

COLORADO

Colorado Attorneys' Fund For Client Protection

(Colorado Supreme Court Guidelines
AND
Colorado Rules of Civil Procedure,
Rule 252.1 to Rule 252.16)

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COLORADO SUPREME COURT

COLORADO ATTORNEYS' FUND FOR CLIENT PROTECTION

The Colorado Attorneys' Fund for Client Protection
Colorado Supreme Court Office of Attorney Regulation Counsel
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GUIDELINES

To carry out the purposes of Rule 252.7(a)(2) of the Colorado Rules of Civil Procedure establishing the Colorado Attorneys' Fund for Client Protection (the "Fund"), the Trustees promulgate the following guidelines that are intended to serve as a guide, but not to bind, the operations of the Fund.

1. **Construction of guidelines.** These guidelines shall be liberally construed to accomplish the objectives of the Fund and the policies of the Trustees.

2. **Eligible claims.**

a. The Trustees shall consider claims for reimbursement of losses caused by the dishonest conduct of the attorney authorized to practice in Colorado and as set forth in Rule 252, that have arisen out of and by reason of an attorney-client relationship or court-appointed fiduciary relationship between the attorney and the client;

b. "Dishonest conduct" embodies a wide range of wrongful acts committed by an attorney. Examples include:

- (1) Theft;
- (2) Embezzlement of money;
- (3) The wrongful conversion of money, property, or other things of value;
- (4) An attorney's refusal to refund unearned fees received in advance as required by Rule 1.16 of the Colorado Rules of Professional Conduct;
- (5) Failure to properly hold or manage property belonging to clients or third parties as required by Rule 1.15(A)-1.15(D) of the Colorado Rules of Professional Conduct;
- (6) Borrowing money from a client without intention to repay it, or with disregard of the attorney's inability or reasonably anticipated inability to repay it; and
- (7) After an attorney has died and it is discovered that at or prior to the time of his demise, the deceased attorney has not complied with Rules 1.15(A)-1.15(D) of the Colorado Rules of Professional Conduct.

c. The loss occurred on or after July 1, 1999.

d. The following losses shall not be eligible:

- (1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of attorney(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 that 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 attorney;
- (5) Losses incurred by any governmental entity or agency;

(6) Losses arising from the activities of an attorney not having an office or residence in Colorado where those activities do not have substantial contacts with Colorado; and

(7) Interest on the loss or any type of consequential damages or punitive damages or cost.

e. Ordinarily, claims against Colorado licensed or certified attorneys in good standing will be denied or payment delayed until discipline is ordered by the Colorado Supreme Court; if the attorney has been disciplined, is dead, the attorney's whereabouts cannot be determined, or other good cause exists, the Trustees shall proceed to process the claim.

f. In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, recognize a claim that would otherwise be excluded under these rules.

g. In cases where it appears that there will be unjust enrichment or multiple recovery or the claimant unreasonably or knowingly contributed to the loss, the Trustees may, in their discretion, deny the claim.

h. The claimant shall have the responsibility to provide satisfactory evidence of an eligible loss.

3. **Filing claims.**

a. Claims for reimbursement from the Fund shall be written and verified. The Fund shall provide an official claim form that shall require the following information: the name and address of the claimant; the name and last known address of the attorney who is alleged to have committed a dishonest act; the terms of the attorney's professional engagement for the claimant; the amount of the loss incurred; the date of the loss or the period of time when the loss occurred; the place and manner in which the loss occurred; the date and manner in which the claimant discovered the loss; a description of what steps the claimant has taken to recover the loss from the attorney or any other source; and whether there are other sources, such as insurance, fidelity bonds, or surety agreements, to reimburse the claimant's loss. The Trustees may require a claimant to submit additional information that may be necessary to determine a claim.

b. The Fund shall promptly acknowledge receipt of the claim, which shall be assigned a claim number.

c. A claim shall be filed no later than three years after the claimant knew or should have known of the dishonest conduct of the attorney.

