

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

RALPH D. GANTS
Chief Justice

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1. Court Submitting Rules for Approval:
Clients' Security Board
 2. Date Rules Submitted for Approval:
July 31, 2018
 3. Date Approved & Promulgated by the Supreme Judicial Court:
June 26, 2019
 4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:
Repeal of current Rules of the Clients' Security Board.
Approval of new Rules of the Clients' Security Board, as attached.
 5. Effective Date:
September 1, 2019

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)

Rules of the Clients' Security Board

Rule 1. General Statement

The Clients' Security Board adopted these rules pursuant to Rule 4:06, Section 1(A), of the Rules of the Supreme Judicial Court (S.J.C.). They provide for the administration of the Clients' Security Fund, the procedures for the presentation, consideration, and payment of claims, and the exercise of the Board's powers and duties under the Rules of the Supreme Judicial Court (S.J.C.).

Rule 2. Definitions

For the purpose of these rules, the following definitions shall apply:

(A) The "Board" shall mean the Clients' Security Board established pursuant to S.J.C. Rule 4:04, Section 1.

(B) The "Fund" shall mean the Clients' Security Fund held by the Board pursuant to S.J.C. Rule 4:04, Section 1.

(C) An "attorney," "lawyer," or "respondent" shall mean a person who is or was a member of the bar of the Commonwealth. For the purpose of these rules, the attorney must have died, been disbarred or suspended from the practice of law, resigned from the bar of the Commonwealth (S.J.C. Rules 4:01, Section 15; 4:05, Section 1), or continued to act as if the attorney were a member of the bar in good standing while under suspension, disbarment, or resignation.

(D) "Client" shall mean a person who suffered a reimbursable loss resulting from an attorney acting either as an attorney or fiduciary as provided in S.J.C. Rule 4:04, Section 1.

(E) "Dishonest Conduct" shall mean wrongful acts committed by an attorney such as theft, embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value, regardless of where the conduct occurred, including but not limited to:

- (1) Failing to refund unearned fees received in advance as required by Rule 1.16(d) of the Massachusetts Rules of Professional Conduct;
- (2) Borrowing of money from a client without intention to repay it, or with disregard of the attorney's ability or reasonably anticipated ability to repay it; and
- (3) Settling a case without authorization and misappropriating the settlement proceeds. When an attorney has misappropriated settlement proceeds in a contingent fee case, the Board may review the facts and, in its discretion, conclude that the attorney settled the case for less than full value and reimburse the claimant for any legal fees that the attorney received.

(F) A "Reimbursable Loss" shall mean the loss of a client's money or other property caused by the dishonest conduct of an attorney that arose out of an attorney-client or a fiduciary relationship.

(G) A reimbursable loss shall not include:

- (1) Any loss to the extent the client has recovered or may recover from a collateral source such as, but not limited to, a bond, a surety agreement, or insurance contract;
- (2) Any loss arising solely out of an investment, lending, personal, or business relationship; or
- (3) Any consequential or incidental damages, such as lost interest, or lawyer's fees or other costs incurred in seeking recovery of a loss.

In cases of hardship, the Board may, in its discretion, recognize as a reimbursable loss a claim that would otherwise be excluded hereunder.

Rule 3. Organization

A. Meetings.

- (1) The Board shall meet at least quarterly. The Board shall elect a treasurer and a secretary who shall serve until the Board elects a different member to assume the responsibilities of either office.
- (2) The Board may hold other meetings upon the call of the Chair or a majority of the members, with reasonable notice to the members.
- (3) A majority of Board members shall constitute a quorum. A majority of the members present at a duly constituted meeting may exercise any powers held by the Board.

B. Duties of Officers.

- (1) The Chair shall preside at all meetings of the Board and shall coordinate and supervise the administrative activities of the Board and of the Fund. The Chair may delegate the administrative activities to the Executive Director of the Board of Bar Overseers pursuant to S.J.C. Rule 4:06, Section 1(G). The Vice-Chair shall preside at meetings in the absence of the Chair and shall have such additional duties as the Chair or the Board shall designate.
- (2) The treasurer shall have custody of the money and other assets of the Fund, receive all payments to the Fund, make disbursements from the Fund authorized by the Board, invest the monies of the Fund in the manner authorized by the Board, cause an annual audit to be made of the Fund, maintain appropriate financial records, and file such tax or information returns as may be required. The Board shall obtain and file with the secretary a surety company bond in the amount of at least \$500,000, and covering all members of the Board. The Board may delegate some or all of its duties under this paragraph (2) to the general counsel and staff.
- (3) In conjunction with the general counsel the secretary shall prepare and maintain minutes of each meeting of the Board. The secretary shall have such other duties as the Chair or the Board shall designate.

