

WASHINGTON

Client Protection Fund

(Client Protection Fund Procedural Regulations Regulation 1, et seq.)

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Admission and Practice Rules

APR 15
CLIENT PROTECTION FUND (APR 15) PROCEDURAL REGULATIONS

REGULATION 1. PURPOSE

(a) The purpose of these regulations is to establish procedures pursuant to Rule 15 of the Admission and Practice Rules, to maintain and administer a Client Protection Fund established as a trust by the Bar, in order to promote public confidence in the administration of justice and the integrity of the legal profession.

(b) Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any lawyer, LLLT, or LPO of the Bar as a result of or directly related to the lawyer's, LLLT's, or LPO's practice of law, or while acting as a fiduciary in a matter directly related to the lawyer's, LLLT's, or LPO's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time a lawyer, LLLT, or LPO of the Bar but who was at the time of the act complained of under a court ordered suspension.

(c) The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from a lawyer's, LLLT's, or LPO's negligent performance of services.

REGULATION 2. ESTABLISHMENT OF THE FUND

(a) Trustees. Pursuant to APR 15, the members of the Board of Governors will serve during their terms of office as Trustees (Trustees) for the Fund to hold funds assessed by the Supreme Court for the purposes of the Fund. The Bar President will serve as President of the Trustees.

(b) Funding. The Trustees may recommend to the Supreme Court that it order an annual assessment of all active lawyers, LLLTs, or LPOs of the Bar in an amount recommended by the Trustees to be held by them in trust for the purposes of the Fund.

(c) Enforcement. Any active lawyer, LLLT, or LPO failing to pay any annual assessment on or before the date set for payment by the Supreme Court shall, be ordered suspended from the practice of law in accordance with APR 17 and the Bar's Bylaws until the assessment is paid.

REGULATION 3. CLIENT PROTECTION BOARD

(a) Membership. The Client Protection Board shall consist of 11 lawyers, LLLTs, or LPOs and 2 community representatives who are not licensed to practice law, appointed by the Trustees for terms not exceeding three years each.

(b) Vacancies. Vacancies on the Client Protection Board shall be filled by appointment of the Trustees.

(c) Officers. The Trustees shall appoint a chairperson of the Client Protection Board for a term of one year or until a successor is appointed. The secretary of the Client Protection Board shall be a staff member of the Bar assigned to the Client Protection Board by the Executive Director of the Bar.

(d) Meetings. The Client Protection Board shall meet not less than once per year upon call of the chairperson, or at the request of the staff member of the Bar, who shall not be entitled to vote on Client Protection Board matters.

(e) Quorum. A majority of the Client Protection Board members, excluding the secretary, shall constitute a quorum.

(f) Record of Meetings. The secretary shall maintain minutes of the Client Protection Board deliberations and recommendations.

(g) Authority and Duties of Client Protection Board. The Client Protection Board shall have the power and authority to:

(1) Consider claims for reimbursement of pecuniary loss and make a report and recommendation regarding payment or nonpayment on any claim to the Trustees.

(2) Provide a full report of its activities annually to the Supreme Court and the Trustees and to make other reports and to publicize its activities as the Court or Trustees may deem advisable.

(h) Conflict of Interest.

(1) A Client Protection Board member who has or has had a lawyer/client relationship or financial relationship with an applicant or lawyer, LLLT, or LPO who is the subject of an application shall not participate in the investigation or deliberation of an application involving that applicant or lawyer, LLLT, or LPO.

(2) A Client Protection Board member with a past or present relationship, other than that as provided in section (1), with an applicant or lawyer, LLLT, or LPO who is the subject of an application, shall disclose such relationship to the Client Protection Board and, if the Client Protection Board deems it appropriate, that member shall not participate in any action relating to that application.

REGULATION 4. APPLICATIONS FOR PAYMENT

(a) Applications. All applications for payment through the Client Protection Fund shall be made by submitting to the Bar an application in such form and manner as determined by the Bar, and shall include all information requested on the form.

(b) **Disciplinary Grievances.** Before an application for payment from the Fund will be considered, the applicant must also file a disciplinary grievance with the Office of Disciplinary Counsel, unless the lawyer, LLLT, or LPO is disbarred, revoked, or deceased, or unless the Client Protection Board in its discretion finds that no disciplinary grievance is required.

(c) **Information about the Fund.** The application and information about the Fund shall be published on the Bar's public website and provided to any person on request.