4. Processing claims.

a. Whenever it appears that a claim is not eligible for reimbursement pursuant to these guidelines, the claimant shall be advised of the reasons why the claim is not eligible for reimbursement, and that unless additional facts to support eligibility are submitted to the Fund within 50 days, the claim shall be dismissed.

b. The Office of the Attorney Regulation Counsel of the Colorado Supreme Court shall serve as the staff agency for the Fund and shall assist the Trustees as follows:

- (1) Investigating and reporting on all claims;
- (2) Recommending denial of those claims received that are clearly not covered by the Fund;
- (3) Recommending denial of those claims when the underlying grievance matter has been closed by the Office of Attorney Regulation Counsel without discipline or the Claimant has withdrawn the claim;
- (4) Preparing the committee agenda and recording the minutes of the committee meetings;
- (5) Presenting of claims to the Trustees;
- (6) Notifying claimants of ultimate disposition;
- (7) Coordinating payouts;
- (8) Monitoring subrogation rights on previously paid claims;
- (9) Preparing of annual Fund reports;
- (10) Acting as custodian of all Fund records including, but not limited to, minutes and all bank records; and
- (11) Paying only those claims authorized or approved by a majority of the Trustees at a meeting duly called at which a quorum was present either in person or via teleconference.

c. A certified copy of an order disciplining an attorney for the same act of conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall, for the purpose of these guidelines, be evidence that the attorney committed such act.

d. All claims that are eligible for reimbursement from the Fund shall be investigated by the Office of the Attorney Regulation Counsel, which shall furnish to the Trustees a written report of each investigation.

e. Upon receipt of the investigation report, the Trustees shall determine whether to conduct additional investigation. If the attorney whose alleged conduct gave rise to the claim has not been previously notified of the claim, a copy of the claim shall be provided to the attorney. The attorney shall be invited to respond to the claim within 20 days.

f. The Trustees may request that testimony be presented to complete the record. Upon request, the claimant and the attorney, or their respective representatives, shall be given an opportunity to be heard.

g. The Trustees shall determine, in their sole discretion, whether a claim merits reimbursement from the Fund, and the amount, time, manner of its payment and the conditions upon which payment shall be made. The award of a claim shall require the affirmative vote of at least four Trustees.

h. If services were performed that were ultimately useful to the claimant, the amount of the claim for which useful services were performed will customarily be denied.

i. Unless the Trustees direct otherwise, no claim shall be awarded during the pendency of a disciplinary proceeding involving the same act of conduct that is alleged in the claim.

j. In the exercise of their discretion in determining claims, the Trustees shall consider, together with such other factors as they deem appropriate:

(1) The amount of money available and likely to become available to the Fund for the payment of claims, and the size and number of claims that have been or are likely to be presented;

(2) The amount of the claimant's loss as compared with the amount of losses sustained by other claimants who may merit reimbursement from the Fund;

(3) Any conduct of the claimant that contributed to the loss; and

(4) The existence of other sources to reimburse the claimant's loss, such as insurance, fidelity bonds or surety agreements.

k. Written notice of the Trustees' determination shall be provided to the claimant and the attorney whose alleged conduct gave rise to the claim, or the representatives.

5. **Reconsideration of claims.** A claimant who is denied reimbursement in whole or in part may request that the Trustees reconsider the claim by filing an application with the Fund no later than 30 days following receipt of the Trustees' determination. If a claimant fails to request reconsideration, or the original determination of the Trustees is confirmed, the Trustees' determination shall be final.

6. **Payment of awards.**

a. Claimants shall be reimbursed for losses in amounts to be determined by the Trustees. No award shall be in excess of \$50,000.00 per claim and the Fund shall not pay more than \$100,000.00 for losses caused by one attorney, unless otherwise determined by the Board of Trustees.

b. Awards shall not include interest. Attorneys' fees, consequential damages, and other incidental and out-of-pocket expenses shall not be reimbursed by the Fund. Additional taxes, interest, late charges and similar penalties finally incurred by a claimant as the direct result of an attorney's misappropriation may be eligible for reimbursement in the discretion of the Trustees. The investigation report in a claim which involves such an element of loss shall contain an estimate of the amount of such loss and a recommendation whether the loss merits reimbursement from the Fund. The Trustees will reconsider all claims previously approved, but not wholly paid, at the final meeting of each calendar year, including for the year the claim was initially approved and two successive years. (For example, assuming the claim was partially paid at the December 2014 meeting, then the committee shall reconsider the claim at the final meeting in 2015 and in 2016. As another example, if the claim was partially paid at the April 2015 meeting, then the Committee shall reconsider the claim at the final meetings in 2015, 2016, and 2017.)

c. No claim for reimbursement shall be paid until the claimant transfers to the Fund, in such form as the Trustees shall authorize, the claimant's rights against the attorney whose dishonest conduct caused the claimant's loss and any other person or entity who may be liable for the claimant's loss.

d. Payment of claims shall be made in such amounts and at such times as the Trustees deem appropriate and may be paid in lump-sum or installment amounts.

e. If a claimant is a minor or is incompetent, the award may be paid to a parent, guardian, committee or the attorney of the claimant, on behalf of and for the sole benefit of the claimant.

f. All payments of awards of reimbursement from the Fund shall be made from the Fund.

g. Payments to the Fund shall be dependent upon the allocations made to the Fund each year by the Colorado Supreme Court pursuant to C.R.C.P. 252.2(b).

