

MAINE

Maine Lawyers' Fund  
for Client Protection

(Created by Order of the Maine Supreme  
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# MAINE

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### **RULE 1. PURPOSE AND SCOPE**

(a) **Purpose.** 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 making efforts toward reimbursement in whole or in part of losses caused by the dishonest conduct of lawyers admitted and licensed to practice law in the courts of this State occurring in the course of lawyer-client or fiduciary relationship between the lawyer and the claimant.

(b) **Scope.** Every lawyer has an obligation to the public to participate in the collective effort of the bar to reimburse in whole or in part persons who have lost money or property as a result of the dishonest conduct of another lawyer. Contribution to the Lawyers' Fund for Client Protection is an acceptable method of meeting this obligation.

### **RULE 2. ESTABLISHMENT**

(a) **Fund.** There is established the Maine Lawyers' Fund for Client Protection (hereinafter "the Fund") for the purpose of reimbursing in whole or in part claimants for losses caused by dishonest conduct committed by lawyers admitted to practice in this State.

(b) **Board of Trustees.** There is established, under the supervision of the Supreme Judicial Court, the Maine Lawyers' Fund for Client Protection Board of Trustees (hereinafter "the Trustees"), which shall receive, hold,

and manage all monies allocated to the Fund; process all claims against the Fund and make any disbursements from the Fund.

(c) **Fiscal Year.** The fiscal year of the Fund shall run from July 1 to June 30.

(d) **Effective Date.** These rules shall be effective on July 1, 1997. The Trustees shall pay only claims for dishonest conduct occurring after January 1, 1999.

### **RULE 3. FUNDING**

(a) **Annual Assessment.** The Fund shall be funded from assessments made annually on members of the Bar of Maine. Every attorney required to register in accordance with the Maine Bar Rules, other than suspended attorneys, shall pay an annual fee as established by the Court, which shall be paid to the Board of Overseers of the Bar with the registration statement on or before August 31, as required by M. Bar R. 6(a)(1). Any attorney who fails to pay such amount shall be subject to the provisions of M. Bar R 10(b) and (c).

(b) **Restitution of Reimbursements.** A lawyer whose dishonest conduct has resulted in reimbursement to a claimant shall make restitution to the Fund including interest and expenses incurred by the Fund in processing the claim and pursuing restitution. Unless the Court determines otherwise, a lawyer who has been suspended or disbarred by reason of conduct resulting in payment to a claimant shall not be reinstated to practice law in Maine until full restitution to the Fund has been made.

### **RULE 4. FUNDS**

All monies or other assets of the Fund shall be held in the name of the Fund, subject to the direction of the Trustees.

### **RULE 5. COMPOSITION AND OFFICERS OF THE BOARD OF TRUSTEES**

(a) **Composition and Terms.** The Board of Trustees shall consist of five lawyers and two nonlawyers appointed by the Court for initial terms as follows:

- (1) Two lawyers for one year;
- (2) one nonlawyer for two years;
- (3) Two lawyers for two years;
- (4) One nonlawyer for three years; and
- (5) One lawyer for three years.

Subsequent appointments shall be for a term of three years. No trustee may serve more than two successive three-year terms.

(b) **No Compensation; Reimbursement of Expenses.** Trustees shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties in accordance with existing reimbursement policies of the Judicial Branch.

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

(d) **Officers.** The Trustees shall select from their membership a chairperson, secretary, treasurer and such other officers as they deem appropriate.

(e) **Treasurer's Bond.** 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 Trustees shall determine but in no event less than 25 percent of the assets of the Fund at the commencement of each fiscal year.

## **RULE 6. MEETINGS OF THE BOARD OF TRUSTEES**

- (a) **Annual and Other Meetings.** The Board of Trustees shall meet at least annually and as frequently as necessary to conduct the business of the Fund and to process claims.
- (b) **Call of Meetings.** The Chairperson shall call a meeting at any reasonable time or upon the request of at least two Trustees.
- (c) **Quorum.** A quorum for any meeting shall be four Trustees.
- (d) **Minutes of Meetings.** Minutes of meetings shall be taken and permanently maintained by the secretary.

## **RULE 7. DUTIES AND RESPONSIBILITIES OF THE BOARD OF TRUSTEES**

The Board of Trustees shall have the following duties and responsibilities:

- (a) to promulgate rules of procedure not inconsistent with these Rules;
- (b) to receive, evaluate, determine and pay claims;
- (c) to invest prudently such portions of the funds as may not be needed currently to pay losses or necessary expenses;
- (d) to provide a full report at least annually to the Court and to make other reports as necessary;
- (e) to publicize its activities to the public and the bar;
- (f) to pursue claims for restitution to which the Fund is entitled;
- (g) to prepare an annual budget for approval by the Court;
- (h) to pay the reasonable and necessary expenses of the administration of the Fund; and
- (i) to perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the Fund.
- (j) to transfer funds to the Maine Assistance Program when so directed by the Supreme Judicial Court.

