

# NEBRASKA

## The Client Assistance Fund of the Nebraska State Bar Association

(Established in January, 1974 by the  
authority of the  
Nebraska Supreme Court.  
Rule A, et seq.)

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**CLIENT ASSISTANCE FUND  
OF THE  
NEBRASKA STATE BAR ASSOCIATION**

- A. **Creation, Operation, Purpose:** The Client Assistance Fund Of The Nebraska State Bar Association (the Fund) is hereby established subject to the authority of the Nebraska Supreme Court to assist claimants in recovering losses caused by dishonest conduct committed by lawyers while practicing law in Nebraska as a member of the Nebraska State Bar Association (NSBA).
- B. **Establishment of the Claims Board:** The Client Assistance Fund Claims Board (the Board) is hereby established to receive, hold, manage, and disburse from the Fund such monies as may from time to time be allocated to the Fund.
- C. **Effective Date:** These rules shall be effective for claims filed with the Board on and after October 18, 2001, and the Board shall not pay claims for losses incurred as the result of dishonest conduct committed prior thereto, except that the Board shall consider claims against the Client Security Fund arising by reason of dishonest conduct which occurred prior to the effective date of these rules and which have not been resolved, subject to the rules and limitations governing the Client Security Fund, and limited by the balance of the Client Security Fund on October 17, 2001.
- D. **Composition of the Claims Board, Quorum:** The membership of the Board shall consist of six lawyers and two nonlawyers appointed by the Court for initial terms as follows:
1. Two lawyers for 1 year;
  2. One nonlawyer for 2 years;
  3. Two lawyers for 2 years;
  4. One nonlawyer for 3 years; and
  5. Two lawyers for 3 years.
- The NSBA Executive Council shall submit to the Court the names of lawyers who reside in each of the six Nebraska Supreme Court Judicial Districts and the names of two nonlawyers who reside in Nebraska as an aid to the Court in making such appointments. Subsequent appointments shall be for a term of 3 years. The number of successive terms that members may serve on the Board may be limited. Upon submission by the NSBA Executive Council, vacancies shall be filled by appointment by the Court for any unexpired term. Members shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. The Board shall organize annually and select from their membership a Chair to serve for a 1-year term and such other officers and for such other terms as they deem necessary or appropriate. Meetings thereafter shall be held at the call of the Chair or of the majority of the Board. Five members shall constitute a quorum and may transact all business except as may be otherwise provided by these rules or by regulations promulgated by the Board. The meetings need not be in person.
- E. **Board Action Outside of a Meeting:**
1. **Determination to Act Outside of a Meeting:** After notice to the Board, any action required or permitted to be taken at a Board meeting may be taken without a meeting provided: (i) all Board members receive an email request for consent setting forth the action taken or to be taken, (ii) all members provide an acknowledgement receipt of the email requesting consent, (iii) a majority of members provide affirmative consent in writing or via email, and (iv) no member casts a negative vote. Any such written consent shall be inserted in the minutes book as if it were the minutes of a Board meeting. Furthermore, such consent shall have the same force and effect as an affirmative majority vote at an in-person meeting and may be stated as

- such in any document filed for the public record.
2. **Vote on Matters to be Determined Outside of a Meeting:** Upon written consent obtained by the procedure set forth in Part a. of this section, any action required or permitted to be taken at a Board meeting may be voted upon by a ballot provided via email, provided: (i) all members provide an acknowledgement receipt of the email ballot, and (ii) no member casts a negative vote. Any such written vote and resulting decision shall be inserted in the minutes book as if it were the minutes of a Board meeting. Furthermore, such decision shall have the same force and effect as an affirmative majority vote at an in-person meeting and may be stated as such in any document filed for the public record.
- F. **Adoption and Publication of Regulations:** The Board may adopt regulations consistent with these rules concerning all of the powers and duties granted to and imposed upon the Board by these rules and the presentation, consideration, rejection, and payment of claims; however, such regulations shall not be effective until approved by the Court. Copies of the regulations shall be available to the public at the offices of the Counsel for Discipline of the Nebraska Supreme Court and the NSBA.
- G. **Administration of the Client Assistance Fund:** The NSBA, under the supervision of the Court, shall administer the Fund by designating a member of its staff to act as Administrator for the Board. With the assistance of the NSBA, the Administrator shall collect assessments from attorneys in amounts as approved by the Court and report to the Court the names and addresses of all attorneys who fail to pay said assessments. The Administrator shall assist the Board in its operations and administration of the funds as directed by the Board. An annual budget estimating the cost of administrative services for the Fund shall be prepared by the Board with consultation from the NSBA and subject to approval by the Court. The Administrator shall perform such other functions and duties as may be directed by the Board or the Court. The reasonable cost and expenses of the NSBA in providing the services of the Administrator to the Fund shall be paid by the Fund to the NSBA after approval by the Court.
- H. **Powers and Duties of the Board:** The Board, in addition to the powers granted elsewhere in these Rules shall have the following powers and duties:
1. To enforce claims for restitution, arising by subrogation, assignment, or otherwise;
  2. To direct the Administrator to invest the Fund or any portion thereof subject to the Investment Objectives, Policies, and Restrictions of the NSBA, which are incorporated into this Rule as appendix A, or as otherwise approved by the Court. The amount of the investments, the allocation of the investments and the performance of the investments shall be included in the report required in H.6.
  3. To employ and compensate legal counsel, employees, and consultants;
  4. To delegate power to perform routine acts which may be necessary or desirable for the operation of the Fund, including the power to authorize disbursements for routine operating expenses of the Fund, and all necessary expenses of staff in the performance of their duties; but authorization for payment of claims shall be made only by the Board under these Rules;
  5. To sue in the name of the Board without joining any or all individual members;
  6. At least once a year and at such additional times as the Court may order, the Board shall file with the Clerk of the Court a written report reviewing in detail the administration of the Fund during the year, including the information required under H.2., together with an audit of the Fund certified by a CPA licensed in Nebraska.
  7. At least 60 days prior to the commencement of each calendar year, the Board shall submit to the Court its budget of operations of such year, which may be amended as necessary. Such budget shall include the cost of the bond referred to in H.8.