7. **Fiscal year.** The Fund will operate on a fiscal year basis, concurrent with the fiscal year of the Office of Attorney Regulation Counsel.

8. **Meetings and Officers.** Meetings of the Trustees shall be subject to the call of the chairperson or the call of a majority of the Trustees. The Trustees shall meet at least annually for the consideration of claims. The Trustees shall keep accurate records of their action which shall be open to inspection at any and all times by any Trustee or by any member of the Colorado Supreme Court or by any person or persons authorized by the Colorado Supreme Court to inspect said records. Nothing set forth in this guideline shall preclude the inspection of the records by any person or persons designated as auditors of the Fund. The Trustees shall have the right to disclose information from their records to any person employed by the Trustees for the purpose of seeking restitution of any claim paid by the Fund and to disclose said information publicly in the prosecution of its subrogation rights.

9. **Duties of Officers.**

a. The chair shall preside at all meetings of the Trustees and generally coordinate and supervise the administration of the Fund.

b. If the chair is absent or otherwise unable to serve, the vice chair shall undertake the duties of the chair.

c. The chair shall utilize the services of the Office of Attorney Regulation Counsel, which shall have (1) custody of the monies and other assets of the Fund; (2) receive all payments to the monies of the Fund in the manner authorized by the Trustees; (3) make disbursement from the Fund authorized by the Trustees; (4) invest the monies of the Fund in the manner authorized by the Trustees; (5) cause an annual accounting to be made of the Fund; (6) maintain appropriate records; and (7) file such tax

Source: Amended and adopted June 25, 1998, effective July 1, 1998; (b)(7)-(b)(9) amended and adopted May 13, 1999, effective July 1, 1999; entire rule amended and effective September 1, 2000; (b)(9) corrected January 8, 2001, effective September 12, 2000; entire rule amended and adopted November 22, 2000, effective January 1, 2001; (b)(8) repealed and adopted and (b)(9) amended and adopted June 7, 2001, effective July 1, 2001; (b)(9) amended and adopted and (b)(9.5) added and adopted June 19, 2003, effective July 1, 2003; (a)(1) amended and adopted September 30, 2004, effective January 1, 2005.

Rule 252. Colorado Rules of Procedure Regarding Attorneys' Fund for Client Protection

Rule 252.1. Purpose and Scope

(a) The purpose of the Colorado Attorneys' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by mitigating losses caused by the dishonest conduct of attorneys admitted and licensed to practice law in the courts of this state occurring in the course of attorney-client or court-appointed fiduciary relationship between the attorney and the claimant.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

ANNOTATION

Law reviews. For article, "The Colorado Attorneys' Fund for Client Protection", see 32 Colo. Law. 27 (November 2003).

Rule 252.2. Establishment

(a) There is established the Colorado Attorneys' Fund for Client Protection to mitigate claimants for losses caused by dishonest conduct committed by attorneys admitted to practice in this state.

(b) There is established, under the supervision of the Supreme Court of Colorado, the Colorado Attorneys' Fund for Client Protection Board of Trustees, which shall receive, hold, manage and disburse from the fund such funds as may from time to time be allocated to the fund.

(c) These Rules shall be effective for claims filed with the board on or after July 1, 1999, and the Board shall not pay claims for losses incurred as a result of dishonest conduct committed prior thereto.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.3. Funding

(a) The Supreme Court shall provide for funding by the attorneys of the state through the attorney registration fee established in C.R.C.P. 227(A)(1)(a) and (c).

