

GEORGIA

Clients' Security Fund of the State Bar of Georgia

(Part X - Clients' Security Fund)

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Part X - Clients' Security Fund

Preamble

The purpose of the Clients' Security Fund is to promote public confidence in the administration of justice and the integrity of the legal profession by providing monetary relief to persons who suffer reimbursable losses as a result of the dishonest conduct of members of the State Bar of Georgia.

Rule 10-101. Fund Established.

There is established a separate fund of the State Bar of Georgia designated "Clients' Security Fund of the State Bar of Georgia." There is also established a Clients' Security Fund Board of Trustees, which shall receive, hold, manage and disburse from the Fund such monies as may from time to time be appropriated to it by the State Bar of Georgia, or received through voluntary contributions, income from investments or other funding sources.

Rule 10-102. Definitions.

For this Rule, the terms shall have the following meanings:

1. "Board" means the Clients' Security Fund Board of Trustees.
2. "Client" means one who files a claim for reimbursement with the Board of Trustees.
3. "Fund" means the Clients' Security Fund of the State Bar of Georgia.
4. "Lawyer" or "attorney" means one who, at the time of the commencement of his or her handling of the matter in which the loss arose, was a member of the State Bar of Georgia.

Rule 10-103. Funding.

1. The State Bar of Georgia shall provide funding for the payment of claims and the costs of administering the Fund. In any year following a year in which the gross aggregate balance of the Fund falls below \$1,000,000, the State Bar of Georgia shall assess and collect from each dues-paying member a *pro rata* share of the difference between the actual Fund balance and \$1,000,000, provided that such assessments shall not exceed \$25 in any single year. The aggregate amount paid to claimants from the Fund in any year shall not exceed \$500,000. The Board of Governors may from time to time adjust the Fund's minimum aggregate balance, maximum annual payout, or maximum annual assessment to advance the purposes of the Fund or to preserve the fiscal integrity of the Fund.
2. All monies 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.
3. Only the Board of Trustees may authorize the payment of money from the Fund.

Rule 10-104. Board of Trustees.

1. The Board of Trustees shall consist of six lawyers and one non-lawyer appointed by the President of the State Bar of Georgia. The initial appointments to the Board shall be for such terms as to result in the staggered expiration of the terms of all members of the Board. Thereafter, the appointments shall be for a term of five years.
2. Vacancies shall be filled by appointment of the President of the State Bar of Georgia for any unexpired term.
3. The Board members shall select a chairperson, who is a member of good standing of the State Bar of Georgia and such other officers as the Board members deem appropriate.
4. A quorum for the transaction of business at any meeting of the Board shall consist of three current members in attendance.
5. The Board may adopt a regulation to terminate Trustees who fail to regularly attend meetings and may adopt additional regulations for the administration of the Fund which are not otherwise inconsistent with these Rules.

Rule 10-105. Investigations.

1. The Board shall review every claim, and in its discretion, will investigate to the extent the Board deems appropriate those claims that appear to meet the requirements for payment as described in these Rules.
2. The Board may approve for payment from the fund such claims as are found, after investigation, to be meritorious and in accordance with these Rules.
3. Applications for relief shall be submitted on forms prescribed by the Board.

Rule 10-106. Eligible Claims.

(a) The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and because of a lawyer-client relationship, or a fiduciary relationship, between the lawyer and the claimant.

(b) As used in these Rules, "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.

(c) There must be a final disposition of a grievance filed with the State Disciplinary Board of the State Bar of Georgia resulting in indefinite suspension, disbarment, or voluntary surrender of license.

(d) The claim shall be filed no later than two years after the date of final disciplinary action by the Supreme Court of Georgia. In the event disciplinary action cannot be prosecuted due to the fact that the attorney is either deceased or cannot be located, the claim shall be filed no later than five years after the dishonest conduct was first discovered by the applicant; provided, however, the claim shall be filed no later than seven years after the dishonest conduct occurred.

(e) Except as provided by part (f) 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(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, or any person or entity described in part (e) (1) hereof;

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

(6) losses incurred by corporations or partnerships, including general or limited.

(f) In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, recognize a claim that otherwise would be excluded under these Rules in order to achieve the purpose of the Fund.

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

(h) The Board shall require the applicant to exhaust his or her civil remedies unless the Board determines that the pursuit of the civil claim is not feasible or practical.

Rule 10-107. Payments.

1. The Board may exercise its discretion to grant monetary relief as a matter of grace and not of right if it determines that a claimant has suffered a reimbursable loss under these Rules and the circumstances warrant relief. Before granting such a claim, the Board must take into consideration the resources of the Fund and the priority to be assigned to a claimant's application.
2. Such monetary relief shall be in an amount as the Board may determine and shall be payable in a manner and upon conditions and terms as the Board shall prescribe.
3. This process is designed so that a claimant should not require legal counsel to assist with a claim. However, if a claimant desires legal counsel, no lawyer may accept any payment for assisting a claimant with prosecuting a claim under these Rules unless such payment has been approved by the Board.

Rule 10-108. Right to Payment and Right of Appeal.

1. No person shall have any legal right to payment or reimbursement from the Fund whether as a claimant, third-party beneficiary, or otherwise. Any amount paid to a claimant by the Fund may be appealed to the Board by the claimant.
2. The claimant may request reconsideration within 30 days of notice 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, and there is no further right of reconsideration or appeal.

Rule 10-109. Restitution and Subrogation.

1. A lawyer whose dishonest conduct results in reimbursement to a claimant shall be liable to the Fund for restitution; the Board may bring such action as it deems advisable to enforce such obligation.
2. As a condition of reimbursement, a claimant shall be required to provide the Fund with a pro tanto release and transfer of the claimant's rights against the lawyer, the lawyer's legal representative, estate or assigns, and the claimant's rights against any third party or entity who may be liable for the claimant's loss.
3. No petition for reinstatement to practice law in the state of Georgia shall be granted until the petitioner has made restitution to the Clients' Security Fund for all amounts paid by the Fund as a result of the petitioner's conduct.

Rule 10-110 Immunity.

The Supreme Court of Georgia recognizes the actions of the State Bar of Georgia and this program to be within the Court's judicial and regulatory functions. As such, the State Bar of Georgia, its employees, the Office of the General Counsel, its staff liaison to the program, the Clients' Security Fund Board of Trustees, and any outside counsel advising and assisting the program shall be entitled to that immunity customarily afforded to persons performing such functions.

Rule 10-111. Confidentiality.

1. Claims, proceedings and reports involving claims for reimbursement are confidential until the Board authorizes reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Board may publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer. The name and the address of the claimant shall not be publicized by the Board unless specific permission has been granted by the claimant.
2. This Rule shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Board shall authorize, or the release of statistical information that does not disclose the identity of the lawyer or the parties, or use of such information as necessary to pursue the Fund's restitution and subrogation rights Rule under Rule 10-109.
3. In the event a lawyer whose conduct resulted in the payment of a claim files a petition for reinstatement to the practice of law, the Board shall release all information pertaining to the claim to the Board to Determine Fitness of Bar Applicants as may be pertinent to the reinstatement proceeding.
4. Any disciplinary information obtained by the Board or a Trustee during the investigation of a claim is confidential to the same extent as required by Bar Rule 4-221 (d).

Rule 10-112. Repeal of Resolution.

Any Resolution of the State Bar of Georgia currently in force and covering the subject matter of these Rules 10-101 through 10-112, shall be repealed upon adoption of these Rules by the Supreme Court of Georgia.