

**RULES OF PROCEDURE
OF THE
STATE BAR OF NEVADA
CLIENTS' SECURITY FUND**

(Approved April 11, 2012)

1. Definitions: As used in these rules, unless the context requires otherwise:
 - a. "Accused Attorney" means a person who has been accused of committing a Dishonest Act while licensed to practice by the State Bar or practicing in this state pursuant to Supreme Court Rule 42 (pro hac vice).
 - b. "Applicant" means a person who applies for reimbursement from the Fund.
 - c. "Application" means the form required by the State Bar to report and substantiate a Claim.
 - d. "Board of Governors" means the Board of Governors of the State Bar.
 - e. "Chairman" means the Chairman of the Committee.
 - f. "Vice Chairman" means the Vice Chairman of the Committee.
 - g. "Claim" means a claim for reimbursement from the Fund in the form required by the Committee.
 - h. "Committee" means the Clients' Security Fund Committee of the State Bar.
 - i. "Dishonest Act" means an act by an Attorney acting in his capacity as an attorney in the context of a lawyer-client relationship, in the nature of defalcation or embezzlement of money, or the wrongful taking or conversion of money or other tangible property.
 - j. "Fund" means the Clients' Security Fund of the State Bar.
 - k. "Loss" means a loss of money or other tangible property by an Applicant as a direct result of a Dishonest Act.
 - l. "State Bar" means State Bar of Nevada.
 - m. "State Bar Staff" means the employee(s) of the State Bar given the responsibility to administer the Fund and act as a liaison between the State Bar and the Committee.
2. Function and Terms of the Clients' Security Fund Committee.
 - a. The Committee shall investigate Applications, rule upon Claims, and receive, hold, manage and distribute monies in the Fund.

- b. The Committee shall consist of not more than twelve (12) members appointed by the Board of Governors. Ten (10) members shall be from the State Bar's membership and two (2) members shall be non-attorneys. Non-attorneys shall have voting privileges, but no authority to investigate claims. The members serve without compensation, but are reimbursed their actual and necessary expenses from the State Bar.
- c. Each member shall hold three, three-year terms, subject to reappointment at the discretion of the Board of Governors. Current members who have served nine or more consecutive years, as of July 2010, will be allowed to finish their current term and serve an additional three-year term. The time served in filling a partial term created by a vacancy shall not be included in computing the three-year term limit. Vacancies are filled by appointment by the Board of Governors for the remainder of any unexpired term.
- d. The Board of Governors shall appoint the Chairman to a one-year term with eligibility to unlimited reappointment at the discretion of the Board of Governors.
- e. The Board of Governors shall appoint the Vice Chairman to a one year term with eligibility to unlimited reappointment at the discretion of the Board of Governors.

3. Consideration of Claims.

- a. All reimbursements of losses from the Fund shall be a matter of grace in the sole discretion of the Committee and not a matter of right. No person shall have any right in the Fund as a third-party beneficiary or otherwise either before or after allowance of a Claim.
- b. A Claim shall be considered by the Committee only if all of the following conditions exist:
 - i. Either (A) the Accused Attorney has died, been adjudged mentally incompetent, had a guardian of his person or estate appointed, disappeared, voluntarily relinquished his right to practice law in the state of Nevada, or been disbarred or suspended from practice by the Supreme Court of the State of Nevada; or (B) such other circumstances exist which, in the sole discretion of the Committee, justify the Committee's consideration of such Claim in order to further the objectives of the Fund and/or the State Bar. For the purposes hereof, the Accused Attorney shall be deemed to have "disappeared" if the location of his place of practice in Nevada cannot be ascertained with reasonable diligence or he has absented himself from such usual place of practice for a period of at least thirty (30) consecutive days under circumstances which reasonably indicate an intent to abandon the practice of law in Nevada or the intent to conceal his whereabouts from the Applicant and/or others;
 - ii. The alleged Dishonest Act occurred during the practice by the Accused Attorney in the State of Nevada, in his capacity as an attorney and counselor at law, in the context of a lawyer-client relationship;
 - iii. The alleged Dishonest Act was in the nature of defalcation or embezzlement of money or the wrongful taking or conversion of money or other tangible property, and was not in the nature of negligence or malpractice;

- iv. The claim was filed no later than seven years after the claimant knew or should have known of the dishonest conduct of the lawyer; and
- v. The Applicant has made a reasonable effort under the circumstances of the particular case to recover the loss from the Accused Attorney, such Accused Attorney's estate, and/or other third party sources of recovery.

4. Application for Reimbursement from the Fund.

Applications for reimbursement from the Fund shall be on a form provided by the State Bar and shall contain such information as the State Bar and the Committee may reasonably require, including, without limitation, the following:

- a. The name, address, and telephone number of the Applicant.
- b. The name, address, and telephone number (if available) of the Accused Attorney.
- c. The facts alleged to constitute the Dishonest Act, and the nature and the extent of the claimed Loss.
- d. The date on which or the period during which the alleged Loss occurred.
- e. A statement of the efforts made by the Applicant to recover the Loss from the Accused Attorney, such Accused Attorney's estate, and/or other third party sources of recovery.
- f. An acknowledgement that a portion of the award may be directed to involved third parties.
- g. Such other information the State Bar or the Committee may reasonably require.