(b) An attorney whose dishonest conduct has resulted in any payment by the fund to a claimant shall make restitution to the fund including interest and the expense incurred by the fund in processing the claim and pursuing restitution. An attorney's failure to make full restitution may be cause for additional discipline or denial of an application for reinstatement or readmission.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.4. Funds

All money or other assets of the fund shall constitute a trust and shall be held in the name of the fund, subject to the direction of the Board.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.5. Composition and Officers of the Board

(a) The Board of Trustees shall consist of five attorneys and two public members appointed by the Supreme Court for initial terms as follows:

- (1) Two attorneys for one year;
- (2) One public member for two years;
- (3) Two attorneys for two years;
- (4) One public member for three years; and
- (5) One attorney for three years.

Subsequent appointments shall be for a term of three years. Members of the Board shall be eligible to serve no more than two consecutive terms.

(b) Trustees shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

(c) Vacancies shall be filled by appointment by the Supreme Court for any unexpired terms.

(d) The Board shall select a chairperson, secretary, treasurer and such other officers as the Board deems appropriate.

(e) The treasurer and any other officer designated to endorse and execute checks and other financial instruments of the fund shall be bonded in such manner and amount as the Board shall determine.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.6. Board Meetings

(a) The Board shall meet as frequently as necessary to conduct the business of the fund and to process claims in a timely manner.

(b) The chairperson shall call a meeting at any reasonable time or upon the request of at least two trustees.

(c) A quorum for any meeting of the Board shall be four trustees.

(d) Minutes of meetings shall be taken and permanently maintained by the secretary.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.7. Duties and Responsibilities of the Board

(a) The Board shall have the following duties and responsibilities:

(1) To receive, and in its sole discretion evaluate, investigate, determine and pay claims;

(2) To promulgate rules of procedure not inconsistent with these rules;

(3) In its discretion, if warranted and prudent, to fix a maximum amount of payment per claim payable from the fund and/or of the aggregate amount which may be paid because of the dishonest conduct of any one attorney;

(4) To solicit and receive funds from donations and other sources in addition to annual attorney registration fees;

(5) To invest prudently such portions of the funds as may not be needed currently to pay losses;

(6) To provide a full report annually to the Supreme Court and to make other reports as necessary;

(7) To publicize its activities to the public and the Bar;

(8) To retain and compensate consultants, actuaries, agents, legal counsel and other persons as necessary;

(9) To pursue claims for restitution to which the Fund is entitled;

(10) To engage in studies and programs for client protection and prevention of dishonest conduct by attorneys; and

(11) To perform all other acts necessary or proper for the fulfillment of the purposes

and effective administration of the fund.

(b) Regulation Counsel shall assist the Board in the effective and efficient performance of its functions, including but not limited to investigation of claims.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.8. Conflict of Interest

(a) A Trustee who has or has had an attorney-client relationship or a financial relationship with a claimant or attorney who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or attorney.

(b) A Trustee with a past or present relationship, other than as provided in section (a), with a claimant or the attorney who is the subject of the claim, shall either voluntarily abstain from participating or disclose such relationship to the Board and, if the Board deems appropriate, that Trustee shall not participate in any proceeding relating to such claim.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.9. Immunity

The Trustees, employees and agents of the Board shall be absolutely immune from civil liability for all acts performed in the course of their official duties. Absolute immunity shall also extend to claimants and attorneys who assist claimants for all communications to the fund.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.10. Eligible Claims

(a) The loss must be caused by the dishonest conduct of the attorney and shall have arisen out of and by reason of an attorney-client relationship or a court-appointed fiduciary relationship between the attorney 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 attorney.

(c) As used in these rules, “dishonest conduct” means one or more wrongful acts committed by an attorney in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:

(1) Refusal to refund unearned fees received in advance as required by Rule 1.16 of the Colorado Rules of Professional Conduct; and

(2) The borrowing of money from a client without intention to repay it, or with disregard of the attorney’s inability or reasonably anticipated inability to repay it.

(d) Except as provided by section (e) of this rule, the following losses shall not be eligible:

(1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of attorney(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 attorney;

(5) Losses incurred by any governmental entity or agency;

(6) Losses arising from the activities of an attorney not having an office or residence in Colorado where those activities do not have substantial contacts with Colorado; and,

(7) Interest on the loss or any type of consequential damages or punitive damages or costs.

(e) In cases of extreme hardship or special and unusual circumstances, the Board may,

in its discretion, recognize a claim which would otherwise be excluded under these rules.

(f) In cases where it appears that there will be unjust enrichment or multiple recovery or the claimant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the claim.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.11. Procedures for Filing Claims

(a) The Board shall prepare and approve a form for claiming reimbursement and shall designate the place and manner for filing a claim.

