

ARKANSAS

Client Security Fund

(Rules of the
Client Security Fund Committee
Rule 1., et seq.)

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Rules of the Client Security Fund Committee

Rule 1. Scope of Rules.

The following rules are for the regulation of the Client Security Fund and shall apply to all claims filed commencing with the publication date of this order. At that time these rules will replace the per curiam order creating the Client Security Fund, 254 Ark. 1075, 493 S.W.2d 422 (1973), and the later amending per curiam orders, 310 Ark. 812, 832 S.W.2d 815 (1992); 306 Ark. 656 (1991); 300 Ark. 643, 782 S.W.2d 357 (1978); 291 Ark. 647, 722 S.W.2d LVIII (1987). (Adopted July 12, 1993.)

Rule 2. Committee.

In 1973 the Court appointed a committee of five lawyers, one from each Congressional District, and one from the State at large, to serve at the pleasure of the Court. The member first appointed from the First Congressional District served a term of one year from the date of his appointment, the first member from the Second District, two years, the first member from the Third District, three years, the first member from the Fourth District, four years, and the first member from the State at large, five years. The successors of the members first appointed have been, and shall continue to be, appointed for terms of five years each. The Committee shall annually select one of its members as Chairperson, and another as Secretary, and shall adopt rules governing its procedures, which shall be subject to approval by this Court. A majority of committee members shall constitute a quorum.

Rule 3. Name of Committee; Authority to Issue Summonses and Subpoenas; Disobedience Thereof Contempt of Court.

The name of the Committee shall be "The Client Security Fund Committee." The Committee shall provide for its use a seal of such design as it may deem appropriate, and in the performance of duties imposed by rules of this Court and by its own regulations in aid of the Court's rules, shall have authority to issue summonses for any person or subpoena for any witness, directed to any sheriff or state police officer within the State, requiring the presence of any party or the attendance of any witness before it. Such process shall be issued under the seal of the Committee and signed by the Chairperson or Secretary thereof. Disobedience of any summons or subpoena or refusal to testify shall be regarded as constructive contempt of the Supreme Court.

Rule 4. Eligible Claims: Maximum Allowable Amount.

Commencing with the publication date of this order, the criteria for the Committee's payment of claims will be as follows:

- A. The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and by reason of a lawyer-client relationship or a fiduciary relationship between the lawyer and the claimant.
- B. The claim shall have been filed no later than three years after the claimant knew or should have known of the dishonest conduct of the lawyer.

C. As used herein, "dishonest conduct" 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 things of value. A dispute over the reasonableness of a lawyer's fee is not an eligible claim.

D. Except as provided by Section F herein, the following losses shall not be reimbursable:

- (1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates, and employees of lawyer(s) causing the losses;
- (2) Losses covered by any 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 the lawyer, any person or entity described in Section D(1), (2), or (3) hereof;
- (5) Losses incurred by any governmental entity or agency.

E. In cases of extreme hardship or special and unusual circumstances, the Client Security Fund Committee may, in its discretion, recognize a claim which would otherwise be excluded under this Order.

F. In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Client Security Fund Committee may, in its discretion, deny the claim.

Provided, however, that no claim shall be paid by the Committee until the Committee on Professional Conduct has certified that the member of the Bar of Arkansas has been disbarred or suspended from the practice of law, or has voluntarily resigned from the practice of law and surrendered his or her license to practice, or died before a disbarment, suspension, or surrender of license could take place. At that time the Executive Director of the Committee on Professional Conduct shall prepare for the Committee a summary of the evidence indicating the amount of the loss due to the dishonesty of the lawyer.

The Committee is authorized and empowered to admit or reject such claims in whole or in part to the extent that funds are available to it, and the Committee shall have complete discretion in determining the order and manner of payment of claims. No claim shall be allowed for an amount in excess of \$100,000. All reimbursements shall be a matter of grace and not of right, and no client or member of the public shall have any right in the Client Security Fund as third party beneficiary or otherwise. No attorney shall be compensated for prosecuting a claim against the Fund.

HISTORY

Amended and effective by per curiam order October 3, 2019.

Rule 5. Place of Filing Claim.

Claims shall be filed with the Clerk of the Supreme Court, and he shall promptly forward the claim to the Committee's representative. The Clerk's address is:

Clerk of the Supreme Court
Supreme Court of Arkansas
625 Marshall Street
Little Rock, Arkansas 72201

Rule 6. Provision for Expenses of Committee.

From the Fund created, members of the Committee shall be entitled to receive their actual, necessary travel and hotel expenses and reimbursement for postage, stationery, communication, and other incidental expenses, including stenographic bills and court costs chargeable against them. Upon instructions from the Supreme Court, the Committee may reimburse the Committee on Professional Conduct for actual expenses it might incur in performing services for the Committee. All such items shall be paid by the Clerk of this Court by check on said Fund, signed by the Clerk and countersigned by the Chairperson and Secretary of the Committee as true and correct.

Rule 7. Manner of Payment.

The Committee may authorize payment from the Client Security Fund as provided herein. If the Committee finds, by a majority vote, that the claimant is entitled to payment from the Fund, it may determine the amount of any payment to be made to the claimant from the Fund. If it is not convenient for the members of the Committee to meet in person in a reasonable amount of time, the Chairperson of the Committee may submit by mail or facsimile transmission all of the necessary information to the Committee members, and they may vote by mail or facsimile transmission. A report, approving payment of any claims, shall be signed by a majority of the Committee members, and filed with the Clerk of this Court. Upon receipt of the aforesaid report, the Clerk will issue a check signed by the Clerk and countersigned by the Chief Justice for payment to the claimant from the Client Security Fund.

Rule 8. Reports.

The Committee shall provide a full report of its activities at least yearly to this Court, and it shall make such other reports of its activities and give such publicity to same as the Court may deem advisable.

Rule 9. Subrogation.

Payment shall be made from the Fund only upon condition that the Fund receive a pro tanto assignment from the claimant for such payment of the claimant's rights against the lawyer involved, his personal representatives, and his estate and assigns, on condition that the Fund shall be entitled to reimbursement on such terms as the Committee may deem proper under the circumstances. Any sums collected by reason of such subrogation shall be for the sole benefit of the Fund and applied thereto.

Rule 10. Funding.

The Client Security Fund shall be financed by a portion of the annual license fees paid by the members of the Bar of Arkansas. Ten dollars of the annual license fee paid by each attorney to the Clerk of this Court shall be credited to the Client Security Fund, until further Order of this Court. The Committee shall have available to it the services of the employed personnel of the Supreme Court Committee on Professional Conduct.