REGULATION 5. ELIGIBLE CLAIMS

(a) **Eligibility.** To be eligible for payment from the Fund, the loss must be caused by the dishonest conduct of a lawyer, LLLT, or LPO or the failure to account for money or property entrusted to a lawyer, LLLT, or LPO as a result of or directly related to the lawyer's, LLLT's, or LPO's practice of law. The loss must also have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship in a matter directly related to the lawyer's, LLLT's, or LPO's practice of law.

(b) **Time Limitations.** Any application must be made within three years from the date on which discovery of the loss was made or reasonably should have been made by the applicant, and in no event more than three years from the date the lawyer, LLLT, or LPO dies, is disbarred or revoked, is disciplined for misappropriation of funds, or is criminally convicted for matters relating to the applicant's loss, provided that the Client Protection Board or Trustees in their discretion may waive any limitations period for excusable neglect or other good cause.

(c) **Dishonest Conduct.** As used in these rules and regulations, "dishonest conduct" or "dishonesty" means wrongful acts committed by a lawyer, LLLT, or LPO in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other thing of value, including but not limited to refusal to refund unearned fees or expenses as required by the Rules of Professional Conduct.

(d) **Excluded Losses.** Except as provided by Section E of this Regulation, the following losses shall not be reimbursable:

(1) Losses incurred by related persons, law partners and associate lawyers, LLLTs, or LPOs of the lawyer, LLLT, or LPO causing the loss. For purposes of these Rules and Regulations, "related persons" includes a spouse, domestic partner, child, grandchild, parent, grandparent, sibling, or other relative or individual with whom the lawyer, LLLT, or LPO maintains a close, familial relationship;

(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, LLLT, or LPO or any person or entity described in Regulation 5 (D) (1), (2) or (3);

(5) Losses incurred by an assignee, lienholder, or creditor of the applicant or lawyer, LLLT, or LPO unless application has been made by the client or beneficiary or the client or beneficiary has authorized such reimbursement;

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

(7) Losses arising from business or personal investments not arising in the course of or arising out of the client-lawyer or client-LLLT relationship, or the provision of LPO services;

(8) Consequential damages, such as lost interest, or attorney's fees or other costs incurred in seeking recovery of a loss.

(e) **Special and Unusual Circumstances.** In cases of special and unusual circumstances, the Client Protection Board may, in its discretion, consider an application which would otherwise be excluded by reason of the procedural requirements of these rules and regulations.

(f) **Unjust Enrichment.** In cases where it appears that there will be unjust enrichment, or that the applicant contributed to the loss, the Client Protection Board may, in its discretion, recommend the denial of the application. No rule should be interpreted as to provide a financial windfall to a claimant from the Fund.

(g) **Investment Victims.** When considering gifts to claimants who were victimized after investing with a lawyer, LLLT, or LPO the Client Protection Board may consider such factors as the sophistication of the investor, the length of the relationship with the lawyer, LLLT, or LPO, and whether the investor was aware that the lawyer, LLLT, or LPO had partners who were not lawyers, LLLTs, or LPOs.

(i) **Exhaustion of Remedies.** The Client Protection Board may consider whether an applicant has made reasonable attempts to seek reimbursement of a loss before taking action on an application. This may include, but is not limited to, the following:

(1) Filing a claim with an appropriate insurance carrier;

(2) Filing a claim on a bond, when appropriate;

(3) Filing a claim with any and all banks which honored a financial instrument with a forged endorsement;

(4) As a prelude to possible suit under part (5) below, demanding payment from any business associate or employer who may be liable for the actions of the dishonest lawyer, LLLT, or LPO; or

(5) Commencing appropriate legal action against the lawyer, LLLT, or LPO or against any other party or entity who may be liable for the applicant's loss.

REGULATION 6. PROCEDURES

(a) Ineligibility. Whenever it appears that an application is not eligible for reimbursement pursuant to Rule 5, the applicant shall be advised of the reasons why the application may not be eligible for reimbursement.

(b) Investigation and Report. The Bar staff member assigned to the Client Protection Board shall conduct an investigation regarding any application. The investigation may be coordinated with any disciplinary investigation regarding the lawyer, LLLT, or LPO. The staff member shall report to the Client Protection Board and make a recommendation to the Client Protection Board.

(c) Notification of Lawyer, LLLT, or LPO. The lawyer, LLLT, or LPO or his or her representative, regarding whom an application is made shall be notified of the application and provided a copy of it, and shall be requested to respond within 20 days. If the lawyer's, LLLT's, or LPO's address of record on file with the Bar is not current, then a copy of the application should be sent to the lawyer, LLLT, or LPO at any other address on file with the Bar. A copy of these Rules and Regulations shall be provided to the lawyer, LLLT, or LPO or representative.

