

OKLAHOMA

Clients' Security Fund Committee of the Oklahoma Bar Association

(Clients' Security Fund
Rule I., et seq.)

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Clients' Security Fund Rules

Originally adopted by the Executive Council (Board of Governors) on November 12, 1964, and approved by the Oklahoma Supreme Court, as amended.

All lawyers take a solemn oath at their admission to practice before the Supreme Court of the State of Oklahoma. To preserve the integrity and reputation of the legal profession, members of the Oklahoma Bar Association desire, to the extent found proper and feasible by the Clients' Security Fund Committee and Board of Governors in their discretion, to reimburse clients' losses caused by dishonest conduct or acts of the very few lawyers who violate their oath.

I. CLIENTS' SECURITY FUND POLICY RULES

A. There is hereby established a Clients' Security Fund Committee of The Oklahoma Bar Association (hereafter called the Committee).

B. The Committee shall consist of fifteen persons appointed by the President with the approval of the Board of Governors, for the terms as follows: five for one year, five for two years, five for three years. After the initial appointments, each subsequent appointment shall be for a term of three years. At least one appointee each year shall be a person who is not a lawyer. Vacancies shall be filled by appointment by the President for the unexpired term.

C. The Committee is authorized to consider claims for reimbursement of losses arising after the effective date of the original resolution and caused by the dishonest conduct of a lawyer, acting as a lawyer, where said lawyer is a practicing member of the Bar of Oklahoma, maintains an office for the practice of law in the State of Oklahoma and has died, has been adjudged mentally ill, appropriate disciplinary action has been completed or he or she shall have resigned or permitted his or her license to practice to lapse after disciplinary proceedings shall have been commenced against the lawyer.

D. The Board of Governors, upon consideration of the Committee's recommendations 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 Clients' Security Fund as third-party beneficiary or otherwise. If the plan is self-insured, the payment of the claims will be determined at one time or at about the end of each year of operation so that available funds may be equitably allocated within any one year.

E. All Petitions for Relief must be filed within five years of the loss caused by the dishonest conduct of the attorney.

F. The Committee is authorized to prescribe rules and procedures for the management of its funds and affairs, for the presentation of claims and the processing and payment thereof.

G. All sums appropriated by the Board of Governors for the use of the Committee shall be held and invested by the Treasurer of the Association in a separate fund known as the Clients' Security Fund subject to the written directions of the Committee under Committee rules.

H. The Committee subject to the final determination of the Board of Governors may use or employ the Clients' Security Fund for all or any of the following purposes within the scope of the Committee's objectives, as heretofore outlined:

1. To make reimbursements to clients.
2. At its discretion, to purchase insurance to insure the integrity of the Clients' Security Fund, provided that such insurance is obtainable at reasonable costs and is deemed appropriate.

I. The expenses of this Committee shall be paid out of the general fund of the Oklahoma Bar Association.

J. The Committee shall provide a full written report of its activities annually to the Board of Governors of the Association, and it shall make such other reports of its activities and give only such further publicity to same as the Board of Governors may deem advisable.

K. The Committee may be abolished at any time upon the recommendation of the Board of Governors and approval of the Oklahoma Supreme Court. In the event of such abolition, all assets of the Clients' Security Fund shall be and remain the property of the Oklahoma Bar Association and usable for its general purposes by action of the Board of Governors.

L. The President shall be authorized to make the appointments to the committee with the approval of the Board of Governors.

M. Given the nature and purpose of the Fund, it is expected that members of the Association will assist claimants for relief without charge, deeming their service to be pro bono publico. Where an unusual amount of time and effort is expended by an attorney who assists a claimant, he or she may be awarded a modest fee out of the award. No attorney shall be compensated for presenting a petition except as authorized by the Clients' Security Fund Committee and the Board of Governors.

N. The Oklahoma Bar Association, members of its Board of Governors, members of the Committee, employees and agents of the Oklahoma Bar Association, claimants and lawyers who assist claimants are absolutely immune from civil liability for all acts of omission or commission in the course of their official duties.

O. The Purposes of the Clients' Security Fund are:

1. To furnish a means of protecting the reputation of lawyers in general from the consequences of dishonest acts of a very few.
2. To furnish a means of reimbursement to clients for financial losses occasioned by dishonest acts of lawyers:
 - a. To the extent that the Fund is capable of making reimbursements; and
 - b. If in the opinion of the Board of Governors upon consideration of the Committee's recommendation, the client is entitled to reimbursement.
 - c. In such amount as the Board of Governors, in its sole discretion, shall deem reasonable and proper, with the consideration of the Committee's recommendation.

P. In establishing the Clients' Security Fund, the Oklahoma Bar Association did not create or acknowledge any legal responsibility for the acts of individual lawyers in their practice of law. Therefore, all reimbursements of losses by the Clients' Security Fund shall be made solely at the discretion of the Board of Governors upon the recommendation of the Committee and not as a matter of legal right capable of enforcement by any claimant.

