equivalent legal services by another lawyer or LP without cost to the client, the legal fee paid to the predecessor lawyer or LP will not be eligible for reimbursement, except if the Committee determines extraordinary circumstances warrant reimbursement.

3.4 Waiver. 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 the provisions in Section 2 of these rules. If the Committee deems a waiver is appropriate, it shall identify which provision has been waived, and the reason the Committee has waived such provision.

Section 4. CSF Committee

4.1 Committee Members. The members and officers of the Committee will be appointed and discharged by the Bar's Board of Governors pursuant to applicable provisions of the Bar Bylaws.

4.2 Meetings. The Committee shall meet at least four times each year 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.

4.3 Public Meetings. The Committee's meetings are public meetings within the meaning of Oregon's public meetings law.

4.4 Quorum. The Committee may only act pursuant to the quorum provisions contained in Section 13.6 of the Bar Bylaws.

4.5 Public Records. Records of the Fund are public records within the meaning of Oregon's public records law.

4.6 Committee Member Conflict. A member of the Committee who has or has had an attorney-client relationship or financial relationship with a claimant or lawyer or LP who is the subject of a claim may not participate in the investigation or review of any claim involving the claimant or lawyer or LP. A member who is subject to this provision shall disclose the nature of the relationship before the Committee begins consideration of such claim, and the member may not participate in the Committee's discussion of the claim without leave of the chair.

Section 5 – Claims

5.1 Claim Submission. All claims for reimbursement must be submitted in a format designated by the administrator.

5.2 Statement of Claim. The statement of claim must include, at a minimum, the following information:

- (1) The name and address of the lawyer or LP alleged to have engaged in dishonest conduct;
- (2) The amount of the alleged loss;
- (3) The date or period of time during which the alleged loss occurred;

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- (4) A general statement of facts relative to the claim, including a statement regarding efforts to collect any judgment against the lawyer or LP;
- (5) The name and address of the claimant;
- (6) A verification of the claim by the claimant via declaration under oath; and
- (7) The name of the attorney, if any, who is assisting the claimant in presenting the claim to the Committee.

5.3 Disclosure Statement. The statement of claim must substantially contain 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 or LPs.”

5.4 Submission of Claims. All statements of claim must be submitted to Client Security Fund, Oregon State Bar, 16037 SW Upper Boones Ferry Rd., P. O. Box 1689, Tigard, Oregon 97281-1935 or via an email or webform designated by the administrator.

5.5 Rejection of Claim. The administrator may reject a claim that does not comply with the requirements of a Statement of Claim, and request that the claimant resubmit the Statement of Claim.

5.6 Represented Claimants. 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 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.

Section 6 – Claims Investigation

6.1 Assigning Investigations. The administrator shall assign each statement of claim to a member of the Committee for investigation and report to the Committee. The administrator shall send a copy of the statement of claim to the lawyer or LP who is the subject of the claim at the lawyer’s or LP’s last known address. Before assigning a statement of claim for investigation, the administrator may request of the claimant further information with respect to the claim.

6.2. Investigation. Committee members assigned a statement of claim for investigation shall investigate to determine whether the claim is for a reimbursable loss and is otherwise in compliance with these Rules. The Committee member may review available records and documents and conduct interviews of the claimant, the lawyer or LP, or others as the Committee member deems reasonably necessary to determine whether the Claimant is eligible for any reimbursement from the Fund. The Committee member may evaluate the credibility of their interviewees in their investigation and provide the basis of their evaluation in their investigative report.

6.3 Reports. Committee members assigned a claim for investigation shall submit an investigative report to the administrator within a reasonable time after the assignment of the claim to that member. The member shall include in such report a summary of their investigation, a discussion on whether the claim fits the criteria for payment under these Rules, and a recommendation on whether the claim should be completely reimbursed, partially reimbursed, or denied by the Committee.

Section 7 – Committee Review and Award

7.1 Consideration. The Committee may consider claims for which an investigation has been completed at any properly noticed meeting of the Committee. The Committee may award a claim, partially award a claim, deny a claim, or take other action as deemed necessary.

