

## LAWYERS' FUND FOR CLIENT PROTECTION RULES

### RULE 1 - PURPOSE OF FUND AND RULES

A. The Purpose of the Lawyers' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the **Dishonest Conduct** of **Lawyers** admitted and licensed to practice law in the courts of Montana.

B. Pursuant to the Supreme Court Order creating the State Bar of Montana, the purpose of these rules is to establish procedures to maintain and administer a Lawyers' Fund for Client Protection established as a trust by the State Bar of Montana.

C. Fund money may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the **Dishonest Conduct** of a **Lawyer** or failure to account for money or property entrusted to **Lawyers**, occurring in the course of the client-lawyer or other fiduciary relationship between the **Lawyer** and the **Applicant**.

D. No person shall have any right to payment from the **Fund** as an **Applicant**, third party beneficiary, or otherwise. Any and all payments made to **Applicants** in connection with the **Fund** are gratuitous, are a matter of grace, and are at the sole discretion of the **Board**, subject only to review by the **State Bar Trustees**.

E. The **Fund** shall not be used for the purpose of relieving any pecuniary loss resulting from an attorney's negligent performance of services.

### RULE 2 - DEFINITIONS

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

- A. State Bar. "**State Bar**" means the State Bar of Montana.
- B. Trustees. "**Trustees**" means the board of Trustees of the State Bar of Montana.
- C. Fund. "**Fund**" means the Lawyers' Fund for Client Protection of the State Bar of Montana.
- D. Board. "**Board**" means the Lawyers' Fund For Client Protection Board appointed by the **Trustees** of the State Bar of Montana.
- E. Chair. "**Chair**" means the chairperson of the **Board** as appointed by the **State Bar**.

F. Lawyer. **Lawyer** means a person who, at the time of the act complained:

1. Was an active member of the State Bar of Montana; or
2. Was a **Lawyer** who was recently suspended or disbarred and whom the client reasonably believed to be licensed to practice law in Montana when the **Dishonest Conduct** occurred.

G. Application. An “**Application**” is a written request on a form approved by the **Board** for reimbursement of a loss sustained as the result of the **Dishonest Conduct** of a **Lawyer**.

H. Applicant. An “**Applicant**” is a person who submits a properly completed **Application**.

I. Dishonest Conduct. “**Dishonest Conduct**” is defined in Rule 8B.

### **RULE 3 - FUNDS**

A. Funding. The **Trustees** shall, after consultation with the **Board**, provide funding necessary for payments to **Applicants** and the expenses of the **Board**.

B. Trust. All monies or other assets of the **Fund** shall constitute a trust and shall be held in the name of the **Fund**, in a separate account, by the **Trustees**. The **Trustees** shall receive, hold, manage and disburse from the **Fund** such monies as may from time to time be allocated to the **Fund**.

C. Expenses. All expenses of the **Board** shall be paid from the **Fund**.

### **RULE 4 - APPOINTMENT OF BOARD**

**Board** members shall be appointed pursuant to **State Bar** Bylaws and policies.

## **RULE 5 - MEETINGS OF THE BOARD**

A. Meetings. The **Board** shall meet as frequently as necessary to conduct the business of the **Fund** and to timely process **Applications**. The **Chair** shall call a meeting at any reasonable time or upon the request of at least two (2) **Board** members. Upon authorization of the **Chair**, **Board** members may participate in a meeting by telephone conference call or by video conference. The **Board** may, in lieu of a meeting, act by unanimous written consent.

B. Notice. The **Chair** shall provide **Board** members with reasonable notice of the time and place of **Board** meetings.

C. Quorum. A quorum of any meeting of the **Board** shall be a majority of members on the **Board**. When a hearing on an **Application** is scheduled, but a quorum is not present, those members present shall hear the evidence and report to the next meeting of the **Board**.