8. The Board shall oversee and supervise the maintenance of the assets of the Fund by the Administrator. The Administrator shall disburse and pay out monies from the Fund only upon the written direction of the Board. The Administrator shall file a bond annually with the Board with approved sureties in an amount directed by the Court upon recommendation of the Board. Premium payments for such bonds, if any, shall be paid by the Fund.

**I. Payment to the Fund, Enforcement:**

1. On the Effective Date set out above, the NSBA shall make an initial contribution to the Fund of \$500,000.00 which shall include the balance of the Client Security Fund. Thereafter, the NSBA shall contribute \$20,000.00 on January 1 each year beginning with January 1, 2002, until the Court determines that additional funding is unnecessary.
2. The Board shall determine the net value of the cash and securities in the Fund as of August 1 of each year and shall file with the Court prior to September 1 of such year a report of the value of the assets of the Fund, the amount of claims and requests for reimbursements against the Fund not disposed of on the date of the report, and all expenses properly chargeable against the Fund. The annual report shall include the Board's recommendation as to whether an assessment of NSBA members is needed and if so, the amount of the recommended assessment.

**J. Claims:**

1. The Board shall consider for payment all claims resulting from the dishonest conduct of a member of the NSBA acting as an attorney, provided that:
  - a. Such conduct was engaged in while the attorney was practicing as a member of the NSBA and the claim arises out of the practice of law in Nebraska;
  - b. Such dishonest conduct occurred on or after October 18, 2001;
  - c. The claim is made within 1 year after the client's discovery of the loss; provided, however, such time limitation may be extended by the Board in its discretion in unusual circumstances for good cause shown;
  - d. The claim is made directly by or on behalf of the injured client or the client's personal representative or, if a corporation, by or on behalf of itself or its successors in interest;
  - e. The Board is satisfied that there is no other source or collateral source for the reimbursement of the loss within a reasonable time; and
  - f. Claims shall not be paid which arise out of an employer-employee relationship as distinguished from a lawyer-client relationship.
2. The Board is vested with the power, which it shall exercise in its sole discretion, to determine whether a claim merits payment from the Fund, and if so, the amount of payment, the time and place and manner of its payment, and the conditions upon which payment shall be made. The power of the Board shall be exercised only with the affirmative vote of the majority of the quorum. In making payment determinations, the Board shall consider among other proper factors, the following:
  - a. The size and number of claims which are likely to be presented;
  - b. The total amount of losses in previous years for which payment has not been made, if any, and the total assets of the Fund;
  - c. The amount of the claimant's loss as compared to the amount of losses sustained by other eligible claimants;
  - d. The degree of hardship suffered by the claimant as a result of the loss;
  - e. The conduct of the claimant which may have contributed to the loss;
  - f. The total amount of losses caused by any one attorney or associated group of attorneys;
  - g. That collateral sources for the reimbursement of the loss caused by dishonest conduct

need not be exhausted prior to payment from the fund.

3. There is only \$100,000 available for payment as a result of a dishonest act or acts by an attorney whether there are multiple acts, claimants, or attorneys involved in the dishonest act or acts.
4. No claimant or any other person or organization shall have any right in the Fund as third-party beneficiary or otherwise. Payment by the Fund shall be a matter of grace and not of right.
5. The Board shall require as a condition of payment that the claimant file a grievance with the Counsel for Discipline against the lawyer whose dishonest conduct is a cause of the loss.
6. Confidentiality agreements may be made and enforced by the Board with claimants on reasonable and necessary terms.
7. No claimant need be represented by an attorney before the Board. No attorney representing a claimant before the Board shall be paid or receive a fee for services from the Fund.