7.2 Statements of the Parties. The claimant, the claimant's attorney, the lawyer or LP or the lawyer's or LP's attorney may attend meetings of the Committee. At the discretion of the Chair, they may present their respective positions on a claim. The Chair may decline to allow such presentations, or request the claimant, claimant's attorney, lawyer or LP, or lawyer's or LP's attorney provide written statements to the Committee.

7.3 Award Review. No award may be made to any claimant from the Fund if the statement of claim has not been submitted and reviewed pursuant to these Rules and approved at a duly noticed meeting of the Committee.

7.4 Maximum Award. No award from the Fund, on any one claim arising from lawyer/LP misconduct which occurred before January 1, 2022, may exceed \$50,000. No award from the Fund, on any one claim arising from lawyer/LP misconduct which occurred on or after January 1, 2022, may exceed \$100,000. For the purposes of this rule, lawyer/LP misconduct arises on the earlier of:

- (1) The date that the lawyer/LP-client relationship is terminated;
- (2) The date that claimant demanded payment from the lawyer or LP;

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(3) The date that the lawyer or LP was disbarred or suspended; or

(4) The date that the claimant knew of the lawyer or LP misconduct.

7.5 Findings. A finding of dishonest conduct by the Committee is for the sole purpose of resolving a claim and is not to be construed as a finding of misconduct for purposes of any other proceeding.

7.6 Providing Assistance. The Committee may provide information obtained by the Committee about a lawyer's conduct to any agency or entity that the Committee determines may be helpful in resolving the claimant's concerns.

Section 8 – Request for Review

8.1 Denial of Claim. The Committee's denial of a claim is final unless a Claimant's written request for review by the Board of Governors is received by the administrator within 20 days of the Committee's decision. The 20 days runs from the date the Committee's decision is sent to the claimant by mail, exclusive of the date of mailing.

8.2. Review. Upon receipt of review, the claim will be placed on the Board of Governors earliest available agenda for review at their next noticed meeting. The Board of Governors will receive the determination of the Committee, the investigative report, and the request for review from the Claimant. The Board of Governors may adopt the findings of the Committee, decline to adopt and award the claimant an amount from the Fund, refer the claim back to the Committee, or take other action the Board of Governors deems necessary.

8.3 Final Decision. The decision of the Board of Governors is final.

Section 9 – Payment of Awards

9.1 Approval of Award. The Committee shall determine the amount of loss, if any, for which any claimant may receive an award from the Fund. The Committee may give final approval to an award of less than or equal to \$10,000 and shall submit regular reports to the Board of Governors reflecting all awards finally approved by the Committee since the Board's last meeting.

9.2 Board of Governors Approval of Award. If the Committee determines that a claim should be approved in an amount more than \$10,000, the Committee must submit its recommendation to the Board of Governors for approval. When reviewing such claims, the Board of Governors shall conduct its review pursuant to the provisions of these rules. The

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Board of Governors may approve, partially approve, deny, refer a claim back to the Committee, or take any other necessary action for each claim.

9.3. Order of Payment. The Board of Governors may determine the order and payment of awards; may defer or pro-rate awards based on 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 of Governors shall consider the following objectives:

- (1) Timely and complete payment of approved awards; and
- (2) Maintaining the integrity and stability of the Fund; and
- (3) Avoiding frequent or significant fluctuations in the member assessment.

Section 10 – Subrogation for Reimbursements Made

10.1 Assignment. As a condition of receiving an award, a claimant shall provide the Bar with a pro tanto assignment of the claimant's rights against the lawyer or LP, the lawyer's or LP's legal representative, estate, and assigns, and of the claimant's rights against any person or entity who may be liable for the claimant's loss. The assignment shall provide that if payment is made to the claimant and claimant fails to cooperate with the Bar as set forth in this Section, the Bar shall have the right to recover any payments made by the Bar to the claimant.

