

INDIANA

The Clients' Financial Assistance Fund of the Indiana State Bar Association

(Rules of Procedure)

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CLIENTS' FINANCIAL ASSISTANCE FUND
OF THE
INDIANA STATE BAR ASSOCIATION

RULES OF PROCEDURE

Adopted August 23, 2019

The following Rules of Procedure are hereby adopted by the Clients' Financial Assistance Fund Committee of the Indiana State Bar Association for the management of its funds and affairs and for the presentation and processing of the applications for payments.

- 1) Definitions. The Clients' Financial Assistance Fund of the Indiana State Bar Association may hereafter be referred to as "the Fund." The Indiana State Bar Association may hereafter be referred to as "the Association," The Special Committee appointed to manage and administer the Fund as "the Committee" and the Clients' Financial Assistance Fund Plan may be referred to as "the Plan."
- 2) Qualified Applicants.
 - a. The Committee shall consider applications for financial assistance and/or relief from individuals suffering losses as a result of dishonest acts of a lawyer, acting either as a lawyer or a fiduciary, provided that:
 - i. The conduct was engaged in while the attorney was a practicing member of the Bar of this State, and
 - ii. The claimant is a resident or citizen of Indiana, or, if not, the legal matter was a matter that occurred in Indiana, and
 - iii. The claimant has been victimized by an attorney's dishonest act or omission that involves the misappropriation of money or other property by the attorney, and
 - iv. The claimant submits a request for investigation (commonly called a grievance) with the Disciplinary Commission of the Indiana Supreme Court unless the attorney is deceased or disbarred or has resigned from the bar
 - b. The Fund shall not pay attorneys' fees or expenses incident to exhaustion of civil remedies or the preparation of an application for assistance from the Fund. Attorneys representing applicants shall be required to give to the Committee a written statement that they will accept no fee from the applicant for services rendered in connection with any payment by the Fund. The foregoing does not bar attorneys from recovering fees for services from representation of claimants in civil actions, which may result in subrogation to the Fund.

- c. The spouse, ancestor, lineal descendant, a person related within the fourth degree of kindred at the common law or law partner or associate of any dishonest lawyer shall not be entitled to receive any payments from the Fund.
 - d. Only persons shall be entitled to be recipients of payments from the Fund except where the claimant is a trust, guardianship, or an estate and the payments from the Fund will go only to natural persons who are the intended beneficiaries of the trust, guardianship, or estate.
- 3) Notice of Loss. Applications for assistance must be received by the Committee within two years after the loss has come to the knowledge of the person claiming such loss unless the claimant is under a legal disability or the claimant presents sufficient facts that the Committee concludes that the two-year period should be equitably extended.
- 4) Filing of Applications.
 - a. An application for payment from the Fund shall be presented by proper sworn statement, signed by the applicant and filed with the Indiana State Bar Association at its office in Indianapolis, Indiana, for its investigation and handling.
 - b. Each application shall set forth all pertinent facts and information required to establish eligibility for assistance and any other information pertinent to the criteria.
- 5) Investigation. Generally, investigation of all applications shall be made by a person or persons designated by the Association. A report of such investigation, with recommendations, shall be made to the Committee as promptly as circumstances permit. The form, scope or type of investigation shall be consistent with the matter involved; and the Committee may, by a proper directive, expand the scope of the investigation as it may deem expedient and necessary for the determination of such matter.
- 6) Consideration of Requests for Assistance.
 - a. The committee shall review each application and decide by a majority vote of those attending a meeting whether to grant an application in whole or in part, whether to deny it, or whether to defer action pending the receipt of further information or pending the occurrence of further events. The Committee may request an applicant to submit supplemental information, may request a supplemental investigation be held, or may hold such conferences or hearings as it deems necessary.
 - b. Committee members can attend meetings in person, by phone, or via technology.
 - c. All payments shall be a matter of grace, and no client or member of the public shall have any right in the Fund as third-party beneficiary or otherwise.
 - d. In cases of emergency, the Committee is authorized to make an interim assistance payment of up to 25% of the maximum award permissible before investigation is completed if:

- i. The investigation to date discloses a reasonable likelihood that the claim will ultimately be honored; and
 - ii. The payment at that time will serve the best interest of the humanitarian purposes of the Fund. Action by the Committee approving interim payments does not require approval of the Board of Governors.
- 7) Criteria for Providing Assistance Payment from the Fund. Subject to approval by the Board of Governors as set forth in paragraph 8, the Committee is invested with the sole discretion to recommend whether an applicant should be provided financial assistance from the Fund and, if so, the amount of such assistance, the time, place and manner of its payment, the conditions upon which payment shall be made, and the order in which payment shall be made.
- 8) Award Considerations and Claim Limits. In making its recommendations, the Committee shall consider, among other appropriate factors, the following:
 - a. The amounts available and likely to become available to the Fund for assistance payments and the size and number of applications which are likely to be presented;
 - b. The total amount of losses in previous years for which total assistance has not been made, if any, and the total assets of the Fund;
 - c. The total amount of the applicant's loss as compared to the amount of losses sustained by other eligible applicants;
 - d. The degree of hardship suffered by the applicant as a result of the loss;
 - e. The degree of negligence, if any, of the applicant which may have contributed to the loss; and
 - f. The total amount of losses caused by defalcations by any one attorney or associated group of attorneys.

In recommending financial assistance payments, the Committee shall not award more than \$15,000 to any one claimant and shall not award more than \$50,000 in the aggregate on account of losses arising out of the conduct of any one attorney. An award of more than \$10,000 but less than \$15,000 to any one claimant shall require and be subject to the approval of the Board of Governors. Applications which the Committee denies or for which the Committee approves a payment of \$10,000 or less need not be submitted to the Board of Governors for review or approval. If a claimant timely files an application for relief, but the application is filed after the \$50,000 aggregate has been exhausted, the Committee may recommend and the Board of Governors may consider payments above the aggregate limit. Any payment made above the aggregate limit of \$50,000 may not exceed \$10,000. Furthermore, the Board of Governors may not approve payment of a greater percentage of the amount applied for in such subsequent application than the largest percentage previously awarded to any claimant seeking assistance as a result of the same attorney's conduct.

- 9) Amendment. The foregoing Rules of Procedure may be amended at any time and from time to time by the Committee with the concurrence of the Board of Governors.
