

(PROPOSED)
RULES FOR THE CLIENT PROTECTION FUND
OF THE WYOMING STATE BAR

At a meeting held January 20, 2017, the Board of Officers and Commissioners of the Wyoming State Bar approved distributing proposed Rules for the Client Protection Fund of the Wyoming State Bar to members for comment. The proposed rules would replace existing rules relating to the Clients' Security Fund which have long been in need of updating.

Comments should be submitted to Mark Gifford, Bar Counsel, at mgifford@wyobc.org, on or before March 17, 2017.

Rule 1. PURPOSE, SCOPE AND DEFINITIONS.

- (a) The purpose of the Client Protection Fund 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 licensed or otherwise authorized to practice law in the courts in Wyoming occurring in the course of the lawyer-client relationship.
- (b) The following definitions shall apply:
 - (1) "Chair" means the chairperson of the Client Protection Fund Committee, or the Chair's designee.
 - (2) "Claimant" means a person or entity who directly or through an authorized representative alleges a loss caused by the dishonest conduct of the lawyer which arises out of and by reason of a lawyer-client relationship.
 - (3) "Committee" means the Client Protection Fund Committee.
 - (4) "Dishonest conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or other wrongful taking or conversion of money, property or other things of value, including failure to refund fees received in advance as required by Rule 1.16 of the Wyoming Rules of Professional Conduct.
 - (5) "Fund" means the Client Protection Fund of the Wyoming State Bar, to be funded by budget allocations designated for such purpose by the Board of Officers and Commissioners of the Wyoming State Bar.
 - (6) "Lawyer" means a member of the Wyoming State Bar, including deceased members and recently suspended or disbarred members whom clients reasonably believed to be authorized to practice law when the dishonest conduct occurred.

Rule 2. CLIENT PROTECTION FUND COMMITTEE.

- (a) The Court shall appoint a Client Protection Fund Committee to administer the Client Protection Fund as hereinafter provided.
- (b) The Committee shall consist of nine members of the Wyoming State Bar, one member from each of the nine judicial districts. Members shall be appointed for terms of three years or until a successor has been appointed. Appointments shall be on a staggered basis so that the number of terms expiring shall be approximately the same each year. No members shall be appointed for more than two consecutive full terms, but members appointed for less than a full term (either originally or to fill a vacancy) may serve two full terms in addition to such part of a term. Each year the Committee shall designate one of its members to serve as Chair.

- (c) The Committee shall have the following powers and duties:
 - (1) To receive, investigate, evaluate, determine and pay claims;
 - (2) To promulgate rules of procedure not inconsistent with these Rules;
 - (3) To educate the public and the bar about the Fund;
 - (4) To prosecute claims for restitution to which the Fund is entitled; and
 - (5) To perform other acts necessary or proper for the fulfillment of the purposes and effective administration of the Fund.
- (d) Members of the Committee shall be entitled to reimbursement by the Wyoming State Bar for reasonable travel, meals, lodging and other expenses incurred in the course of their official duties.
- (e) A Committee member who has or has had a lawyer-client 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. A Committee member with a past or present relationship (other than that described in the preceding sentence) with a claimant or lawyer whose alleged conduct is the subject of the claim, or who has other potential conflicts of interest, shall disclose such relationship to the Committee and, if the Committee deems appropriate, that member shall not participate in any proceeding relating to such claim.
- (f) Wyoming State Bar staff shall be assigned to assist the Committee. The assigned staff shall have such administrative responsibilities as may be delegated by the Committee.

Rule 3. ELIGIBLE CLAIMS.

- (a) The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and by reason of a lawyer-client relationship.
- (b) The claim shall have been filed no later than four years after the Claimant knew or should have known of the dishonest conduct of the lawyer.
- (c) Except as provided in paragraph (d) of this Rule, the following losses are not reimbursable:
 - (1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) 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 that 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 the lawyer(s), or any person or entity described in subparagraphs (c)(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 lawyer-client relationship; and
 - (7) Consequential or incidental damages, such as lost interest, or legal fees or other costs incurred in seeking recovery of a loss.
- (d) In determining whether it would be more appropriate for the Fund or a fund of another jurisdiction to pay a claim, the Committee should consider the following factors:
 - (1) The location of the lawyer’s principal office and other offices;
 - (2) The location ~~where~~ the lawyer-client relationship arose;
 - (3) The domicile or residence of the client;

- (4) The number of years the lawyer has been licensed in each jurisdiction;
 - (5) The primary location where the legal services were rendered;
 - (6) Whether at the time the legal services were rendered, the lawyer was engaged in the unauthorized practice of law as defined by the jurisdiction in which the legal services were rendered; and
 - (7) Any other significant contacts.
- (e) The Committee may enter into an agreement with the fund of another jurisdiction to reimburse a portion of the loss suffered by a Claimant whose claim may be eligible for payment under more than one fund.
- (f) In cases of extreme hardship or special and unusual circumstances, the Committee may, in its discretion and consistent with the purpose of the Fund, recognize a claim that would otherwise be excluded under these Rules.

