



WSBA

WASHINGTON STATE BAR ASSOCIATION

LAWYERS' FUND FOR CLIENT PROTECTION (APR 15) PROCEDURAL RULES

(Adopted by the Washington Supreme Court July 18, 1995; amended February 11, 1997; May 6, 1999; October 5, 2001; December 2, 2004; September 1, 2006; November 2, 2006; September 1, 2008)

RULE 1. PURPOSE

A. The purpose of these rules is to establish procedures pursuant to Rule 15 of the Admission to Practice Rules, to maintain and administer a Lawyers' Fund for Client Protection established as a trust by the Washington State Bar Association (WSBA), in order to promote public confidence in the administration of justice and the integrity of the legal profession.

B. Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any member of the WSBA in connection with the member's practice of law, or while acting as a fiduciary in a matter related to the member's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time a member of the WSBA but who was at the time of the act complained of under a court ordered suspension.

C. The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from an attorney's negligent performance of services.

RULE 2. ESTABLISHMENT OF THE FUND.

A. Trustees. Pursuant to APR 15, the members of the Board of Governors of the WSBA will serve during their terms of office as Trustees (Trustees) for the Fund to hold funds assessed by the Supreme Court for the purposes of the Fund. The WSBA President will serve as President of the Trustees.

B. Funding. The Trustees may recommend to the Supreme Court that it order an annual assessment of all active members of the WSBA in an amount recommended by the Trustees to be held by them in trust for the purposes of the Fund.

C. Enforcement. Any active member failing to pay any annual assessment on or before the date set for payment by the Supreme Court shall, after 60 days written notice sent to his or her last known business address as shown in the records of the WSBA, be ordered suspended from the practice of law until the assessment is paid.

RULE 3. LAWYERS' FUND FOR CLIENT PROTECTION COMMITTEE

A. Membership. The Lawyers' Fund for Client Protection Committee shall consist of 11 lawyers and 2 nonlawyers appointed by the Trustees for terms not exceeding 3 years each.

B. Vacancies. Vacancies on the Committee shall be filled by appointment of the Trustees.

C. Officers. The Trustees shall appoint a chairperson of the Committee for a term of one-year or until a successor is appointed. The secretary of the Committee shall be a staff member of the WSBA assigned to the Committee by the Executive Director of the WSBA.

D. Meetings. The Committee shall meet not less than once per year upon call of the chairperson, or at the request of the staff member of the WSBA, who shall not be entitled to vote on Committee matters.

E. Quorum. A majority of the Committee members, excluding the secretary, shall constitute a quorum.

F. Record of Meetings. The secretary shall maintain minutes of the Committee deliberations and recommendations.

G. Authority and Duties of Committee. The Committee shall have the power and authority to:

(1) Consider claims for reimbursement of pecuniary loss and make a report and recommendation regarding payment or nonpayment on any claim to the Trustees.

(2) Provide a full report of its activities annually to the Supreme Court and the Trustees and to make other reports and to publicize its activities as the Court or Trustees may deem advisable.

H. Conflict of Interest.

(1) A Committee member who has or has had a lawyer/client relationship or financial relationship with an applicant or lawyer who is the subject of an application shall not participate in the investigation or deliberation of an application involving that applicant or lawyer.

(2) A Committee member with a past or present relationship, other than that as provided in section (1), with an applicant or lawyer who is the subject of an application, shall disclose such relationship to the Committee and, if the Committee deems it appropriate, that member shall not participate in any action relating to that application.

RULE 4. APPLICATIONS FOR PAYMENT

A. Application Form. All applications for payment through the Lawyers Fund for Client Protection shall be made by submitting an application on a form approved by the Committee, and shall include all information requested on the form.

B. Disciplinary Grievances. Before an application for payment from the Fund will be considered, the applicant must also file a disciplinary grievance with the Office of Disciplinary Counsel, unless the lawyer is disbarred or deceased, or unless the Committee in its discretion finds that no disciplinary grievance is required.

C. Notice by Office of Disciplinary Counsel. Any person who has filed a disciplinary grievance with the WSBA alleging a loss occasioned by the dishonest conduct of a lawyer should be provided with a Lawyers Fund for Client Protection application form and given information about the Fund.

