

MISSOURI

Client Security Fund of the Missouri Bar

(Regulations and Rules of Procedure of the Client Security Fund Committee of the Missouri Bar)

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REGULATIONS AND RULES OF PROCEDURE OF THE CLIENT SECURITY FUND COMMITTEE OF THE MISSOURI BAR

(As amended May 5, 1994; November 13, 1997; September 22, 1999; July 26, 2002; October 1, 2003; July 22, 2005, effective January 1, 2006; May 12, 2006; May 14, 2010; February 22, 2013; November 20, 2015; and November 15, 2018)

Article 1. Definitions.

- 1.1 The "Board" refers to the Board of Governors of The Missouri Bar.
- 1.2 The "Fund" is the Client Security Fund of the Bar, created pursuant to the resolution of the Board of Governors of The Missouri Bar adopted September 8, 1965, as amended.
- 1.3 The "Committee" is the Client Security Fund Committee of The Missouri Bar, and consists of six persons from time to time appointed to the Committee by the President of The Missouri Bar, with the approval of the Board of Governors, as provided in the resolution of September 8, 1965, as amended.
- 1.4 A "formal claim" is one for indemnification out of the Fund executed on the form provided or required by the Committee and includes any amendment or supplement thereto.
- 1.5 A "fraudulent or dishonest act" is any wrongful act committed by a member of The Missouri Bar, who is at the time of the commission thereof, a member in good standing of The Missouri Bar, engaged in the private practice of law in the State of Missouri or is within twelve months of the date of suspension or disbarment and the claimant reasonably believes is licensed to practice when the dishonest conduct occurred, giving rise to a "loss" as hereinafter defined, including but not limited to, the defalcation or embezzlement of money, the wrongful taking of property, the borrowing of money from a client without intention to repay it, or with disregard of the lawyer's inability or reasonably anticipated inability to repay it, or the failure to remit or turn over money or property belonging to the client, but not including malpractice, non-feasance or negligence.
- 1.6 A "loss" is a pecuniary, monetary or property loss suffered by the injured client or claimant as a direct result of a fraudulent or dishonest act which has not otherwise been recouped and which arises out of legal services substantially provided in Missouri. Losses arising from business or personal investments not arising in the course of the client-lawyer relationship and consequential or incidental damages, such as lost interest, lawyer's fees or other costs incurred in seeking recovery of a loss are not reimbursable.
- 1.7 "Claimant" includes the injured client and, in the event of the claimant's death or incapacity, the claimant's duly-appointed personal representative, but does not include any surety, indemnitor, subrogee or creditor, or any other person whomsoever. The claims of Missouri corporations may be recognized and paid in whole or in part if the Committee finds and determines that the nature, size, business and operation of the corporation and the make-up and interrelationship of its shareholders are such that undue personal hardship would result if such claims are not considered. The claims of beneficiaries of a trust may be recognized subject to the limits of paragraph 3.1 of Article 3. The claims of third parties, such as family members, who have made payments to an attorney on behalf of a client may be recognized.

Article 2. Recognition of Claims

- 2.1 Only a formal claim by a claimant and no others shall qualify for recognition.
- 2.2 A formal claim shall qualify for recognition upon determination by the Committee that all of the following conditions exist:
 - (a) The claimant suffered a loss resulting from a fraudulent or dishonest act which occurred during, or in the context of an attorney-client relationship or a fiduciary relationship between the attorney and the claimant;