10.2 Receipt of Assignment. Upon receipt of such assignment, the following rules govern the relationship between the Bar and the claimant:

- (1) Upon commencement of an action by the Bar as subrogee or assignee of a claim, the administrator shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.
- (2) In the event that the claimant commences an action to recover unreimbursed losses against the lawyer, LP, or another person or entity who may be liable for the claimant's loss, the claimant shall notify the Bar of such action in writing, within 14 days of the commencement of such action.
- (3) The claimant shall cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.
- (4) The claimant shall not release the lawyer or LP from liability or otherwise impair the Bar's assignment of judgment or subrogated interest without the prior approval of the Board of Governors.

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10.3 Discretion of Administrator. 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 Fund for reasonable costs and expenses of collection.

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(As approved by the Board of Governors through January 1, 2022)

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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 “Claimant” means one who files a claim with the Fund.
- 1.4 “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.
- 1.5 “Committee” means the Client Security Fund Committee.
- 1.6 “Dishonest conduct” has the meaning prescribed in Rule 2.1.2.
- 1.7 “Fund” means the Client Security Fund.
- 1.8 “Lawyer” means the person named in a statement of claim as the attorney whose dishonest conduct caused the loss, and who, at the time of the at or acts complained of, was an active member of the Oregon State Bar.
- 1.9 “Statement of Claim” means the form designated by the administrator pursuant to CSF Rule 3.1.

Section 2. Reimbursable Losses.

- 2.1 A loss of money or other property of a lawyer’s client is eligible for reimbursement if:
 - 2.1.1 The claim is made by the injured client or the client’s conservator, personal representative, guardian ad litem, trustee, or attorney in fact.
 - 2.1.2 The loss was caused by the lawyer’s dishonest conduct. For purposes of this rule, dishonest conduct includes: (i) a lawyer’s willful act against a client’s interest by defalcation, embezzlement, or other wrongful taking; (ii) 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, (iii) a lawyer’s wrongful failure to maintain the advance payment in a lawyer trust account until earned. A lawyer’s failure to perform or complete a legal engagement does not constitute, in itself, evidence of misrepresentation, false promise, or dishonest conduct.
 - 2.1.3 The loss is 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.
 - 2.1.4 The loss is not incurred by a financial institution covered by a “banker’s blanket bond” or similar insurance or surety contract.
 - 2.1.5 The loss arose from, and was because of: (i) an established lawyer-client relationship; or, (ii) 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.

2.1.6 As a result of the dishonest conduct, either: (i) the lawyer was found guilty of a crime; (ii) a civil judgment was entered against the lawyer, which remains unsatisfied; (iii) the claimant holds an allowed claim against the lawyer's probate or bankruptcy estate, which remains unsatisfied; or (iv) 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.

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

2.1.8 The statement of claim was filed with the Bar within two years after the latest of the following: (i) the date of the lawyer's conviction; or (ii) in the case of a claim of loss of \$5,000 or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar; or (iii) the date a judgment is obtained against the lawyer, or (iv) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event may the Committee approve a claim for reimbursement if the statement of claim is submitted more than six years after the date of the loss.

2.1.9 The loss arose from the lawyer's practice of law in Oregon. In determining whether the loss arose from the lawyer's practice of law in Oregon, the Committee may consider all relevant factors including the parties' domiciles, the location of the lawyer's office, the location where the attorney-client relationship was formed, and the location where legal services were rendered.

2.2 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 or other evidence acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee may exceed the actual fee that the client paid the lawyer.

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

2.4 A claim approved by the Committee may 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.

2.5 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 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.

2.6 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 the provisions in Section 2 of these rules.

Section 3. Statement of Claim for Reimbursement.

3.1 All claims for reimbursement must be submitted in a format designated by the administrator.

3.2 The statement of claim must include, at a minimum, the following 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; and

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

3.3 The statement of claim must 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 Claims.

4.1 All statements of claim must 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 assign each statement of claim to a member of the Committee for investigation and report, and the Bar shall reimburse such member for reasonable out of pocket expenses incurred in making such investigation. The administrator shall send a copy of the statement of claim to the lawyer who is the subject of the claim at the lawyer's last known address. Before assigning 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

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Committee in determining the extent, if any, to which the claimant may receive an award from the Fund.