D. Record of Meetings. Written minutes of each meeting shall be prepared and properly maintained.

## **RULE 6 - DUTIES AND RESPONSIBILITIES OF THE BOARD**

The **Board** shall have the following duties and responsibilities:

A. To receive, investigate, evaluate and determine the disposition of **Applications**;

B. To the extent deemed necessary by the **Board**, to promulgate rules of procedure not inconsistent with these Rules;

C. To recommend to the **Trustees** the amount of the annual assessment of **Lawyers** for the **Fund**;

D. To provide a full report at least annually to the **Trustees** and to make other reports as necessary;

E. To publicize its activities to potential **Applicants**, the public and the bar, as deemed advisable;

F. To employ adequate staff to assure the **Board**'s effective and efficient performance of its functions;

G. To retain and compensate consultants, administrative staff, investigators, actuaries, agents, legal counsel, and other persons as necessary;

- H. To prosecute claims for restitution to which the **Fund** is entitled;
- I. To promote effective coordination, cooperation and communication between lawyer disciplinary authorities and the **Fund**; and
- J. To perform all other acts necessary or proper for the fulfillment of the purposes of the **Fund** and effective administration of the **Fund**.

## **RULE 7 - APPLICATION FORMS; APPLICANT'S RESPONSIBILITIES**

- A. Application Form. All requests for payment from the **Fund** shall be made by submitting an **Application** form approved by the **Board**. The request shall include all information requested on the **Application** form. **Application** forms shall be available from the **State Bar**.
- B. Applicant's Responsibilities. The **Applicant** is responsible for preparing and filing a properly completed applicable form and providing satisfactory evidence of a reimbursable loss. An **Applicant** must timely respond to requests for additional information and/or clarification as may be requested by the **Fund** as part of the investigation of the **Application**.
- C. Disciplinary Complaints. The **Board** shall provide the Office of Disciplinary Counsel with a supply of **Application** forms.

## **RULE 8 - ELIGIBLE APPLICATIONS**

- A. Eligibility. To be eligible for payment from the **Fund**, the loss must be caused by the **Dishonest Conduct** of the **Lawyer** or the failure to properly account for [and/or return] 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.
- B. Dishonest Conduct. As used in these rules, "**Dishonest Conduct**" or "dishonesty" 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 thing of value, provided:
  - (1) the **Lawyer** shall have been disbarred or suspended from the practice of law or shall have been permitted to voluntarily surrender his or her license to practice law; or
  - (2) the **Lawyer** shall have died or shall have been adjudged mentally incompetent; or
  - (3) the **Lawyer** shall have been found guilty of a crime arising out of the claimed **Dishonest Conduct** which caused the loss; or

(4) a judgment or decree was entered against the **Lawyer** in any proceeding arising out of the claimed **Dishonest Conduct** which caused the loss, and, if a judgment for money was entered against the **Lawyer** in favor of the **Applicant**, that the **Lawyer** has failed to pay the judgment and execution issued on the judgment has been returned uncollected.

C. Time Limitations. The **Application** shall be filed no later than three (3) years after the **Applicant** knew, or should have known, of the **Dishonest Conduct** of the **Lawyer**.

D. Excluded Losses. Except as provided by Paragraph E of this Rule, the following losses shall not be reimbursable:

- (1) losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of **Lawyer** causing the losses;
- (2) losses covered by a bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety, or insurer is subrogated, to the extent of that subrogated interest;
- (3) losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;
- (4) losses incurred by any business entity controlled by **Lawyer**, or by any person or entity described in subparagraph D (1), (2) or (3) of this Rule;
- (5) losses incurred by any governmental entity or agency;
- (6) losses arising from business or personal investments not arising in the course of the client-lawyer relationship; and
- (7) consequential or incidental damages, such as lost interest, or lawyer's fees or other costs incurred in seeking recovery of a loss.

E. Hardship. In cases of extreme hardship or special and unusual circumstances, the **Board** may, in its discretion, and consistent with the purpose of the **Fund**, recognize an **Application**, in whole or in part, which would otherwise be excluded under these Rules.

