

Client Security Fund Rules

*(As approved by the Board of Governors through September 8, 2017)*

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**Section 1. Definitions.**

For the purpose of these rules, the following definitions apply:

- 1.1 “Administrator” means the Oregon State Bar 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 act 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

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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 may exceed \$50,000.

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.

### **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.

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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.