Rule 4. PROCEDURES AND RESPONSIBILITIES FOR CLAIMANTS.

- (a) The Committee shall prepare and approve a form for claiming reimbursement.
- (b) The form shall include at least the following information provided by the claimant under penalty of perjury:
- (1) The name and address of Claimant; home and business telephone; occupation and employer; and social security number;
 - (2) The name, address and telephone number of the lawyer alleged to have dishonestly taken the Claimant's money or property, and any family or business relationship of Claimant to the lawyer;
 - (3) The legal services the lawyer was to perform for Claimant;
 - (4) The amount paid to the lawyer;
 - (5) A copy of any written agreement pertaining to the claim;
 - (6) Copies of checks, money orders, receipts, or other proofs of payment;
 - (7) The form of Claimant's loss (e.g., money, securities or other property);
 - (8) The amount of loss and the date when the loss occurred;
 - (9) The date when Claimant discovered the loss was the result of dishonest conduct by the lawyer, and how Claimant discovered the loss;
 - (10) The lawyer's dishonest conduct and the names and addresses of persons who have knowledge of the loss;
 - (11) The name of the person(s), if any, to whom the loss has been reported (e.g., law enforcement, the Office of Bar Counsel, or other person or entity) and a copy of any complaint and description of any action that was taken;
 - (12) The source, if any, from which the loss can be reimbursed including any insurance, fidelity or surety agreement;
 - (13) The description of any steps taken to recover the loss directly from the lawyer, or any other source;
 - (14) The circumstances under which Claimant has been, or will be, reimbursed for any part of the claim (including the amount received, or to be received, and the source), along with a statement that Claimant agrees to notify the Committee of any reimbursements Claimant receives during the pendency of the claim;
 - (15) The existence of facts believed to be important to the Committee's consideration of the claim;
 - (16) The name, address and telephone number of Claimant's present lawyer;

- (17) Claimant's agreement to cooperate with the Committee in reference to the claim or as required by Rule 10, in reference to civil actions which may be brought in the name of the Committee pursuant to a subrogation and assignment clause which shall also be contained within the claim;
 - (18) Claimant's agreement to repay the Fund if Claimant is subsequently reimbursed from another source;
 - (19) The name and address of any other jurisdiction's fund to which Claimant has applied or intends to apply for reimbursement, together with a copy of the application; and
 - (20) A statement that Claimant agrees to the publication of appropriate information about the nature of the claim and the amount of reimbursement if reimbursement is made.
- (c) Claimant shall have the responsibility to complete the claim form and provide satisfactory evidence of a reimbursable loss.
 - (d) The claim shall be signed by Claimant under penalty of perjury and shall be filed with the Wyoming State Bar, 4124 Laramie St., P.O. Box 109, Cheyenne, Wyoming 82003.

Rule 5. PROCESSING CLAIMS.

- (a) The Chair shall make an initial determination whether the claim is eligible for reimbursement as provided in Rule 3. If the Chair determines that a claim is not eligible for reimbursement pursuant to Rule 3, Claimant shall be notified of the reasons why the claim may not be eligible for reimbursement, and that unless additional facts to support eligibility are submitted to the Committee, the claim file shall be closed.
- (b) If the Chair determines that the claim is eligible for reimbursement, a copy of the claim shall be provided to the lawyer. The lawyer shall have 20 days in which to respond.
- (c) The Office of Bar Counsel of the Wyoming State Bar shall be promptly notified of a claim. Following receipt of the claim, Bar Counsel shall determine whether an investigation is warranted. If so, the Office of Bar Counsel shall report its investigation of the claim to the Committee. The Committee may conduct additional investigation when it deems appropriate.
- (d) The Committee may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.
- (e) Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be considered if it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. Claimant shall have the duty to supply relevant evidence to support the claim.
- (f) 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 Committee's determination and the reasons therefor. The approval or denial of a claim shall require the affirmative vote of five members of the Committee.
- (g) Claimant or the lawyer may request reconsideration by the Committee in writing within 30 days of the denial or the determination of the amount of a claim. If Claimant or the lawyer fails to make a request or the request is denied, the decision of the Committee is final and there is no further right of appeal.