- (b) The loss arose after January 1, 1966;
- (c) The formal claim was filed with the Committee or its authorized representative within two years after the loss has come to the knowledge of the person claiming such loss. The Committee may in its discretion consider a claim filed within two (2) years after the date of death or the disciplinary action required in subparagraph (d) thereof shall have occurred;
- (d) The attorney has died, been adjudged mentally incapacitated, been medically diagnosed by an independent, licensed medical doctor as mentally incapacitated such that the attorney is unable to practice law and has entered into an agreement with the Office of Chief Disciplinary Counsel to voluntarily and permanently withdraw from the practice of law, or been disbarred or suspended from practice, including an attorney whose suspension has been stayed in whole or part with placement on probationary status;
- (e) If the attorney shall have died, been adjudged mentally incapacitated, or been medically diagnosed by an independent, licensed medical doctor as mentally incapacitated such that the attorney is unable to practice law and has entered into an agreement with the Office of Chief Disciplinary Counsel to voluntarily and permanently withdraw from the practice of law, that the "fraudulent or dishonest act," as defined in paragraph 1.5 of Article 1, would have been of such nature that the attorney, but for death or such mental incapacity would likely have been disbarred or suspended from practice; and
- (f) An affidavit must be included in the filing of any claim averring that no portion of the claim sought on behalf of the client will be paid to a lawyer aiding or assisting the client in making the claim.

2.3 Formal claims otherwise qualifying for recognition shall not be recognized if any of the following conditions exist:

- (a) The claimant is, or at the time of commission of the fraudulent or dishonest act or the occurrence, accrual or discovery of the loss was, the spouse, ancestor or lineal descendent, or a partner, associate or attorney employer or attorney employee of the attorney against whom the complaint is made; or
- (b) The fraudulent or dishonest act was covered in whole or in part by any insurance, indemnity or bond (unless liability hereunder has been judicially determined in favor of such carrier or bonding company); or
- (c) In the judgment of the Board, the Fund does not have the necessary moneys to pay the claim.

2.4 The burden of proof shall at all times be upon the claimant to establish that the claim qualifies for recognition hereunder.

2.5 The Committee shall investigate each claim, and for that purpose may request assistance from local bar associations and members of The Missouri Bar. If the Committee shall determine that the claimant has not exhausted all legal remedies available, it shall so advise claimant and hold such claim in abeyance until the Committee is satisfied that all such legal remedies have been exhausted, unless, in cases of claims involving \$5,000 or less, it appears to the Committee in its sole discretion that such further pursuit of legal remedies would not be reasonable or practical. The Committee may avail itself of transcripts of other proceedings related to the matters complained of, and of any other relevant information which may come to its attention.

2.6 The Committee may recommend payment or denial of a claim based upon the written

information submitted to the Committee or it may hold a hearing on a claim. If the Committee recommends denial of a claim without conducting a hearing, the aggrieved party shall be provided a hearing upon request. If the amount of the claim is for \$5,000 or less, the hearing may be held by a Committee member designated by the Chair. If a claim is for more than \$5,000 and less than \$10,000, a subcommittee of three members may conduct the hearing. If the claim is for \$10,000 or more, the hearing shall be conducted by a majority of the members of the Committee. The Committee may engage counsel, who shall not be compensated, who shall have the right to present witnesses and evidence, and to cross-examine witnesses on behalf of the Committee. Claimant may appear in person or by counsel and shall produce the witnesses and evidence at the hearing to sustain the claim.

- 2.7 If a hearing by a majority of the Committee is scheduled, the Committee shall notify the claimant, the attorney complained of and all interested parties as determined by the Committee not less than ten (10) days prior to any hearing. A majority vote of the entire Committee shall be required for decision. The Committee, with the approval of the Board of Governors, may reject any claims submitted to it, or it may allow a claim in whole or in part.
- 2.8 Upon receipt of the claim, the Committee shall notify the attorney complained of. The Committee shall advise the attorney that the attorney may provide the Committee with information about the circumstances of the claim prior to submission of the Committee's recommendation to the Board of Governors.
- 2.9 The Committee's recommendation and the Board's consideration of any claim shall be a matter of grace and not a matter of right; and no claimant, client or member of the public shall have any right in the Fund or to any indemnification there from, or reimbursement as a third party beneficiary or otherwise.
- 2.10 The Committee may submit recommendations for payments of \$5,000 or less to the Board of Governors at any time during the fiscal year, subject to a limit of 50% of the amount appropriated to the Fund for the fiscal year. When the total of the recommended payments exceeds 50% of the appropriation for the fiscal year or when a recommendation is for a payment in excess of \$5,000, the recommendation shall be submitted to the Board of Governors at its final meeting of the fiscal year.
- 2.11 The Board of Governors of The Missouri Bar's determination that a claim properly qualifies hereunder shall be final and conclusive in all respects.