RULE 5. ELIGIBLE CLAIMS

A. Eligibility. To be eligible for payment from the Fund, the loss must be caused by the dishonest conduct of a lawyer or the failure to account for money or property entrusted to a lawyer in connection with the lawyer's practice of law, or while acting as a fiduciary in a matter related to the lawyer's practice of law.

B. Time Limitations. Any application must be made within three years from the date on which discovery of the loss was made or reasonably should have been made by the applicant, and in no event more than three years from the date the lawyer dies, is disbarred, is disciplined for misappropriation of funds, or is criminally convicted for matters relating to the applicant's loss, provided that the Committee or Trustees in their discretion may waive any limitations period for excusable neglect or other good cause.

C. Dishonest Conduct. As used in these rules, "dishonest conduct" or "dishonesty" 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 thing of value, including but not limited to refusal to refund unearned fees or expenses as required the Rules of Professional Conduct.

D. Excluded Losses. Except as provided by Section E of this Rule, the following losses shall not be reimbursable:

- (1) Losses incurred by partners and associates of the lawyer causing the loss;
- (2) Losses covered by any 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 which 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 or any person or entity described in Rule 5 D (1), (2) or (3);
- (5) Losses incurred by an assignee, lienholder, or creditor of the applicant or lawyer, unless application has been made by the client or beneficiary or the client or beneficiary has authorized such reimbursement;
- (6) Losses incurred by any governmental entity or agency.
- (7) Consequential damages, such as lost interest, or attorney's fees or other costs incurred in seeking recovery of a loss.

E. Special and Unusual Circumstances. In cases of special and unusual circumstances, the Committee may, in its discretion, consider an application which would otherwise be excluded by reason of the procedural requirements of these rules.

F. Unjust Enrichment. In cases where it appears that there will be unjust enrichment, or that the applicant contributed to the loss, the Committee may, in its discretion, recommend the denial of the application.

G. Exhaustion of Remedies. The Committee may consider whether an applicant has made reasonable attempts to seek reimbursement of a loss before taking action on an application. This may include, but is not limited to, the following:

- (1) Filing a claim with an appropriate insurance carrier;
- (2) Filing a claim on a bond, when appropriate;
- (3) Filing a claim with any and all banks which honored a financial instrument with a forged endorsement;
- (4) As a prelude to possible suit under part (5) below, demanding payment from any business associate or employer who may be liable for the actions of the dishonest lawyer; or
- (5) Commencing appropriate legal action against the lawyer or against any other party or entity who may be liable for the applicant's loss.

RULE 6. PROCEDURES

A. Ineligibility. Whenever it appears that an application is not eligible for reimbursement pursuant to Rule 5, the applicant shall be advised of the reasons why the application may not be eligible for reimbursement.

B. Investigation and Report. The WSBA staff member assigned to the Committee shall conduct an investigation regarding any application. The investigation may be coordinated with any disciplinary investigation regarding the lawyer. The staff member shall report to the Committee and make a recommendation to the Committee.

C. Notification of Lawyer. The lawyer, or his or her representative, regarding whom an application is made shall be notified of the application and provided a copy of it, and shall be requested to respond within 20 days. If the lawyer's address of record on file with the WSBA is not current, then a copy of the application should be sent to the lawyer at any other address on file with the WSBA. A copy of these Rules shall be provided to the lawyer or representative.

D. Withdrawal of Application/Restitution. If, during the investigation of an application, the Applicant withdraws the Application or the Applicant receives full restitution of the amount stated in the Application, the Applicant and the lawyer shall be advised that the file will be closed without further action.

E. Testimony. The Committee may request that testimony be presented to complete the record. Upon request, the lawyer or applicant, or their representatives, may be given an opportunity to be heard at the discretion of the Committee.

F. Finding of Dishonest Conduct. The Committee may make a finding of dishonest conduct for purposes of considering an application. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.