(d) Withdrawal of Application/Restitution. If, during the investigation of an application, the Applicant withdraws the Application or the Applicant receives full restitution of the amount stated in the Application, the Applicant and the lawyer, LLLT, or LPO shall be advised that the file will be closed without further action.

(e) Testimony. The Client Protection Board may request that testimony be presented to complete the record. Upon request, the lawyer, LLLT, or LPO or applicant, or their representatives, may be given an opportunity to be heard at the discretion of the Client Protection Board.

(f) Finding of Dishonest Conduct. The Client Protection Board may make a finding of dishonest conduct for purposes of considering an application. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.

(g) Evidence and Burden of Proof. 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 sort of evidence commonly accepted by reasonably prudent persons in the conduct of their affairs. The applicant shall have the burden of establishing eligibility for reimbursement by a clear preponderance of the evidence.

(h) Pending Disciplinary Proceedings. Unless the Trustees otherwise direct, no application shall be acted upon during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the claim.

(i) Deferred Disciplinary Proceedings; Lawyer, LLLT, or LPO on Disability Inactive Status.

(1) If an application relates to a lawyer, LLLT, or LPO on disability inactive status, and/or a disciplinary proceeding or investigation is deferred due to a lawyer's, LLLT's, or LPO's transfer to disability inactive status, the Client Protection Board may act on the application when received or may defer processing the application for up to three years if the lawyer, LLLT, or LPO remains on disability inactive status.

(2) A lawyer, LLLT, or LPO on disability inactive status seeking to return to Active status may, while pursuing reinstatement pursuant to the Rules for Enforcement of Conduct or other applicable discipline rules, request that the lawyer's, LLLT's, or LPO's obligation to make restitution for any applications approved while the lawyer, LLLT, or LPO was on disability inactive status be reviewed.

(A) If the request for review is based in, whole or in part on the merits of the application(s), the lawyer, LLLT, or LPO may request the Client Protection Board review and reconsider any such applications. The Client Protection Board's decision on review shall be reported to the Trustees, which shall have sole authority for the final decision. If the Trustees determine that the application(s) should not have been approved, the lawyer, LLLT, or LPO will not be responsible for restitution and the applicant(s) shall not be required to repay the Fund. If the Trustees determine that the applications were appropriately granted and the lawyer, LLLT, or LPO is responsible for restitution, the rules regarding restitution shall apply.

(B) If the lawyer, LLLT, or LPO does not contest the merits of the applications but simply wants to request that restitution be waived, the request shall be submitted to Bar Counsel for the Fund, who shall submit the request to the Trustees together with Bar Counsel's recommendation. The decision of the Trustees shall be final and is not subject to appeal.

(j) Public Participation. Public participation at Client Protection Board meetings shall be permitted only by prior permission granted by the Client Protection Board chairperson.

(k) Client Protection Board Action.

(1) Actions of the Client Protection Board Which Are Final Decisions. A decision by the Client Protection Board on an application for payment of \$25,000 or less-whether such decision be to make payment, to deny payment, to defer consideration, or for any action other than payment of more than \$25,000- shall be final and without right of appeal to the Trustees.

(2) Actions of the Client Protection Board Which Are Recommendations to the Trustees. A decision by the Client Protection Board (a) on an application for more than \$25,000, or (b) involving a payment of more than \$25,000 (regardless of the amount stated in the application), is not final and is a recommendation to the Trustees which shall have sole authority for final decisions in such cases.

REGULATION 7. ADJUDICATION BY TRUSTEES

(a) A recommendation by the Client Protection Board (a) concerning applications for more than \$25,000, or (b) that payments of more than \$25,000 be made to applicants regarding any one lawyer, LLLT, or LPO shall be reported to the Trustees which may, in its discretion, adopt, modify, disapprove or take any other appropriate action on the Client Protection Board's recommendation.

(b) A decision of the Trustees shall be final and there shall be no right of appeal from that decision.

REGULATION 8. NOTIFICATION OF APPLICANT AND LAWYER, LLLT, OR LPO

Both the applicant and the lawyer, LLLT, or LPO who is the subject of an application shall be advised of any decision of the Client Protection Board or the Trustees.

REGULATION 9. LIMITATIONS ON REIMBURSEMENT

(a) The Trustees may, at their discretion, set limitations on the amount of reimbursement.

(b) The maximum allowable amount of a gift is \$150,000. There is no limit on the number of gifts that can be made to reimburse clients for the wrongful acts of any one lawyer, LLLT, or LPO.