Article 3. Payment of Recognized Claims

- 3.1 The Board of Governors may in its discretion make payment of any recognized claims forthwith, or defer payment of any claims until it shall have ascertained the amount remaining in the Fund at the end of the fiscal year, and the aggregate losses shown in the recognized claims during such year, or until such other time as the Board shall deem appropriate. The Board shall then determine the aggregate sum to be paid out toward indemnification of losses and the basis of allocation, if necessary. The Board shall not be required to make allocations to such claimants on any equal or pro rata basis. No payment shall exceed \$50,000 per claim. Payments for all claims related to losses incurred by a single trust shall not exceed \$50,000. For claims in excess of \$5,000, the amount of the payment may not exceed the total of \$5,000 and 80% of the claim above \$5,000.
- 3.2 As a condition of payment by the Board on account of any claim, the Board in its sole and absolute discretion may elect to cause The Missouri Bar to be subrogated for the benefit of the Fund, to the rights of the claimant against the attorney or the attorney's estate; or to cause an assignment to be made by the claimant to The Missouri Bar or the Committee's designee of an appropriate interest in any recovery by the claimant against said attorney or the attorney's estate or any other person or entity, or out of any property or liens thereon, arising out of such fraudulent or dishonest act; or to require the claimant to sue or to join in any suit looking to the effectuation of any of the objects herein described; and no such

payment shall be made until the claimant shall have executed and delivered to the Committee or its designee such agreements, assignments, receipts or other instruments as the Committee may require in furtherance of the objects hereof.

- 3.3 Any net amounts recovered by the Fund pursuant to any of the provisions of 3.2 shall be retained by the Fund as full or partial reimbursement of the payments made to the claimant by way of indemnification out of the Fund, and the surplus, if any, shall be remitted to the claimant.

Article 4. Administration

- 4.1 The fiscal year of the Fund shall commence on the first day of January each year, beginning with the year 1966.
- 4.2 The Executive Director of The Missouri Bar shall act as Secretary for the Committee, and all records of the Committee shall be maintained at The Missouri Bar.
- 4.3 A chair and vice-chair of the Committee shall be elected by the Committee for a one year term, which shall commence on the first day of January. The vice-chair shall act in the absence, death or disability of the chair.
- 4.4 The chair of the Committee may appoint such sub-committees as the chair shall deem appropriate, in furtherance of the objectives hereof.
- 4.5 Meetings of the Committee shall be called on at least five (5) days written notice by the chair or any other two members of the Committee. Notice may be waived by any member of the Committee.
- 4.6 A majority of the entire Committee shall be required to recommend the approval or allowance of any claim.
- 4.7 The Committee annually shall report to the Board of Governors as to its actions in respect to the preceding fiscal year and as to recommended amendments of these rules.
- 4.8 The Missouri Bar Advisory Committee and the Office of Chief Disciplinary Counsel shall be advised of all payments made by the Fund. The Client Security Fund Committee shall request that reinstatement of an attorney be conditioned upon payment to the Fund of amounts paid by the fund due to the attorney's defalcations. To the extent that the Fund pays a claim of an attorney who has been medically diagnosed as mentally incapacitated pursuant to Section 2.2(d) above and who has entered into an agreement with the Office of Chief Disciplinary Counsel to voluntarily withdraw from the practice of law, such agreement shall include a provision requiring that the attorney reimburse the Fund for any claims paid as a condition to reinstatement of the attorney to the practice of law.
- 4.9 These rules may be amended at any duly-held meeting of the Committee, subject to the approval of the Board.