## **RULE 8. CONFLICT OF INTEREST**

- (a) **Basic Rule.** A Trustee who has or has had a lawyer-client relationship, a familial or other significant personal relationship, or a financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.
- (b) **Disqualification and Disclosure.** A Trustee shall promptly notify the Board of the Trustee's disqualification as to any claim about which the Trustee has a reasonable belief of inability to act with complete impartiality and thereafter shall not participate in any manner in the processing of that claim. A Trustee shall promptly disclose to the Board any fact the Trustee reasonably considers to be relevant to the impartiality of any Trustee as to a claim. Based on that disclosure, should any Trustee request disqualification of any Trustee, that Trustee thereafter shall not participate in any manner in processing of such claim.

## **RULE 9. IMMUNITY**

The Trustees and their employees and agents shall be absolutely immune from civil liability for all acts in the course of their official duties.

## **RULE 10. ELIGIBLE CLAIMS**

(a) **Claims to Be Considered.** The Trustees will consider for reimbursement:

- (1) Claims for losses caused by the dishonest conduct of a member of the Maine Bar within the practice of his or her profession or acting as a fiduciary who has resigned, died, been adjudged insane, been disbarred, suspended or otherwise disciplined, been convicted of embezzlement or misappropriation of money or other property of his or her client, or whose whereabouts is unknown;
- (2) Claims certified to the Trustees by the Board of Overseers of the Bar for consideration pursuant to this Rule;
- (3) Any other claims for losses due to the dishonest conduct of a member of the Maine Bar that the Trustees, in their discretion pursuant to subdivision (e) of this rule, deem appropriate for consideration in that such consideration will advance the purposes of the Fund.

(b) **Time Limit.** 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 lawyer but in no event later than ten years from the date of the dishonest conduct.

(c) **Dishonest Conduct" Defined.** 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.

(d) **Exclusions.** Except as provided by subdivision (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 the lawyer or lawyers causing the losses;
- (2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby;
- (3) Losses to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;
- (4) Losses incurred by any financial institution or insurance company;
- (5) Losses incurred by any business entity controlled by the lawyer or by any person or entity described in paragraphs (1), (2), or (3) of this subdivision;
- (6) Losses incurred by any governmental entity or agency;
- (7) Losses arising from the activities of a lawyer not having an office or residence in Maine, where those activities do not have substantial contacts with Maine.

(e) **Allowance of Excluded Claims for Hardship or Unusual Circumstances.** In cases of hardship or special and unusual circumstances, the Trustees may, in their discretion, recognize or accelerate payment of a claim which would otherwise be excluded under these Rules.

(f) **Denial of Claims for Unjust Enrichment or Similar Circumstances.** In cases where it appears that claimant will be unjustly enriched, or the claimant is deemed to have suffered no hardship, or the claimant has unreasonably or knowingly contributed to the loss, the Trustees may deny all or any part of the claim.

## **RULE 11. PROCEDURES AND RESPONSIBILITIES FOR CLAIMANTS**

(a) **Claim Form.** The Board of Trustees shall prepare and make available to claimants a form for claiming reimbursement. The form shall contain the following statement in bold type: "**THE BOARD OF TRUSTEES OF THE MAINE LAWYERS' FUND FOR CLIENT PROTECTION IS NOT RESPONSIBLE FOR THE CONDUCT OF LAWYERS. ANY REIMBURSEMENTS OF LOSSES FROM THE FUND SHALL BE MADE IN THE SOLE**

**DISCRETION OF THE BOARD OF TRUSTEES OF THE FUND. NO CLIENT OR MEMBER OF THE PUBLIC SHALL HAVE ANY RIGHT IN THE FUND AS A THIRD-PARTY BENEFICIARY OR OTHERWISE."**

(b) **Responsibility of Claimant.** The claimant shall have the responsibility to complete the claim form and provide satisfactory evidence of a reimbursable loss.

(c) **Filing.** The Board shall provide a claim form which shall state the manner and designate the place of filing a claim with the Trustees.

## **RULE 12. PROCESSING CLAIMS**

(a) **Ineligible Claims.** Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, the claimant shall be advised in writing 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) **Evidence of Discipline or Judgment.** A certified copy of an order disciplining a lawyer for the same dishonest act or conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall be evidence that the lawyer committed such dishonest act or conduct.

(c) **Initial Investigation; Bar Counsel's Records.** Bar Counsel for the Board of Overseers of the Bar shall be promptly notified of a claim filed with the Trustees and shall furnish a report of the investigation of the claim to the Trustees together with all records of the investigation. If, on the Trustees' receipt of the report and records, there is a pending proceeding before the Board of Overseers of the Bar or the Grievance Commission involving the same conduct alleged in the claim, the Trustees shall determine whether to delay any additional investigation it may deem necessary until the conclusion of such proceeding.