(c) Applications approved for \$5,000 or less shall be paid in full upon approval by the Client Protection Board (and the Trustees, if required under these Rules and Regulations). Applications approved for more than \$5,000 shall be paid \$5,000 upon approval by the Client Protection Board (and the Trustees, if required under these Rules and Regulations); payment of the remaining balance approved shall be deferred until fiscal year end and shall be subject to any proration which may be approved by the Trustees.

(d) At the last meeting of the Trustees for each fiscal year, the Client Protection Board shall report the total outstanding balance on approved gifts and shall recommend whether the outstanding balance should be paid in full or prorated. When approved gifts are prorated, the prorated payment shall reflect the total amount of the gift, less the initial \$5,000 payment made upon approval by the Client Protection Board. By way of illustration:

Example 1: The application is for an amount in excess of \$150,000. The Client Protection Board recommends and the Board of Governors, as Trustees, approves a gift in the maximum allowable amount of \$150,000. \$5,000 is paid upon approval by the Trustees. At fiscal year end, the Client Protection Board recommends and the Board of Governors, as Trustees, approves using a prorating formula that would result in applicants receiving 20% of their unpaid gifts. 20% of \$145,000 is \$29,000, so a second payment of \$29,000 is issued to the applicant.

Example 2: In the same fiscal year another applicant applies for and receives a gift in the amount of \$7,500. \$5,000 is paid upon approval. At fiscal year's end, a second payment is issued for \$500.

REGULATION 10. NO LEGAL RIGHT TO PAYMENT

Any and all payments made to applicants in connection with the Client Protection Fund are gratuitous and are at the sole discretion of the Trustees.

RULE 11. RESTITUTION AND SUBROGATION

(a) Restitution. A lawyer, LLLT, or LPO whose conduct results in payment to an applicant shall be liable to the Fund for restitution, and the Trustees may bring such action as they deem advisable to enforce restitution.

(b) Subrogation. As a condition of payment, an applicant shall be required to provide the Fund with a pro tanto transfer of the applicant's rights against the lawyer, LLLT, or LPO, the lawyer's, LLLT's, or LPO's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the applicant's loss. Failure to return a signed subrogation agreement to the Fund within three years of approval of the application will result in revocation of that approval.

(c) Action to Enforce Restitution. In the event the Trustees commence a judicial action to enforce restitution, they shall advise the applicant who may then join in the action to recover any unreimbursed losses. If the applicant commences such an action against the lawyer, LLLT, or LPO or another entity who may be liable for the loss, the applicant shall notify the Fund who may join in the action.

(d) Duty to Cooperate. As a condition of payment, the applicant shall be required to cooperate in all efforts that the Fund undertakes to achieve restitution.

REGULATION 12. COMPENSATION FOR REPRESENTING APPLICANTS

No lawyer shall charge or accept any payment for prosecuting an application on behalf of an applicant, unless such charge or payment has been approved by the Trustees.

REGULATION 13. CONFIDENTIALITY

(a) Matters Which Are Public. On approved applications, the facts and circumstances which generated the loss, the Client Protection Board's recommendations to the Trustees with respect to payment of a claim, the amount of claim, the amount of loss as determined by the Client Protection Board, the name of the lawyer, LLLT, or LPO causing the loss, and the amount of payment authorized and made, shall be public.

(b) Matters Which Are Not Public. The Client Protection Board's file, including the application and response, supporting documentation, and staff investigative report, and deliberations of any application; the name of the applicant, unless the applicant consents; and the name of the lawyer, LLLT, or LPO unless the lawyer, LLLT, or LPO consents or unless the lawyer's, LLLT's, or LPO's name is made public pursuant to these rules and regulations, shall not be public.

REGULATION 14. NOTICE OF ACTIONS

Notice of approval of an application to the Fund may be published in the official publication of the Bar and elsewhere at the direction of the Client Protection Board or Trustees. Notice may also be posted electronically on any web site maintained by the Bar. If the lawyer, LLLT, or LPO has made full restitution to the Fund, any notice posted electronically by the Bar may, at the request of the lawyer, LLLT, or LPO be removed.

REGULATION 15. AMENDMENTS

These Rules and Regulations may be amended, altered or repealed on the recommendation of the Client Protection Board by a vote of the Trustees, with the approval of the Supreme Court.

(Adopted by the Washington Supreme Court July 18, 1995; amended February 11, 1997; May 6, 1999; October 5, 2001; December 2, 2004; September 1, 2006; November 2, 2006; September 1, 2008; January 13, 2009; December 1, 2009; September 1, 2012; January 1, 2014; September 1, 2017.)