The Applicant has an ongoing responsibility to notify the State Bar of any changes of address or telephone number.

5. Processing of Applications.

- a. The State Bar Staff shall appoint one attorney member of the Committee to investigate the Claim. The member to whom the Claim is referred may request the assistance of the appropriate disciplinary board of the State Bar and any individual members of the State Bar. Any information obtained from a disciplinary board shall be used only for the purpose of the Committee and shall remain confidential.
- b. The member appointed to investigate the Claim shall promptly send a copy of the Application by regular mail to the Accused Attorney, and shall, within ninety (90) days thereafter, report in writing to the Chairman and the State Bar staff the results of his investigation and his recommendation to the Committee for action on the Application. The time for investigation and report may be extended by the Chairman if circumstances so require.

- c. At the request of any member of the Committee, or at the request in writing of the Accused Attorney, the Committee shall afford an opportunity to both the Applicant and the Accused Attorney to appear before the Committee and present evidence and arguments. Any such proceedings shall be informal, and all relevant testimony and evidence may be considered.
- d. Any Applicant and any Accused Attorney may be represented by counsel at any stage of the proceedings before the Committee but no member of the State Bar may receive compensation from the Fund for assisting or representing an Applicant or an Accused Attorney in connection with an Application for reimbursement from the Fund.
- e. The Committee, at any time that it determines that special circumstances warrant, may appoint a member of the State Bar to represent an Applicant or an Accused Attorney before the Committee, such attorney to serve without compensation; however, such member of the State Bar shall be reimbursed for out-of-pocket costs and expenses.
- f. The members of the Committee may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence in the manner provided in Nevada Revised Statutes Section 38.095 with respect to arbitrators.

6. Payment of Claims.

- a. The Committee shall have sole discretion to determine whether or not any Application shall be granted in whole or in part, and its decision shall not be reviewable.
- b. In making its decision, the Committee shall consider all relevant matters, including, without limitation:
 - i. The condition of the Fund.
 - ii. The nature and size of the Claim.
 - iii. The promptness of the Applicant's action upon discovery of the Dishonest Act.
 - iv. The comparative hardship the Applicant has suffered as a result of the Loss.
 - v. The degree, if any, to which the Applicant's conduct may have contributed to or made more likely the Dishonest Act.
 - vi. The credibility of the testimony and evidence presented to the Committee by the Applicant and the Accused Attorney.
- c. The Committee may pay a Claim at any time or may, in its sole discretion, defer payment of any or all Claims until a later date to determine the total amount of Claims in relation to the total amount of monies in the Fund.
- d. The Committee shall apply the following limits to awards for reimbursement from the Fund:
 - i. The maximum amount which any Applicant may recover from the Fund arising from a relationship with an attorney is \$50,000.00.
 - ii. In cases of extreme hardship or special and unusual circumstances, the Committee may recommend to the Board of Governors that the amount of maximum payment provided in i. above be altered.

- iii. If there is insufficient funding available to pay all the approved claims in a year, each claim shall be reduced proportionately (prorated) to conform to the limited resources available.
 - iv. In the event a claim against a particular attorney is prorated in a particular year, except for insufficient funding, all future claims against this same attorney must also be reduced using this same proration formula.
- e. The Committee may in its sole discretion allow additional reimbursement in subsequent years for Losses which were reimbursed only in part because of the condition of the Fund at the time the initial reimbursement was made.

7. Subrogation Agreements.

Payment from the Fund for reimbursement of any Loss shall be made only upon the condition that the Applicant enter into an agreement with the State Bar pursuant to which the State Bar is subrogated to the rights of the Applicant against the Accused Attorney and/or his estate in an amount equal to the amount of the reimbursement plus any costs incurred by the State Bar in recovering the amount of reimbursement from the Accused Attorney or his estate, personal representatives, assignees, or successors in interest. The subrogation agreement shall also provide that the Applicant will cooperate with the State Bar in any proceedings it may choose to commence for recovery of the amount of reimbursement. Any amounts received may be used first to pay the costs of collection and the remainder shall be paid to the Fund.

8. Administration.

- a. The Committee shall hold not less than one (1) regular meeting each year on a date or dates as the Chairman shall designate.
- b. The Committee shall hold a special meeting at any time upon call of the Chairman or any three members of the Committee.
- c. The State Bar Staff shall give members of the Committee not less than fifteen (15) days written notice of the time and place of each regular meeting, and not less than five (5) days written notice of the time and place of each special meeting. Any member may waive notice of any meeting either before or after the meeting.
- d. Written minutes of each meeting of the Committee shall be prepared by the State Bar Staff and retained permanently.
- e. If the Chairman is absent from any meeting, the Vice Chairman of the Committee shall act as temporary chairman to preside at the meeting.
- f. The Chairman may authorize the State Bar Staff to sign checks and vouchers on behalf of the Committee.

- g. The State Bar staff shall notify Bar Counsel when a decision has been made and money granted to a claimant. State Bar staff shall request Bar Counsel to petition the Supreme Court to require restitution to the Fund upon reinstatement of license.

9. Amendments.

These rules may be amended at any time by a majority vote of the members of the Committee and approval by the Board of Governors.