**K. Restitution and Subrogation:**

1. A lawyer whose dishonest conduct results in payment to a claimant shall be liable to the Fund for restitution and the Board may bring such action as it deems advisable to enforce such obligation.
2. As a condition of payment a claimant shall be required to provide that the Fund shall be subrogated to the rights of the claimant in the amount of the claim paid to the claimant by the Fund against a lawyer, the lawyer's legal representatives or estate, and the claimant's rights against any third party or entity who may be liable for the claimant's loss.
3. Upon commencement of an action by the Board 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. The proceeds, net of court costs, necessary expenses and attorney's fees of such an action shall be first paid to the Fund in an amount paid out by the Fund and the balance shall be paid to the claimant.
4. In the event that the claimant commences an action to recover unreimbursed losses against a lawyer or another entity who may be liable for the claimant's loss, the claimant shall be required to notify the Board of such action.
5. The claimant shall be required to agree to cooperate in all efforts that the Board undertakes to achieve restitution for the Fund.

- L. **Amendment to Rules:** These Rules may be amended by the NSBA House of Delegates subject to approval of the Court.

**STATEMENT OF  
NEBRASKA STATE BAR ASSOCIATION  
Investment Objectives, Policies, and Restrictions**

**Investment Objective**

The investment objective of the Nebraska State Bar Association is to seek a prudent level of current income consistent with preservation of capital and maintenance of liquidity.

The investment objective and the following investment policies and restrictions are considered fundamental and cannot be changed without the approval of the House of Delegates.

**Investment Policies and Restrictions**

1. Investment Committee. Investment actions will be carried out by NSBA staff under the direction of the Investment Committee of the NSBA. The Investment Committee shall meet at least twice each calendar year to establish the allocation of financial assets among each of four investment categories:
  - a. NSBA Cash Reserve – Funds designated for short-term liquidity needs of NSBA operations. Must be invested entirely in money market instruments.
  - b. NSBA Capital Reserve – NSBA funds not needed to insure short-term liquidity. May be invested in higher-yielding instruments with investment horizons longer than 24 months.
  - c. Client Assistance Fund Cash Reserve – Funds designated for short-term liquidity needs of the Client Assistance Fund. Must be invested entirely in money market instruments.
  - d. Client Assistance Fund Capital Reserve – Funds not needed to insure short-term liquidity of the Client Assistance Fund. May be invested in higher-yielding instruments with investment horizons longer than 24 months.

The Committee will also review and approve specific instruments other than money market, and set caps on exposure to individual instruments or asset classes. The Committee may delegate decisions regarding the timing of investment entry and exit to NSBA staff.

2. Money Market Instruments. Investments in money market instruments are restricted to the following:
  - a. U.S. Treasury Bills
  - b. Certificates of Deposit – Nationwide
    - Issued by banks, savings banks, and savings and loan associations chartered by the federal or any state government and which are FDIC-insured.
    - Maturities of up to 24 months.

- c. Certificates of Deposit – Nebraska
    - Issued by banks, savings banks, and savings and loan associations chartered by Nebraska or the federal government, having their principal office in Nebraska, and which are FDIC-insured.
    - Maturities of up to 24 months.
  
  - d. U.S. Government Securities Money Market Funds
    - Shares of money market mutual funds which invest primarily in securities of the U.S. Government, its Agencies or Instrumentalities.
    - Fund must be registered under the Federal Investment Company Act of 1940, the Securities Act of 1933, and for sale in Nebraska.
  
  - e. Savings and Checking Accounts – Nebraska
    - Savings and checking accounts.
    - Banks, savings banks, and savings and loan associations chartered by Nebraska or the federal government, having their principal office in Nebraska, and which are FDIC-insured.
3. Other Instruments. Investments in instruments other than money market are restricted to the following:
- No-load open-end domestic index mutual funds.
  - Liquid exchange-traded funds (ETFs) which are domestic index funds or, if actively managed, are themselves invested primarily in domestic index ETFs or open-end mutual funds.
  - Funds must be registered under the Federal Investment Company Act of 1940, the Securities Act of 1933, and for sale in Nebraska.
4. Liquidity Requirement. Investments shall be made in such a manner as to provide cash availability to meet the liquidity needs of the NSBA.
5. Preservation of FDIC Insurance. No deposits (i.e., certificates of deposit, savings accounts, and checking accounts) in any one financial institution shall be made when combined with other deposits in the same institution shall be in excess of the maximum FDIC insurance limit.
6. Purveyors of Instruments. Institutions with offices located in Nebraska must be utilized for all transactions, except those involving nationwide certificates of deposit and open-end mutual funds.