

MONTANA

Lawyers' Fund for Client Protection of the State Bar of Montana

(Lawyers' Fund for Client Protection
Rules: Rule 1, et seq.)

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LAWYERS' FUND FOR CLIENT PROTECTION RULES

RULE 1 - PURPOSE OF FUND AND RULES

A. The Purpose of the Lawyers' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the Dishonest Conduct of Lawyers admitted and licensed to practice law in the courts of Montana.

B. Pursuant to the Supreme Court Order creating the State Bar of Montana, the purpose of these rules is to establish procedures to maintain and administer a Lawyers' Fund for Client Protection established as a trust by the State Bar of Montana.

C. Fund money may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the Dishonest Conduct of a Lawyer or failure to account for money or property entrusted to Lawyers, occurring in the course of the client-lawyer or other fiduciary relationship between the Lawyer and the Applicant.

D. No person shall have any right to payment from the Fund as an Applicant, third party beneficiary, or otherwise. Any and all payments made to Applicants in connection with the Fund are gratuitous, are a matter of grace, and are at the sole discretion of the Board, subject only to review by the State Bar Trustees.

E. The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from an attorney's negligent performance of services.

RULE 2 - DEFINITIONS

For the purpose of these Rules, the following definitions apply:

A. State Bar. "State Bar" means the State Bar of Montana.

B. Trustees. "Trustees" means the board of Trustees of the State Bar of Montana.

C. Fund. "Fund" means the Lawyers' Fund for Client Protection of the State Bar of Montana.

D. Board. "Board" means the Lawyers' Fund For Client Protection Board appointed by the Trustees of the State Bar of Montana.

E. Chair. "Chair" means the chairperson of the Board as appointed by the State Bar.

F. Lawyer. Lawyer means a person who, at the time of the act complained:

1. Was an active member of the State Bar of Montana; or
2. Was a Lawyer who was recently suspended or disbarred and whom the client reasonably believed to be licensed to practice law in Montana when the Dishonest Conduct occurred.

G. Application. An “Application” is a written request on a form approved by the Board for reimbursement of a loss sustained as the result of the Dishonest Conduct of a Lawyer.

H. Applicant. An “Applicant” is a person who submits a properly completed Application.

I. Dishonest Conduct. “Dishonest Conduct” is defined in Rule 8B.

RULE 3 - FUNDS

A. Funding. The Trustees shall, after consultation with the Board, provide funding necessary for payments to Applicants and the expenses of the Board.

B. Trust. All monies or other assets of the Fund shall constitute a trust and shall be held in the name of the Fund, in a separate account, by the Trustees. The Trustees shall receive, hold, manage and disburse from the Fund such monies as may from time to time be allocated to the Fund.

C. Expenses. All expenses of the Board shall be paid from the Fund.

RULE 4 - APPOINTMENT OF BOARD

Board members shall be appointed pursuant to State Bar Bylaws and policies.

RULE 5 - MEETINGS OF THE BOARD

- A. Meetings. The Board shall meet as frequently as necessary to conduct the business of the Fund and to timely process Applications. The Chair shall call a meeting at any reasonable time or upon the request of at least two (2) Board members. Upon authorization of the Chair, Board members may participate in a meeting by telephone conference call or by video conference. The Board may, in lieu of a meeting, act by unanimous written consent.
- B. Notice. The Chair shall provide Board members with reasonable notice of the time and place of Board meetings.
- C. Quorum. A quorum of any meeting of the Board shall be a majority of members on the Board. When a hearing on an Application is scheduled, but a quorum is not present, those members present shall hear the evidence and report to the next meeting of the Board.
- D. Record of Meetings. Written minutes of each meeting shall be prepared and properly maintained.

RULE 6 - DUTIES AND RESPONSIBILITIES OF THE BOARD

The Board shall have the following duties and responsibilities:

- A. To receive, investigate, evaluate and determine the disposition of Applications;
- B. To the extent deemed necessary by the Board, to promulgate rules of procedure not inconsistent with these Rules;
- C. To recommend to the Trustees the amount of the annual assessment of Lawyers for the Fund;
- D. To provide a full report at least annually to the Trustees and to make other reports as necessary;
- E. To publicize its activities to potential Applicants, the public and the bar, as deemed advisable;
- F. To employ adequate staff to assure the Board's effective and efficient performance of its functions;
- G. To retain and compensate consultants, administrative staff, investigators, actuaries, agents, legal counsel, and other persons as necessary;
- H. To prosecute claims for restitution to which the Fund is entitled;
- I. To promote effective coordination, cooperation and communication between lawyer

disciplinary authorities and the Fund; and

J. To perform all other acts necessary or proper for the fulfillment of the purposes of the Fund and effective administration of the Fund.