II. RULES OF PROCEDURE

A. **Definitions.** For the purpose of these rules of procedure, the following definitions shall apply:

1. The "Committee" shall mean the Clients' Security Fund Committee.
2. The "Fund" shall mean the Clients' Security Fund.
3. "Lawyers" shall include only those lawyers admitted to practice law within the State of Oklahoma, domiciled and actively practicing law within said state.
4. "Reimbursable Losses" shall include only those losses of money or other property of clients of lawyers which meet the following tests:
 - a. That the loss shall have been caused by the dishonest act of a lawyer while acting as a lawyer for the client.

- b. That the lawyer shall have died, shall have been adjudged mentally ill, appropriate disciplinary action has been completed, or he or she shall have resigned or permitted his or her license to practice to lapse after disciplinary proceedings shall have been commenced against the lawyer.
 - c. That the dishonest act shall have been committed within the State of Oklahoma, or as a part of a contract of employment, the major portion of which was to be performed within said State.
- 5. The following shall be excluded from "Reimbursable Losses":
 - . Losses of spouses and other close relatives, partners, servants and employees of lawyers;
 - a. Losses the proof of which, either as to factual existence or amount, is dependent upon inventory computation or profit and loss computation.
 - b. Losses covered by any bond, surety agreement, or insurance contract, to the extent covered thereby.
 - c. Losses for which the client has received reimbursement from any source.
- 6. As used in these rules "Dishonest Conduct or Acts" means any of the following:
 - . 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; or
 - a. Refusal to refund unearned fees received in advance where the lawyer performed no services or such an insignificant portion of the service that the refusal to refund the unearned fee constitutes a wrongful taking or conversion of money.

III. MANNER OF MAKING APPLICATION FOR REIMBURSEMENT

Applications to the Fund for reimbursement for loss suffered by clients as the result of dishonest acts of lawyers shall be in writing and shall be addressed and delivered to the Director of the Oklahoma Bar Association for transmission to the Chairperson of the Committee. Said applications shall be in such form as the Committee may prescribe, and shall contain the following minimum information:

- A.** The name of the "Lawyer".
- B.** The amount of the "Reimbursable Loss".
- C.** The date or period of time during which the loss was incurred, together with a sufficient statement of facts to show that the loss is in fact a "Reimbursable Loss" as hereinbefore defined.
- D.** All applications shall be supported by submission of such documentary evidence as may be available and shall be signed by the claimant.
- E.** A copy of the application submitted to the Committee shall be mailed or served on the affected former attorney at his or her last known address by the Office of the General Counsel. Included with the application shall be a notice that the claim has been received and will be considered by the Committee and that the former attorney is invited to submit any statement or documentary evidence either in favor or against said claim. The notice shall also state that if the claim is paid, the Committee may be entitled to subrogation of the claim against the attorney and that reimbursement of the Clients' Security Fund will be a condition of any application for reinstatement.

IV. PROCESSING AND ALLOWANCE OF APPLICATIONS

- A.** Applications submitted to the Committee shall be referred by the Chairperson to the General Counsel or other Staff of the Oklahoma Bar Association for investigation and recommendation as to the validity of the claim included in the application. The reports of investigation and the recommendations thus made shall be submitted to the Committee as a whole. The Committee, during each calendar year, in its sole discretion shall determine the amount of loss for which any client shall be reimbursed and in making such determination the Committee shall consider, inter alia, the following:

1. The conduct, if any, of the client which contributed to the loss,
2. The comparative hardship the client has suffered by the loss,
3. The total amount of applications for reimbursement which have been submitted by the clients of any one lawyer or association of lawyers, and
4. All claims against the Clients' Security Fund shall be presented to the Clients' Security Fund Committee for its consideration. In December of each year, the Clients' Security Fund Committee shall make a written report to the Board of Governors of the Oklahoma Bar Association setting forth the Committee's recommendations with regard to all claims considered by the Committee during the preceding year. The Board of Governors shall consider the recommendations of the Clients' Security Fund Committee and make a final determination of approval or rejection of each claim. After the Board of Governors has made a final decision regarding all the claims for the preceding year, the Executive Director shall compute the total dollar amount of all claims approved by the Board of Governors. If the total dollar amount of the approved claims does not exceed the annual aggregate amount of reimbursement as specified in paragraph 6 of this section, the Executive Director shall promptly pay all the approved claims. If the total dollar amount of the approved claims exceeds the annual aggregate amount of reimbursement, the Executive Director shall pay all approved claims on a prorated basis so that the same percentage of each approved claim is paid and the total dollar amount of the prorated claims paid equals the annual aggregate amount of reimbursement. The Board of Governors may increase the amount available for reimbursement by appropriating an amount from the Permanent Fund not to exceed 10% of the total of the Permanent Fund as determined on November 1 of each year. Nothing herein shall create any obligation on the part of the Board of Governors to any such increase under any circumstances.
5. The President of the Association and the Budget Committee shall budget for the benefit of the Clients' Security Fund sufficient money from the annual budget so that the Clients' Security Fund shall have in it as of January 1 of each year the sum of \$175,000.00. The Association shall also establish a Clients' Security Permanent Fund, the income of which shall be used to increase the annual aggregate amount available for reimbursement of claimant losses. The Permanent Fund shall be funded in the following manner: In the event that the total dollar amount of the approved claims in any one year does not exceed the annual budgeted \$175,000.00 amount plus any earned income from that amount, the remaining balance of the budgeted amount and earned income shall be added to the Clients' Security Permanent Fund; The Permanent Fund shall also include other funds received by the Board relating to Client Security including voluntary contributions or subrogation or restitution received for claims paid. The appropriated annual funds and the other funds of the Clients' Security Permanent Fund shall be invested at the direction of the Board of Governors and the income from such investment shall be added to the Clients' Security Fund to be used in the manner prescribed herein. Nothing herein shall create any obligation on the part of the Association to fund or pay all approved claims.
6. The annual aggregate amount of reimbursement for any calendar year that is payable by the Clients' Security Fund is hereby set as the total of the budgeted amount, \$175,000.00, plus any current income from the Permanent Fund and the budgeted \$175,000.00. In the event that it is determined to purchase insurance to insure the integrity of the Fund in making payments of reimbursement in accordance with Section II(H)(2), principal and income of the annual budgeted amount and the Permanent Fund may be used for any such purpose.
7. The Board of Governors, subject to approval by the Oklahoma Supreme Court, may from time to time change or modify the maximum amount of reimbursement payable by the Clients' Security Fund. (As amended by Supreme Court Order 52298)
8. Claimant shall be reimbursed for losses in amounts to be determined in the sole discretion and approval of the Board of Governors at the recommendation of the Committee. Reimbursement, if any, shall not include interest, incidental consequential and out of pocket expenses.

9. If the claimant is a minor or an incompetent, the reimbursement may be made to any person or entity for the benefit of the claimant.
10. Although the rules set forth herein establish procedures for the processing of the claims seeking reimbursement from the Fund, they are not intended to nor do they create a substantive right to reimbursement, compensation, damages or restitution for a lawyer's dishonest act.
11. The Oklahoma Bar Association, members of its Board of Governors, members of the Committee and the agents and employees of the Oklahoma Bar Association are not guarantors of honesty or integrity in the practice of law. Dishonest conduct by a member of the Bar imposes no separate legal obligation on the profession collectively, or on the Clients' Security Fund, to compensate for a lawyer's misconduct. The Fund is a Bar-financed public service of the Bar Association with the intent to promote public confidence in the administration of justice and the integrity of the legal profession, and therefore payment of reimbursement of losses is a matter of grace and discretion by the Board of Governors.
12. The recommendations made by the Clients' Security Fund Committee or the decisions made by the Board of Governors of the Oklahoma Bar Association pursuant to these rules shall be final.

V. SUBROGATION FOR REIMBURSEMENTS MADE

A. In the event reimbursement is made to a client, the Fund shall be subrogated in said amount and may bring such action as it deems advisable against the lawyer, his or her assets or estate, either in the name of the client or in the name of the Oklahoma Bar Association. The client shall be required to execute a subrogation agreement in said regard.

B. The client shall be entitled to bring an action for recovery of losses directly against the lawyer, his or her assets or estate if the Committee has not done so within six months of execution of the subrogation agreement. Any amounts recovered from the lawyer, either by the Committee or the client, in excess of the amount to which the fund is subrogated, less the Committee's actual costs of such recovery, shall be paid to or retained by the client as the case may be.

VI. MEETINGS OF THE COMMITTEE

The Committee shall meet from time to time upon call of the Chairperson, provided that the Chairperson shall call a meeting at any reasonable time at the written request of at least two members of the Committee.

VII. GENERAL PROVISIONS

A. No publicity shall be given to the rules of procedure, to applications for reimbursement, payments made by the Committee or to any action of the Committee without the express prior approval of the Board of Governors of the Oklahoma Bar Association. Subject to such express prior approval:

1. The Committee is authorized to prepare, use and distribute an informational brochure detailing the rules of procedure and activities of the Committee for the purpose of assisting fund claimants in the preparation of their applications and informing the general public of the purpose and aims of the Committee. Copies of the informational brochure shall also be made available to the general public. The contents of the brochure shall be reviewed and approved by the Board of Governors; and
2. Annually, after review and consideration of claims by the Board of Governors, the Committee shall prepare and distribute a summary of activities containing information regarding the purpose and aims of the Committee, the number of claims submitted, the number of claims paid, the amount of such payments and the name of the successful claimant and affected attorney. The summary may only be published by the Board of Governors. The Committee

shall not include specific information regarding claims which were not paid or any claim application against an attorney who was not involved in a “reimbursable loss” as defined under Rule II(A)(4).

B. These rules may be changed at any time by a majority vote of the Committee if said changes are approved by the Board of Governors of the Oklahoma Bar Association and the Oklahoma Supreme Court.