RESOLUTION PERTAINING TO CLIENT SECURITY FUND

(As amended March 13, 1982, February 18, 1983, May 5, 1994, November 20, 2009)

WHEREAS, the Board of Governors of The Missouri Bar, has heretofore authorized the establishment of a Client Security Fund, for the purpose of reimbursing losses to clients, subject to the establishment of rules for the operation of said fund, and has authorized the payment of Ten Thousand Dollars (\$10,000) into such a fund out of the budget for the year 1964-65, subject only to the approval of the Supreme Court of Missouri for the establishment of such a fund; and

WHEREAS, the President and Executive Director of The Missouri Bar, pursuant to the direction of the Board of Governors, met and conferred with the Supreme Court concerning the establishment of the fund and thereafter the Chief Justice of said Court advised the President and Executive Director that it had no objection to the establishment of a Client Security Fund by The Missouri Bar; and

WHEREAS, it now appears that such a fund should be formally established with the necessary rules and regulations for its operations,

NOW, THEREFORE, Be It Resolved by The Missouri Bar:

1. That there is hereby established a Client Security Fund Committee of The Missouri Bar (hereinafter called the "Committee"), whose function it shall be to receive, hold, manage and with the approval of the Board of Governors of The Missouri Bar distribute such funds as may from time to time be appropriated to it by the Board of Governors, or through voluntary contributions, or otherwise.
2. The Committee shall consist of six members of The Missouri Bar appointed by the President with the approval of the Board of Governors. The appointment shall be for a term of five years. Vacancies shall be filled by appointment by the President for the unexpired term. No member of the Committee will serve more than two five year terms and any portion of an unexpired term to which the member has been appointed.
3. The Committee shall be authorized, beginning not later than January 1, 1967, to consider claims for reimbursement of losses arising after the effective date of this resolution and caused by the dishonest conduct of a lawyer, acting as a lawyer, where said lawyer is a practicing member of The Missouri Bar, maintains an office for the practice of law in the State of Missouri, and has died, has been adjudged mentally ill, has been disbarred or has been suspended. The Committee with approval of the Board of Governors of The Missouri Bar shall be authorized and empowered to honor, pay, or reject such claims in whole or in part to the extent that funds are available. All reimbursements shall be a matter of grace, not right, and no client and no member of the public shall have any right in the Client Security Fund as a third-party beneficiary of otherwise.
4. The Committee is authorized to prescribe rules and procedures (not inconsistent herewith and subject to approval thereby by the Board of Governors) for the management of its fund and affairs, for the presentation of claims and the processing and payment thereof.
5. All sums appropriated by the Board of Governors for the use of the Committee shall be held and invested by the Executive Director of The Missouri Bar in a separate fund known as the "Client Security Fund," subject to the written directions of Committee under Committee rules.
6. The Committee with the approval of the Board of Governors of The Missouri Bar may use or employ the Client Security Fund for all or any of the following purposes within the scope of the Committee's objectives, as heretofore outlined:
 - a. To make reimbursements to clients.
 - b. At its discretion, to purchase insurance to insure the integrity of the Client Security Fund, provided that such insurance is obtainable at reasonable cost and is

deemed appropriate.

7. The expenses of this Committee shall be paid out of the general fund of The Missouri Bar.
8. The Committee shall provide a full written report of its activities, at least yearly, to the Board of Governors of The Missouri Bar, and it shall make such other reports of its activities and give only further publicity to same as the Board of Governors may deem advisable.
9. The Committee may be abolished at any time by the action of the Board of Governors of The Missouri Bar. In the event of such abolition, all assets of the Client Security Fund shall be and remain the property of The Missouri Bar, and usable for its general purposes by action of the Board of Governors.
10. The President shall be authorized to make appointments to the Committee with the approval of the Board of Governors, and the Board of Governors shall be authorized, in its discretion, to make an appropriation to the Committee for Client Security Fund in the amount of \$10,000 for the first year of operation, and thereafter in such amounts as it may deem necessary and proper for each subsequent year.
11. Fifteen percent of funds available at the end of each fiscal year must be retained as "seed" money for the ensuing year.