(b) The claimant must agree to cooperate with the Board in reference to the claim and in reference to civil actions which may be brought in the name of the Board pursuant to a subrogation and assignment clause which shall also be contained within the claim.

(c) The claimant shall have the responsibility to complete the claim form and provide satisfactory evidence to support the claim.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.12. Procedures for Processing Claims

(a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, the claimant shall be advised of the reasons why the claim may not be eligible for reimbursement, and that, unless additional facts to support eligibility are submitted to the Fund, the claim file shall be closed.

(b) A certified copy of an order disciplining an attorney for the same dishonest act or conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall be conclusive evidence that the attorney committed such dishonest act or conduct.

(c) Regulation Counsel shall be promptly notified of the claim and requested to furnish a report of its investigation, if any, on the matter to the Board. The Regulation Counsel shall allow the Fund's representatives access to its records during an investigation of a claim. The Board shall evaluate whether the investigation is complete and determine whether the Board should conduct additional investigation or await the conclusion of any disciplinary investigation or proceeding involving the same act or conduct that is alleged in the claim.

(d) The Board may conduct its own investigation when it deems it appropriate and may seek and obtain the assistance of the Regulation Counsel, the Attorney Regulation Committee, the Board of Law Examiners, the Board of Continuing Legal Education, and the Attorney Registration Office, irrespective of any confidentiality requirements of those offices, subject to rule 252.15.

(e) The Board or an individual trustee or counsel designated to act on behalf of the trustees, upon determining that any person has knowledge or is in possession or custody of books, papers, documents or other objects relevant to the disposition of a claim, may issue a subpoena requiring such person to appear and testify or to produce such books, papers, documents or other objects before the Board or counsel designated to act on behalf of the trustees, at the time and place specified therein. Subpoenas shall be subject to the provisions of C.R.C.P. 45.

(f) If any person, without adequate excuse, shall fail to obey a subpoena, the Board or an individual trustee or counsel designated to act on their behalf, may file with the Supreme Court a verified statement setting forth the facts establishing such disobedience, and the Court may then, in its discretion, institute contempt proceedings. If such person is found guilty of contempt, the Court may compel payment of the costs of the contempt proceedings to be taxed by the Court.

(g) If, by the completion of the investigation, the attorney or the attorney's representative has not been notified of the claim and given an opportunity to respond to the claim, a copy of the claim shall be served upon the attorney, or the attorney's representative. The attorney or representative shall have 21 days in which to respond.

(h) The Board may request that testimony be presented to complete the record. Upon

request, the claimant or attorney, or their representatives, will be given an opportunity to be heard.

(i) The Board may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for purposes of professional discipline or other purposes.

(j) When the record is complete, the claim shall be determined on the basis of all available evidence, and notice shall be given to the claimant and the attorney of the Board's determination and the reasons therefor. The approval or denial of a claim shall require the affirmative votes of at least four trustees. Payment of a claim may be made in a lump sum or in installments in the discretion of the Board.

(k) Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings.

(l) The Board shall determine the order and manner of payment and pay all approved claims, but unless the Board directs otherwise, no claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct that is alleged in the claim if the attorney disputes the pertinent allegations.

(m) Both the claimant and the attorney shall be advised of the status of the Board's consideration of the claim and shall be informed of the final determination.

(n) The claimant may request in writing reconsideration within 35 days of the denial or determination of the amount of a claim. If the claimant fails to make a request or the request is denied, the decision of the Board is final.

Source: Added and adopted June 25, 1998, effective January 1, 1999; (g) and (n) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b).

Rule 252.13. Reimbursement from Fund is a Matter of Grace

No person shall have the legal right to payment from the fund whether as claimant, third-party beneficiary, or otherwise. The decisions and actions of the Board of Trustees are not reviewable on any ground in any court or other tribunal.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.14. Restitution and Subrogation

(a) An attorney whose dishonest conduct results in payment to a claimant shall be liable to the Fund for restitution; and the Board may bring such action as it deems advisable to enforce such obligation, including costs of such action.

(b) As a condition of payment, a claimant shall be required to provide the fund with a transfer of the claimant's rights up to the amount paid by the Fund against the attorney, the attorney's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the claimant's loss.

(c) Upon commencement of an action by the Board as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unpaid losses.

(d) In the event that the claimant commences an action to recover unpaid losses against the attorney or another entity who may be liable for the claimant's loss, the claimant shall be required to notify the Board of such action.