(d) **Further Investigation by the Board of Trustees.** The Board of Trustees may conduct its own investigation when it deems it appropriate and may seek the assistance of Bar Counsel for that purpose.

(e) **Notice to Lawyer; Response.** If, by the completion of the investigation, the lawyer or the lawyer'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 lawyer, or the lawyer's representative. The lawyer or representative shall have 20 days in which to respond.

(f) **Testimony; Hearing.** The Board of Trustees may request that testimony be presented to complete the record. Upon request, the claimant and lawyer, or their representatives, will be given an opportunity to be heard.

(g) **Effect of Finding by the Board of Trustees.** The Trustees' finding of dishonest conduct for purposes of processing a claim shall not be considered for other purposes.

(h) **Determination by the Board of Trustees.** 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 lawyer of the determination of the Board of Trustees and the reasons therefor. The approval or denial of a claim shall require the affirmative votes of at least four trustees. The claimant shall have the duty to supply relevant evidence to support the claim.

(i) **Rules of Evidence Not to Apply.** The Board need not observe rules of evidence observed by the courts, but shall consider evidence if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

(j) **Payment of Approved Claim; Effect of Pending Disciplinary Proceeding.** The Board of Trustees shall determine the order and manner of payment and pay all approved claims, but unless the Board of Trustees

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.

(k) **Notification of Determination.** Both the claimant and the lawyer shall be advised of the status of consideration of the claim and shall be informed of the final determination.

(l) **Reconsideration; Finality.** The claimant may request reconsideration within 30 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 of Trustees is final.

(m) **Notice.** Notice, notification and service provided in these Rules shall be effected by first class mail, postage prepaid.

### **RULE 13. PAYMENT OF REIMBURSEMENT**

(a) **Maximum Payable.** The maximum amount of reimbursement that is payable by the Fund shall be \$50,000 per claim and \$200,000 per lawyer.

(b) **Determination of Amount.** Claimants shall be reimbursed for losses in amounts to be determined by the Board of Trustees. Reimbursement shall not include interest and other incidental and out-of-pocket expenses.

(c) **Manner of Payment.** Payment of reimbursement shall be made in such amounts and at such times as the Board of Trustees deems appropriate and may be paid in lump sum or installment amounts.

(d) **Minor Claimants.** If a claimant is a minor or a person adjudicated to be incompetent, the reimbursement shall be paid to the appointed representative of the estate.

### **RULE 14. REIMBURSEMENT FROM FUND IS A MATTER OF GRACE**

Reimbursement from the Fund is a matter of grace. No person shall have the right to reimbursement 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.

### **RULE 15. RESTITUTION AND SUBROGATION**

(a) **Action by the Board.** The Board of Trustees may bring such action as it deems advisable for restitution, including therein costs of such action arising out of the dishonest conduct of a lawyer that has resulted in reimbursement to a claimant.

(b) **Transfer of Claimant's Rights.** As a condition of reimbursement, a claimant shall be required to provide the Fund with a transfer, to the extent of the reimbursement, of the claimant's rights against the lawyer, the lawyer'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) **Joinder of Claimant.** Upon commencement of an action by the Board of Trustees as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses; provided that all sums recovered will be payable first to the Fund up to the amount of reimbursement. The lawyer representing the Fund or the claimant shall be entitled to a reasonable fee for services as a charge against any funds recovered.

(d) **Notification by Claimant.** In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another entity who may be liable for the claimant's loss, the claimant shall be required to notify the Board of Trustees of such action.

(e) **Cooperation by Claimant.** The claimant shall be required to agree to cooperate in all efforts that the Board of Trustees undertakes to achieve restitution for the Fund.

## **RULE 16. [RESERVED]**

## **RULE 17. CONFIDENTIALITY**

(a) **Basic Rule.** 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 shall 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.

(b) **Exception.** 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 which does not disclose the identity of the lawyer or the claimant.

## **RULE 18. COMPENSATION FOR REPRESENTING CLAIMANTS**

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

### **Advisory Notes**

April 2019 — In order for the Trustees of the Lawyers' Fund for Client Protection to more fully carry out their mission of promoting public confidence in the administration of justice and the integrity of the legal profession by reimbursing clients who suffer losses caused by an attorney's dishonest conduct, and recognizing that some lawyers cause losses to multiple clients, this amendment increases the maximum amount of reimbursement that is payable by the Fund from \$100,000 to \$200,000 per lawyer. The maximum amount payable by the Fund per individual shall remain at \$50,000 per individual.

September 2018 — This amendment changes the maximum amount of reimbursement that is payable by the Fund from \$25,000 per individual and \$50,000 per lawyer to \$50,000 per individual and \$100,000 per lawyer.

2. This amendment shall be effective June 11, 2013.