C. Staff of the Board.

(1) The Board may employ and cause to be compensated an executive director, general counsel, additional counsel, an administrative assistant, and any other employees as are necessary for the performance of the Board's work. At the Board's discretion, one person may serve as both the Board's executive director and general counsel. The Board's executive director or the general counsel if the Board does not have an executive director, shall be responsible for overseeing and managing the Board's staff.

Rule 4. Investment of the Fund

Money paid into the Fund may, upon authorization by the Board, be invested in any of the following:

- (A) Bonds, notes, or other securities of or guaranteed by the United States or any Federal agency;
- (B) Bonds, notes, or other securities of or guaranteed by the Commonwealth of Massachusetts;
- (C) Interest-bearing accounts or certificates of any federally insured bank, trust company, savings bank, or savings and loan association; or
- (D) Any fund insured by the Federal Deposit Insurance Corporation.

In addition, not less than twenty-five percent (25%) of the Fund shall be held in a money market fund or in investments maturing within three months.

Rule 5. Filing A Claim

A. Claim Form.

(1) A claimant shall apply to the Board in writing, on a form supplied by the Board, containing the following information:

- (a) The claimant's name, home and business addresses, and occupation;
- (b) The name and address (including the address at the time the claim arose) of the attorney involved;
- (c) A summary of the attorney's actions;
- (d) The date and circumstances under which the claimant discovered the loss;
- (e) The efforts made to obtain reimbursement from the attorney or any third party;
- (f) The total amount of the claimant's loss, including how the claimant calculated the amount of the loss;
- (g) The name and address of any attorney or other person assisting or representing the claimant in connection with the claim;

(h) The claimant's signature or other verification; and

(i) How claimant learned of the Fund.

(2) The claimant shall include with the claim form all supporting documentation of the events giving rise to the claim.

(3) A claimant shall provide a financial statement and when requested by the Board tax returns.

B. The Board may, in its discretion, require the exhaustion of all reasonable remedies before processing a claim or reimbursing a loss. Such remedies may include, but are not limited to, pursuing recovery under a bond, from a surety, from a professional liability insurance carrier, by filing a civil action, or by reporting the loss to appropriate criminal authorities. A claimant's failure to cooperate in the disciplinary proceedings against the lawyer shall not bar the granting of relief from the Fund.

C. The claim form and supporting documentation shall be sent by mail or hand-delivery to Clients' Security Board, 99 High Street, 2nd Floor, Boston, MA 02110-2320. The claim form and supporting documentation may also be e-mailed to: info@masscsb.org.

Rule 6. Processing A Claim

A. The general counsel shall cause reasonable investigation to be made of all claims filed with the Board.

B. Any member of the Board who has or has had a lawyer-client or financial relationship with a claimant or respondent, or is related by blood or marriage to either the claimant or respondent, shall not participate in the investigation or adjudication of any claim involving that claimant or that respondent.

C. As soon as practicable after receiving a claim, the Board shall send a copy of the claim by any reasonable method to the last known address of the attorney who is the subject of the claim. The attorney shall have twenty days from the date of mailing to file an answer with the Board.

D. If the claim does not meet the requirements of S.J.C. Rule 4:05, Section 1 but bar disciplinary proceedings are pending, general counsel shall notify the claimant of the requirements of Rule 4:05, Section 1. General counsel shall maintain the claim in an inactive status and periodically determine from the Board of Bar Overseers the status of the disciplinary proceedings. The Board shall use any information from the Board of Bar Overseers solely to investigate and resolve claims. The Board shall maintain any such information as confidential.

E. In determining whether it would be more appropriate for the Fund or the fund of another jurisdiction to pay a claim, the Board should consider the following factors:

(1) the fund(s) into which the attorney was required to pay an annual assessment or into which an appropriation was made on behalf of the attorney by the bar association or otherwise;

(2) the domicile of the attorney;

- (3) the domicile of the client;
- (4) the residence(s) of the attorney;
- (5) the number of years the attorney has been licensed in each jurisdiction;
- (6) the location of the attorney's principal office and other offices;
- (7) where the attorney-client relationship arose;
- (8) where the attorney performed the legal services;
- (9) whether at the time the attorney performed the legal services, the attorney was engaged in the unauthorized practice of law as defined by the jurisdiction in which the attorney performed the legal services;
- (10) any negligence or conduct of the claimant that may have contributed to the loss; and
- (11) any other significant contacts with Massachusetts or another jurisdiction.