Rule 6. PAYMENT OF CLAIMS.

- (a) The Committee may from time to time fix the maximum amount of reimbursement that is payable from the Fund.
- (b) Payment of reimbursement shall be made in such amounts and at such times as the Committee deems appropriate and may be paid in lump sum or installment amounts; provided, however, that the Committee shall not approve payment to any one Claimant of more than \$15,000.00 per calendar year without the prior approval of the Board of Officers and Commissioners of the Wyoming State Bar.
- (c) If Claimant is a minor, incompetent or deceased, the reimbursement may be paid to any person or entity authorized to receive the reimbursement for the benefit of Claimant.

Rule 7. REIMBURSEMENT FROM THE FUND IS DISCRETIONARY.

No person shall have the legal right to reimbursement from the Fund. There shall be no appeal from a decision of the Committee.

Rule 8. CONFIDENTIALITY.

- (a) Claims, proceedings and reports involving claims for reimbursement are confidential until the Committee authorizes reimbursement to Claimant, except as provided below, unless provided otherwise by law. After payment of reimbursement, the Committee may publicize the nature of the claim, the amount of reimbursement and the name of the lawyer. The name and other identifying information of Claimant shall not be publicized unless specific permission has been granted by Claimant.
- (b) This Rule shall not be construed to deny access to relevant information by professional discipline agencies or law enforcement authorities, as the Committee shall authorize, or the release of statistical information that does not disclose the identity of the lawyer or Claimant, or the use of such information as is necessary to pursue the Fund's subrogation rights under Rule 10.

Rule 9. IMMUNITY.

- (a) Claimants and witnesses shall have such immunity as is applicable in a civil action.
- (b) Members of the Committee and staff shall be immune from suit for any conduct in the course and scope of their official duties.

Rule 10. RESTITUTION AND SUBROGATION.

- (a) A lawyer whose dishonest conduct results in reimbursement to a claimant shall be liable to the Fund for restitution. The Committee may bring such action as it deems advisable to enforce such obligation.
- (b) A lawyer whose dishonest conduct has resulted in reimbursement to a Claimant shall make restitution to the Fund including interest and the expense incurred by the Fund in processing the claim. A lawyer's failure to make satisfactory arrangement for restitution shall be cause for suspension, disbarment, or denial of an application for reinstatement.
- (c) As a condition for reimbursement, and to the extent of the reimbursement provided by the Fund, a Claimant shall be required to provide the Fund with a transfer and assignment of Claimant's rights against the lawyer, the lawyer's legal representative, estate or assigns; and of Claimant's rights against any third party or entity who may be liable for Claimant's loss.

- (d) Upon commencement of an action by the Committee as subrogee or assignee of a claim, it shall advise the Claimant, who may then join in such action to recover Claimant's unreimbursed losses.
- (e) In the event Claimant commences an action to recover unreimbursed losses against the lawyer or another entity that may be liable for Claimant's loss, Claimant shall promptly notify the Committee of such action. Failure by the Claimant to so notify the Committee may result in reconsideration of Claimant's claim and adjustment/modification of payment.
- (f) Claimant shall be required to agree to cooperate in all efforts undertaken by the Committee to achieve restitution for the Fund, and to repay the Fund if Claimant is subsequently reimbursed from another source an amount that exceeds the difference between the amount misappropriated and the amount reimbursed by the Fund. Such repayment shall not exceed the amount paid by the Fund.

Rule 11. JUDICIAL RELIEF

- (a) The Committee may make application to the appropriate court for relief to protect the interests of a Claimant or the Fund where:
 - (1) The assets of clients appear to be in danger of misappropriation or loss, or to secure Claimant's or Fund's rights to restitution or subrogation; or
 - (2) The lawyer disciplinary agency has failed to exercise jurisdiction.
- (b) A court's jurisdiction in such proceedings shall include the authority to appoint and compensate custodial receivers to conserve the assets and practices of disciplined, missing, incapacitated or deceased lawyers.

Rule 12. COMPENSATION FOR REPRESENTING CLAIMANTS

No lawyer shall accept any payment for assisting a Claimant with prosecuting, unless such payment has been approved by the Committee.