RULE 7 - APPLICATION FORMS; APPLICANT'S RESPONSIBILITIES

A. Application Form. All requests for payment from the Fund shall be made by submitting an Application form approved by the Board. The request shall include all information requested on the Application form. Application forms shall be available from the State Bar.

B. Applicant's Responsibilities. The Applicant is responsible for preparing and filing a properly completed applicable form and providing satisfactory evidence of a reimbursable loss. An Applicant must timely respond to requests for additional information and/or clarification as may be requested by the Fund as part of the investigation of the Application.

C. Disciplinary Complaints. The Board shall provide the Office of Disciplinary Counsel with a supply of Application forms.

RULE 8 - ELIGIBLE APPLICATIONS

A. Eligibility. To be eligible for payment from the Fund, the loss must be caused by the Dishonest Conduct of the Lawyer or the failure to properly account for [and/or return] money or property entrusted to the Lawyer in connection with the Lawyer's practice of law, or while acting as a fiduciary in a matter related to the Lawyer's practice of law.

B. Dishonest Conduct. As used in these rules, "Dishonest Conduct" or "dishonesty" 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 thing of value, provided:

- (1) the Lawyer shall have been disbarred or suspended from the practice of law or shall have been permitted to voluntarily surrender his or her license to practice law; or
- (2) the Lawyer shall have died or shall have been adjudged mentally incompetent; or
- (3) the Lawyer shall have been found guilty of a crime arising out of the claimed Dishonest Conduct which caused the loss; or
- (4) a judgment or decree was entered against the Lawyer in any proceeding arising out of the claimed Dishonest Conduct which caused the loss, and, if a judgment for money was entered against the Lawyer in favor of the Applicant, that the Lawyer has failed to pay

the judgment and execution issued on the judgment has been returned uncollected.

C. Time Limitations. The Application shall be filed no later than three (3) years after the Applicant knew, or should have known, of the Dishonest Conduct of the Lawyer.

D. Excluded Losses. Except as provided by Paragraph E 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 causing the losses;

(2) losses covered by a 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 Lawyer, or by any person or entity described in subparagraph D (1), (2) or (3) of this Rule;

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

(6) losses arising from business or personal investments not arising in the course of the client-lawyer relationship; and

(7) consequential or incidental damages, such as lost interest, or lawyer's fees or other costs incurred in seeking recovery of a loss.

E. Hardship. In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, and consistent with the purpose of the Fund, recognize an Application, in whole or in part, which would otherwise be excluded under these Rules.

F. Enrichment. In cases where it appears that there will be unjust enrichment, or the Applicant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the Application.

RULE 9 - PROCESSING APPLICATIONS

A. Ineligibility. Whenever it appears that an Applicant is not eligible for reimbursement pursuant to Rule 9, the Chair shall advise the Applicant of the reasons why the Application is not eligible for consideration by the Board for reimbursement, and that unless additional facts to support eligibility are submitted to the Fund, the Applicant's file shall be closed.

B. Disciplinary Notification. The Office of Disciplinary Counsel may be notified of an Application in the discretion of the Chair.

C. Notification of Lawyer. The Lawyer or his or her representative shall be notified and provided a copy of the Application, via U.S. Mail, delivery receipt requested, to the Lawyer's address of record on file with the State Bar. Such notice is deemed complete upon mailing.

D. Responses from Lawyer. The Lawyer shall respond to the Application within twenty (20) days of the date of mailing. The Lawyer shall respond to requests from the Fund for information within the time specified in the request or, if no time for response is stated in the request, then within twenty (20) days of the date of mailing the request.

E. Investigation and Report. The Fund shall conduct an investigation of the merits of an Application. The Chair may cause the investigation of an Application to be made by a member of the Board, any other active member of the State Bar, a retained investigator, or the State Bar staff member assigned to the Board. A written report of the investigation shall be provided to the Board with a recommendation.

F. Board Determination. The Board shall review each Application to determine in its discretion whether the Application is a reimbursable loss and to determine the extent, if any, to which the Applicant shall be reimbursed. In all cases, the Applicant and the Lawyer or their personal representative shall be given an opportunity to be heard by the Board if requested. With or without a request from a party, the Fund may hold a hearing on an Application.

G. Notice of Decision. Written notice of the Board's decision on an Application shall be mailed to the Applicant and the Lawyer.

H. Findings of Dishonest Conduct. If the Board makes a finding of Dishonest Conduct for purposes of determining an Application, such a determination is not a finding of Dishonest Conduct for purposes of professional discipline.

I. Evidence. 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 type of evidence commonly accepted by reasonably prudent persons in the conduct of their affairs.

J. Burden of Proof. The Applicant shall have the burden of establishing eligibility for reimbursement by a clear preponderance of the evidence.