G. Evidence and Burden of Proof. Consideration of an application need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence commonly accepted by reasonably prudent persons in the conduct of their affairs. The applicant shall have the burden of establishing eligibility for reimbursement by a clear preponderance of the evidence.

H. Pending Disciplinary Proceedings. Unless the Committee or Trustees otherwise direct, no application shall be acted upon during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the claim.

I. Public Participation. Public participation at Committee meetings shall be permitted only by prior permission granted by the Committee chairperson.

J. Committee Action.

(1) Actions of the Committee Which Are Final Decisions: A decision by the Committee on an application for payment of \$25,000 or less – whether such decision be to make payment, to deny payment, to defer consideration, or for any action other than payment of more than \$25,000 – shall be final and without right of appeal to the Trustees.

(2) Actions of the Committee Which Are Recommendations to the Trustees: A decision by the Committee (a) on an application for more than \$25,000, or (b) involving a payment of more than \$25,000 (regardless of the amount stated in the application), is not final and is a recommendation to the Trustees which shall have sole authority for final decisions in such cases.

RULE 7. ADJUDICATION BY TRUSTEES

A. A recommendation by the Committee (a) concerning applications for more than \$25,000, or (b) that payments of more than \$25,000 be made to applicants regarding any one lawyer, shall be reported to the Trustees which may, in its discretion, adopt, modify, disapprove or take any other appropriate action on the Committee's recommendation.

B. A decision of the Trustees shall be final and there shall be no right of appeal from that decision.

RULE 8. NOTIFICATION OF APPLICANT AND LAWYER

Both the applicant and the lawyer who is the subject of an application shall be advised of any decision of the Committee or the Trustees.

RULE 9. LIMITATIONS ON AMOUNT OF REIMBURSEMENT

The Trustees may, at their discretion, set limitations on the amount of reimbursement.

RULE 10. NO LEGAL RIGHT TO PAYMENT

Any and all payments made to applicants in connection with the Lawyers' Fund for Client Protection are gratuitous and are at the sole discretion of the Trustees.

RULE 11. RESTITUTION AND SUBROGATION

A. Restitution. A lawyer whose conduct results in payment to an applicant shall be liable to the Fund for restitution, and the Trustees may bring such action as they deem advisable to enforce restitution.

B. Subrogation. As a condition of payment, an applicant shall be required to provide the Fund with a pro tanto transfer of the applicant'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 applicant's loss.

C. Action to Enforce Restitution. In the event the Trustees commence a judicial action to enforce restitution, they shall advise the applicant who may then join in the action to recover any unreimbursed losses. If the applicant commences such an action against the lawyer or another entity who may be liable for the loss, the applicant shall notify the Fund who may join in the action.

D. Duty to Cooperate. As a condition of payment, the applicant shall be required to cooperate in all efforts that the Fund undertakes to achieve restitution.

RULE 12. COMPENSATION FOR REPRESENTING APPLICANTS

No lawyer shall charge or accept any payment for prosecuting an application on behalf of an applicant, unless such charge or payment has been approved by the Trustees.

RULE 13. CONFIDENTIALITY

A. Matters Which Are Public. The facts and circumstances which generated the loss, the Committee's findings of fact and recommendations to the Trustees with respect to payment of a claim, the amount of claim, the amount of loss as determined by the Committee, and the amount of payment authorized and made, shall be public. After payment is authorized, the name of the lawyer causing the loss shall be public.

B. Matters Which Are Not Public. The Committee's investigation and deliberations of any application; the name of the applicant, unless the applicant consents; or the name of the lawyer unless the lawyer consents or unless the lawyer's name is made public pursuant to these rules, shall not be public.

RULE 14. NOTICE OF ACTION

Notice of approval of an application to the Fund may be published in the *Washington State Bar News* and elsewhere at the direction of the Committee or Trustees. Notice may also be posted electronically on any web site maintained by the WSBA. If the lawyer has made full restitution to the Fund, any notice posted electronically by the WSBA may, at the request of the lawyer, be removed.

RULE 15. AMENDMENTS

These Rules may be amended, altered or repealed on the recommendation of the Committee by a vote of the Trustees, with the approval of the Supreme Court.