F. Enrichment. In cases where it appears that there will be unjust enrichment, or the **Applicant** unreasonably or knowingly contributed to the loss, the **Board** may, in its discretion, deny the **Application**.

## **RULE 9 - PROCESSING APPLICATIONS**

- A. Ineligibility. Whenever it appears that an **Applicant** is not eligible for reimbursement pursuant to Rule 9, the **Chair** shall advise the **Applicant** of the reasons why the **Application** is not eligible for consideration by the **Board** for reimbursement, and that unless additional facts to support eligibility are submitted to the **Fund**, the **Applicant's** file shall be closed.
- B. Disciplinary Notification. The Office of Disciplinary Counsel may be notified of an **Application** in the discretion of the **Chair**.
- C. Notification of Lawyer. The **Lawyer** or his or her representative shall be notified and provided a copy of the **Application**, via U.S. Mail, delivery receipt requested, to the **Lawyer's** address of record on file with the **State Bar**. Such notice is deemed complete upon mailing.
- D. Responses from Lawyer. The **Lawyer** shall respond to the **Application** within twenty (20) days of the date of mailing. The **Lawyer** shall respond to requests from the **Fund** for information within the time specified in the request or, if no time for response is stated in the request, then within twenty (20) days of the date of mailing the request.
- E. Investigation and Report. The **Fund** shall conduct an investigation of the merits of an **Application**. The **Chair** may cause the investigation of an **Application** to be made by a member of the **Board**, any other active member of the **State Bar**, a retained investigator, or the **State Bar** staff member assigned to the **Board**. A written report of the investigation shall be provided to the **Board** with a recommendation.
- F. Board Determination. The **Board** shall review each **Application** to determine in its discretion whether the **Application** is a reimbursable loss and to determine the extent, if any, to which the **Applicant** shall be reimbursed. In all cases, the **Applicant** and the **Lawyer** or their personal representative shall be given an opportunity to be heard by the **Board** if requested. With or without a request from a party, the **Fund** may hold a hearing on an **Application**.
- G. Notice of Decision. Written notice of the **Board's** decision on an **Application** shall be mailed to the **Applicant** and the **Lawyer**.
- H. Findings of Dishonest Conduct. If the **Board** makes a finding of **Dishonest Conduct** for purposes of determining an **Application**, such a determination is not a finding of **Dishonest Conduct** for purposes of professional discipline.
- I. Evidence. Consideration of an **Application** need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the type of evidence commonly accepted by reasonably prudent persons in the conduct of their affairs.

J. Burden of Proof. The **Applicant** shall have the burden of establishing eligibility for reimbursement by a clear preponderance of the evidence.

K. Pending Disciplinary Proceedings. Unless the **Board** or **Chair** otherwise directs, no **Application** shall be heard by the **Board** during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the **Application**.

L. Exhaustion of Remedies. The **Board** may direct an **Applicant** to seek reimbursement of a loss from other potentially available sources before acting upon an **Application**.

M. Status of Applications. Both the **Applicant** and the **Lawyer** shall be periodically advised, as necessary, of the status of the **Board's** consideration of the **Application**.

## **RULE 10 - REIMBURSEMENT FROM THE FUND IS DISCRETIONARY**

No person shall have the legal right to reimbursement from the **Fund**. Any and all payments made to **Applicants** in connection with the **Fund** are a matter of grace and are at the sole discretion of the **Board**, subject only to review by the **Trustees** pursuant to Rule 12. There shall be no appeal from or judicial review of any decision of the **Board** or the **Trustees**.

## **RULE 11 - RECONSIDERATION**

A. Request for Reconsideration. The **Applicant** or **Lawyer** may request reconsideration by the **Board** in writing within thirty (30) days of the **Board's** written notice of the denial or determination of the amount of relief. The decision of the **Board** is final, subject only to review by the **Trustees** pursuant to Rule 12.

B. Procedure. To request reconsideration, the party must make the request in writing to the **Fund** and state the reason. The **Board** will notify the parties of its decision on the request for reconsideration.