Rule 7. Consideration and Payment of Claims

- A.** Upon determination by general counsel that a claim is ready for adjudication, the Board shall decide the matter upon the record before it or after such hearing as the Board in its discretion deems necessary. In the event the Board determines that a hearing is not necessary, it shall cause the parties to be notified that the Board will consider the claim without hearing.
- B.** As an alternative to the Board hearing a matter, the Chair may designate one or more members of the Board as hearing members, who shall consider the Board's file, decide to hear the claim, make further investigation as they may deem appropriate, and make recommendations to the Board for disposition of the claim.
- C.** The Board may hold hearings at the Board's offices or other places mutually convenient to the Board members and the claimant. The Board may make a recording or transcript of each hearing solely for its administrative purposes.
- D.** The Board shall send notice of hearing by any reasonable method to the claimant, claimant's counsel, the respondent at the respondent's last known address, and the respondent's counsel.
- E.** The Board, in acting on each claim, shall take into account the standards and factors set forth in S.J.C. Rule 4:05, Section 3.
- F.** As soon as practicable, the Board shall send notice of its determination by any reasonable method to the claimant, claimant's counsel, respondent, and respondent's counsel.

G. The Board shall make payment of an allowed claim as soon as practicable following its adjudication and may make payment by any reasonable method giving consideration to a claimant's circumstances and the Board's need for documentation of the claimant's receipt of payment. Before the Board makes payment, it shall obtain a subrogation agreement from the claimant.

H. Upon the request of a claimant, respondent, or member of the Board, the Board in its discretion may reconsider its adjudication of a claim. Unless the time is extended by the Board, a claimant or respondent shall file a request with the Board within thirty days after the date of the Board's adjudication. The request shall state in writing and with particularity the facts on which reconsideration is sought. Except as provided herein, an adjudication of the Board is final and the Board shall give no further consideration to the original claim form or subsequent claim forms based upon substantially the same allegations.

I. Any payment of claims shall be a matter of grace, not right, and no client, beneficiary, employer, organization, or other person shall have any right or interest in the Fund. No decision to allow or deny reimbursement shall be subject to judicial review in a court of either appellate or original jurisdiction.

Rule 8. Confidentiality

The Board shall keep confidential all claim forms, proceedings, investigations, claimants' and respondents' financial information, and reports involving specific claims received and payments made from the Fund. The Board and its staff shall maintain the confidentiality of the claimants, investigations, and proceedings. This provision shall not be construed to:

(A) to deny relevant information to the Board of Bar Overseers, to a court or investigative agency of proper jurisdiction, to an authorized agency investigating the qualifications of a judicial candidate, or claim form for governmental employment;

(B) to prohibit the release of statistical or summary information that does not disclose the identity of the parties; or

(C) to prohibit the release of publicity after the Board has made an award in a manner that is consistent with the provisions of this section.

Rule 9. Subrogation for Reimbursement Made

As a condition of reimbursement, a claimant must execute a subrogation agreement on a form prepared by the Board. The Board shall be subrogated to the rights of a claimant to the extent of the amount of reimbursement made by the Board, and, where practicable, will seek recovery for the Fund. The Board may bring an action either in the name of the claimant or in the name of the Board, and, as a condition of reimbursement, the claimant shall agree to cooperate with the Board in the prosecution of such action.

Rule 10. Attorney's Fees

Any attorney representing a claimant before the Board shall do so as a public service and shall not receive any portion of the award or any fee from the claimant for services related to the Board's proceedings.

Rule 11. Insurance of Approved Claims

The Board may insure the payment of claims approved by the Board with such insurance carrier or carriers as it may from time to time elect and may, in such event, authorize the treasurer to pay out of the Fund such premiums as it shall approve.

Rule 12. Publicity

A. The Board shall have the discretion to publicize its activities, decisions, and awards so long as any publicity adheres to the confidentiality requirements set forth in Rule 8.

B. After awards are made the Board may publicize its awards by disclosing the name of, and other information pertaining to, an attorney who has caused a reimbursable loss. The Board may withhold such information in those cases where it finds the existence of mitigating circumstances.

Rule 13. General Provisions

A. The Board may waive technical adherence to these rules to achieve the objectives of S.J.C. Rules 4:04 to 4:08, inclusive.

B. The Board may amend these rules at any time by a majority vote, subject to the approval of the Supreme Judicial Court.