K. Pending Disciplinary Proceedings. Unless the Board or Chair otherwise directs, no Application shall be heard by the Board during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the Application.

L. Exhaustion of Remedies. The Board may direct an Applicant to seek reimbursement of a loss from other potentially available sources before acting upon an Application.

M. Status of Applications. Both the Applicant and the Lawyer shall be periodically advised, as necessary, of the status of the Board's consideration of the Application.

RULE 10 - REIMBURSEMENT FROM THE FUND IS DISCRETIONARY

No person shall have the legal right to reimbursement from the Fund. Any and all payments made to Applicants in connection with the Fund are a matter of grace and are at the sole discretion of the Board, subject only to review by the Trustees pursuant to Rule 12. There shall be no appeal from or judicial review of any decision of the Board or the Trustees.

RULE 11 - RECONSIDERATION

A. Request for Reconsideration. The Applicant or Lawyer may request reconsideration by the Board in writing within thirty (30) days of the Board's written notice of the denial or determination of the amount of relief. The decision of the Board is final, subject only to review by the Trustees pursuant to Rule 12.

B. Procedure. To request reconsideration, the party must make the request in writing to the Fund and state the reason. The Board will notify the parties of its decision on the request for reconsideration.

RULE 12 - REVIEW BY STATE BAR TRUSTEES

A. Request for Review. The Applicant or the Lawyer may request a review of a final decision of the Board by the Trustees if such review is requested in writing within thirty (30) days of the date of the final decision of the Board. The decision of the Trustees is final.

B. Procedure. To request review, the party must make the request in writing to the Trustees and state the reason. The request must be sent to the Executive Director of the State Bar. Upon receipt of a request for review, the Fund shall provide to the Chair of the Trustees a copy of the

documents and materials relied upon by the Board in making its final decision. The Trustees will notify the parties and the Fund of its decision on the request for review.

RULE 13 - CONFLICT OF INTEREST

A. Conflicts. A Board member who has or has had a client-lawyer relationship or a financial relationship with an Applicant or the Lawyer who is the subject of an Application shall not participate in the investigation or adjudication of any Application involving that Applicant or the Lawyer.

B. Disclosure of Potential Conflicts. A Board member with any other past or present relationship with a party which could be deemed a conflict of interest, shall disclose such relationship to the Board. If the Board deems appropriate, that Board member shall not participate in any proceeding relating to the Application.

RULE 14 - RESTITUTION AND SUBROGATION

A. Restitution Obligation. A Lawyer whose Dishonest Conduct results in payment to an Applicant is liable to the Fund for restitution.

B. Enforcement. A Lawyer whose Dishonest Conduct results in payment to an Applicant shall make restitution to the Fund of all amounts paid to the Applicant, including any expenses incurred by the Fund in processing and investigating the Application, together with interest at the statutory rate on all such amounts.

C. Subrogation. As a condition of payment, and to the extent of the reimbursement provided by the Fund, an Applicant shall be required to provide the Fund with a transfer of the applicant's rights against the Lawyer, the Lawyer's legal representative, estate or assigns, and of the applicant's rights against any third party or entity who may be liable for the applicant's loss (unless such transfer or assignment is included in the original Application signed by the Applicant).

D. Action to Enforce Restitution. The Board may bring such action as it deems advisable to enforce restitution. If the Board commences a judicial action to enforce restitution, it shall notify the Applicant, who may then join in such action to recover the unreimbursed losses. If the Applicant commences an action against the Lawyer or another entity who may be liable for the loss, the Applicant shall notify the Fund who may join in the action to recover its payment to the Applicant.

E. Duty to Cooperate. As a condition of payment, the Applicant is required to cooperate in all efforts that the Fund undertakes to achieve restitution.

RULE 15 - CONFIDENTIALITY

A. Confidentiality. Applications, proceedings and reports involving Applications for reimbursement are confidential until the decision by the Board to reimburse the Applicant is final, except as set forth in sub-sections B or C of this Rule.

B. Waiver by Lawyer. If the Lawyer whose alleged conduct gave rise to the Application requests that the matter be made public, the requirement of confidentiality is waived.

C. Disclosure Provided by Law. Section A shall not be construed to deny access to relevant information by professional discipline agencies or law enforcement authorities as required or authorized by law or Supreme Court rule, or the release of statistical information which does not disclose the identity of the Lawyer or the parties.

RULE 16 - COMPENSATION FOR REPRESENTING APPLICANTS

The Board recommends that no lawyer charge or accept any payment for prosecuting any Application on behalf of an Applicant.

RULE 17 - AMENDMENT

These Rules may be amended at any time by a majority vote of the Board at a duly held meeting, with the approval of the Trustees.

Adopted by the LFCP Board on July 11, 2006. Approved by the Board of Trustees on September 14, 2006.

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