## **RULE 12 - REVIEW BY STATE BAR TRUSTEES**

A. Request for Review. The **Applicant** or the **Lawyer** may request a review of a final decision of the **Board** by the **Trustees** if such review is requested in writing within thirty (30) days of the date of the final decision of the **Board**. The decision of the **Trustees** is final.

B. Procedure. To request review, the party must make the request in writing to the **Trustees** and state the reason. The request must be sent to the Executive Director of the **State Bar**. Upon receipt of a request for review, the **Fund** shall provide to the **Chair** of the **Trustees** a copy of the

documents and materials relied upon by the **Board** in making its final decision. The **Trustees** will notify the parties and the **Fund** of its decision on the request for review.

### **RULE 13 - CONFLICT OF INTEREST**

A. Conflicts. A **Board** member who has or has had a client-lawyer relationship or a financial relationship with an **Applicant** or the **Lawyer** who is the subject of an **Application** shall not participate in the investigation or adjudication of any **Application** involving that **Applicant** or the **Lawyer**.

B. Disclosure of Potential Conflicts. A **Board** member with any other past or present relationship with a party which could be deemed a conflict of interest, shall disclose such relationship to the **Board**. If the **Board** deems appropriate, that **Board** member shall not participate in any proceeding relating to the **Application**.

### **RULE 14 - RESTITUTION AND SUBROGATION**

A. Restitution Obligation. A **Lawyer** whose **Dishonest Conduct** results in payment to an **Applicant** is liable to the **Fund** for restitution.

B. Enforcement. A **Lawyer** whose **Dishonest Conduct** results in payment to an **Applicant** shall make restitution to the **Fund** of all amounts paid to the **Applicant**, including any expenses incurred by the **Fund** in processing and investigating the **Application**, together with interest at the statutory rate on all such amounts.

C. Subrogation. As a condition of payment, and to the extent of the reimbursement provided by the **Fund**, an **Applicant** shall be required to provide the **Fund** with a transfer of the applicant's rights against the **Lawyer**, the **Lawyer's** legal representative, estate or assigns, and of the applicant's rights against any third party or entity who may be liable for the applicant's loss (unless such transfer or assignment is included in the original **Application** signed by the **Applicant**).

D. Action to Enforce Restitution. The **Board** may bring such action as it deems advisable to enforce restitution. If the **Board** commences a judicial action to enforce restitution, it shall notify the **Applicant**, who may then join in such action to recover the unreimbursed losses. If the **Applicant** commences an action against the **Lawyer** or another entity who may be liable for the loss, the **Applicant** shall notify the **Fund** who may join in the action to recover its payment to the **Applicant**.

E. Duty to Cooperate. As a condition of payment, the **Applicant** is required to cooperate in all efforts that the **Fund** undertakes to achieve restitution.

## **RULE 15 - CONFIDENTIALITY**

A. Confidentiality. **Applications**, proceedings and reports involving **Applications** for reimbursement are confidential until the decision by the **Board** to reimburse the **Applicant** is final, except as set forth in sub-sections B or C of this Rule.

B. Waiver by Lawyer. If the **Lawyer** whose alleged conduct gave rise to the **Application** requests that the matter be made public, the requirement of confidentiality is waived.

C. Disclosure Provided by Law. Section A shall not be construed to deny access to relevant information by professional discipline agencies or law enforcement authorities as required or authorized by law or Supreme Court rule, or the release of statistical information which does not disclose the identity of the **Lawyer** or the parties.

## **RULE 16 - COMPENSATION FOR REPRESENTING APPLICANTS**

The **Board** recommends that no lawyer charge or accept any payment for prosecuting any **Application** on behalf of an **Applicant**.

## **RULE 17 - AMENDMENT**

These Rules may be amended at any time by a majority vote of the **Board** at a duly held meeting, with the approval of the **Trustees**.

*Adopted by the LFCP Board on July 11, 2006. Approved by the Board of Trustees on September 14, 2006.*

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