(e) The claimant shall be required to agree to cooperate in all efforts that the Board undertakes to achieve restitution for the Fund.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

ANNOTATION

Ratification of unauthorized action. Claimant's acceptance of moneys from the fund does not constitute ratification of his attorney's unauthorized settlement with a third party if claimant was not aware of the consequences of accepting the fund moneys. *Siener v. Zeff*, 194 P.3d 467 (Colo. App. 2008).

Rule 252.15. Confidentiality

(a) The Board and its agents shall keep claims, proceedings and reports involving claims for reimbursement confidential until the Board authorizes reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Board shall publicize the nature of the claim, the amount of reimbursement, and the name of the attorney. The name and the address of the claimant shall not be publicized by the Board unless specific permission has been granted by the claimant.

(b) This rule shall not be construed to deny access to relevant information by the Regulation Counsel or other professional discipline agencies or other law enforcement authorities as the Board shall authorize, or the release of statistical information which does not disclose the identity of the attorney or the claimant.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 252.16. Compensation for Representing Claimants

No attorney shall accept any payment for prosecuting a claim to the Fund on behalf of a claimant, unless such payment has been approved by the Board.

Source: Added and adopted June 25, 1998, effective January 1, 1999.

Rule 254. Colorado Lawyer Assistance Program

(1) **Colorado Lawyer Assistance Program.** The Colorado Supreme Court hereby establishes an independent Colorado Lawyer Assistance Program ("COLAP"). The goal of such program is:

(a) To protect the interests of clients, litigants and the general public from harm caused by impaired attorneys or judges;

(b) To assist impaired members of the legal profession to begin and continue recovery; and

(c) To educate the bench, bar and law schools to the causes of and remedies for impairments affecting members of the legal profession. Such program and its director shall be under the supervision of the Supreme Court Advisory Committee ("Advisory Committee") as set forth in C.R.C.P. 251.34(b)(3).

(2) **COLAP Services.** The Attorney Assistance Program shall provide the following services:

(a) Immediate and continuing assistance to members of the legal profession who suffer from physical or mental disabilities that result from disease, disorder, trauma or age and that impair their ability to practice;

(b) Planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and, to convey an understanding of appropriate ways of interacting with affected individuals;

(c) Investigation, planning and participation in interventions with members of the legal profession in need of assistance;

(d) Aftercare services upon request, by order, or under contract that may include the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and

(e) Monitoring services that may include the following: alcohol and/or drug screening

invest the monies of the Fund in the manner authorized by the Trustees; (5) cause an annual accounting to be made of the Fund; (6) maintain appropriate records; and (7) file such tax or information returns as may be required of the Fund. Disbursements from the Fund shall be made upon direction of the Board of Trustees and by the signature of Attorney Regulation Counsel, or for those amounts \$5,000 or more, by the signature of Attorney Regulation Counsel and one of the liaison justices. The chair may, authorize payment of administrative expenses from the Fund.

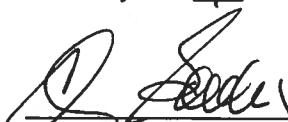
d. The Office of Attorney Regulation Counsel shall prepare minutes of each meeting of the Trustees and shall maintain the original records of the Trustees, including a separate file for each claim for all claims for reimbursement filed with the Fund.

10. **Fund of last resort.** Claimants should reasonably exhaust other remedies before seeking reimbursement from the Fund. Other remedies include bonds, professional liability policies, third party responsibility, the defalcating attorney's partners and deceased attorney's estate. Neither the Trustees nor the Fund nor its staff shall incur any liability for non-payment of claims or for erroneous payments.

11. **Investment.** All Fund assets may be invested, as authorized by C.R.C.P. 252.7(a)(5): (1) in bonds, notes or other securities of or guaranteed by the United States or a federal agency, and (2) in interest bearing accounts or certificates of any bank, trust company, or savings and loan association which are insured by the Federal Deposit Insurance Corporation of the United States or protected pursuant to the Public Deposit Protection Act (PDPA), C.R.S. § 11-105 – 101, et. seq.

12. **Amendment.** These Guidelines and Regulations may be amended by a vote of at least four of the Trustees.

Date of Adoption: These Guidelines have been adopted on June 16, 1999, which are effective, and amended March 23, 2005 and June 11, 2015.



Charles Goldberg, Esq., Chair
Colorado Attorneys' Fund for Client Protection
Colorado Supreme Court