4.4 The Committee member to whom a claim is assigned for investigation shall submit an investigative report to the administrator within a reasonable time after the assignment of the claim to that member. The member shall include in such report a discussion of the criteria for payment set by these rules and a recommendation regarding payment on such claim from the Fund.

4.5 At any meeting of the Committee, claims may be considered for which an investigation has been completed.

4.6 No award may be made to any claimant if the statement of claim has not been submitted and reviewed pursuant to these rules, and approved at a duly noticed meeting of the Committee.

4.7 No award from the Fund, on any one claim arising from attorney misconduct which occurred before January 1, 2022, may exceed \$50,000. No award from the Fund, on any one claim arising from attorney misconduct which occurred on or after January 1, 2022, may exceed \$100,000. For the purposes of this rule, attorney misconduct arises on the earlier of:

4.7.1 The date that the attorney-client relationship is terminated;

4.7.2 The date that claimant demanded payment from the attorney;

4.7.3 The date that the attorney was disbarred or suspended; or

4.7.4 The date that the claimant knew of the attorney misconduct.

4.8 The Committee shall determine the amount of loss, if any, for which any claimant may 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 of Governors reflecting all awards finally approved by the Committee since the Board's last meeting.

4.9 The Committee's denial of a claim is final unless a claimant's written request for review by the Board of Governors is received by the administrator within 20 days of the Committee's decision. The 20 days runs from the date the Committee's decision is sent to the claimant by mail, exclusive of the date of mailing.

4.10 If the Committee determines that a claim should be approved in an amount of \$5,000 or more, the Committee must submit its recommendation to the Board of Governors for approval. When reviewing such claims, the Board of Governors shall conduct its review pursuant to the provisions of these rules. The Board of Governors may 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.

4.11 Awards from the Fund are discretionary. The Committee or Board of Governors may deny claims in whole or part for any reason.

4.12 The Board of Governors may determine the order and payment of awards; may defer or pro-rate awards based on 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 of Governors shall consider 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 is for the sole purpose of resolving a claim and is not to be construed as a finding of misconduct for purposes of any other proceeding.

4.14 The Committee may provide information obtained by the Committee about a lawyer's conduct to any agency or entity that the Committee determines may be helpful in resolving the claimant's concerns. S

Section 5. Subrogation for Reimbursements Made.

5.1 As a condition of receiving an award, a claimant shall provide the Bar with a pro tanto assignment of the claimant's rights against the lawyer, the lawyer's legal representative, estate and assigns, and of the claimant's rights against any person or entity who may be liable for the claimant's loss. Upon receipt of such assignment, the following rules govern the relationship between the Bar and the claimant:

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

5.1.2 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 notify the Bar of such action in writing, within 14 days of the commencement of such action.

5.1.3 The claimant shall cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.

5.1.4 The claimant shall not release the lawyer from liability or otherwise impair the Bar's assignment of judgment or subrogated interest without the prior approval of the Board of Governors.

5.2 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 Fund for reasonable costs and expenses of collection.

Section 6. General Provisions.

6.1 The members and officers of the Committee will be appointed and discharged pursuant to applicable provisions of the Bar Bylaws.

6.2 The Committee may only act pursuant to the quorum provisions contained in section 14.9 of the Bar Bylaws.

6.3 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.

6.4 These Rules may be changed at any time by a majority vote of the entire membership of the Committee, subject to approval by the Board of Governors of the Bar.

6.5 When investigating, reviewing, or acting on a claim, the Committee and its members are deemed to be the representative of the Board of Governors and, as such, shall be vested with the authority conferred by ORS 9.655.

6.6 Records of the Fund are public records within the meaning of the Oregon's public records law and meetings of the Committee are public meetings within the meaning of Oregon's 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.

6.7 A member of the Committee who has or has had an attorney-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim may not participate in the investigation or review of any claim involving the claimant or lawyer. A member who is subject to this provision shall disclose the nature of the relationship before the Committee begins consideration of such claim, and the member may not participate in the Committee's discussion of the claim without leave of the chair.

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

6.9 The administrator shall prepare an annual report to the Bar 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.