

COMMONWEALTH OF MASSACHUSETTS  
Supreme Judicial Court

At the Supreme Judicial Court holden at Boston within  
and for said Commonwealth on the twenty-sixth day of June, in  
the year of two thousand and nineteen:

present,

<u>RALPH D. GANTS</u>	)	Chief Justice
	)	
<u>BARBARA A. LENK</u>	)	
	)	
	)	
<u>FRANK M. GAZIANO</u>	)	Justices
	)	
	)	
<u>DAVID A. LOWY</u>	)	
	)	
	)	
<u>KIMBERLY S. BUDD</u>	)	
	)	
	)	
<u>ELSPETH B. CYPHER</u>	)	
	)	
	)	
<u>SCOTT L. KAFKER</u>	)	

ORDERED: That Chapter Four of the Rules of the Supreme  
Judicial Court is hereby amended as follows:

- Rule 4:04           By striking out said rule and inserting in  
                      lieu thereof the new Rule 4:04 attached hereto.
- Rule 4:05           By striking out said rule and inserting in  
                      lieu thereof the new Rule 4:05 attached hereto.
- Rule 4:06           By striking out said rule and inserting in  
                      lieu thereof the new Rule 4:06 attached hereto.

Rule 4:08 By striking out said rule and inserting in lieu thereof the new Rule 4:08 attached hereto.

Rule 4:09 By striking out said rule and inserting in lieu thereof the new Rule 4:09 attached hereto.

The amendments accomplished by this order shall take effect on September 1, 2019.

<u>RALPH D. GANTS</u>	)	Chief Justice
	)	
<u>BARBARA A. LENK</u>	)	
	)	
<u>FRANK M. GAZIANO</u>	)	Justices
	)	
<u>DAVID A. LOWY</u>	)	
	)	
<u>KIMBERLY S. BUDD</u>	)	
	)	
<u>ELSPETH B. CYPHER</u>	)	
	)	
<u>SCOTT L. KAFKER</u>	)	

## Rule 4:04. Clients' Security Board and Fund

**Section 1.** The full court shall appoint a Clients' Security Board (Board). This Board shall consist of seven members of the Massachusetts bar to serve as public trustees to receive, hold, manage, and distribute the funds allocated to the Board from the annual fees assessed under Rule 4:03(1)(a). The Board shall hold such funds in trust as the Clients' Security Fund (Fund). The purpose of the Fund is to discharge, as far as practicable and in a reasonable manner, the collective professional responsibility of the members of the Massachusetts bar for actual losses caused by the theft of client funds or property by attorneys, acting either as attorneys or as fiduciaries (except to the extent to which such losses are otherwise reimbursed).

### **Section 2.**

(A) The Massachusetts Bar Association, each county bar association (including the Boston Bar Association as the county bar association for Suffolk County) and other appropriate organizations may submit to the full court not more than three nominees for each vacancy on the Board. The full court shall select from these nominees or from any other members of the bar a person to fill each vacancy, and shall designate a Chair and a Vice Chair to act in the absence of the Chair.

(B) All terms (except to fill an unexpired term) shall be for five years. No member shall serve more than two consecutive full terms, in addition to any term of less than five years, either by original appointment or to complete an unexpired term. A member shall be eligible, however, for reappointment for further terms after a lapse of one or more years. A member whose term has expired shall continue in office until the full court appoints a successor.

**Section 3.** The Chair or a majority of the members may call meetings of the Board. The Board shall meet at least quarterly, upon reasonable notice to the Board members. A majority of members shall constitute a quorum. A majority of the members present at a duly constituted meeting may exercise any powers held by the Board.

**Section 4.** The Board, members of the Board, and the staff of the Board shall be immune from liability for any conduct in the course of their official duties.

## Rule 4:05. Claims by Clients

**Section 1.** The Board may consider a client's claim for reimbursement of losses caused by an attorney who had been a member of the Massachusetts bar and who has been disbarred, suspended, has resigned from the bar, or has died. The Board may allow or deny such claims in whole or in part to the extent that funds are available and in accordance with all applicable rules and principles, especially the provisions of this Chapter Four.

**Section 2.** All reimbursements 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.

**Section 3.** In exercising its discretion whether to allow any claim for reimbursement from the Fund, the Board shall attempt to establish fair, reasonable, and consistent principles for the allowance and denial

of claims. To the extent possible, the Board shall attempt to fully reimburse claimants for their actual losses consistent with the Board's role as public trustee of the Fund and considering the following and other factors as the Board may deem appropriate and relevant:

- (A) The amounts available and likely to become available to the Fund for payment of claims;
- (B) The size and number of claims likely to be presented in the future;
- (C) The amount of the claimant's loss as compared with the amount of the losses sustained by other claimants who may merit reimbursement from the Fund;
- (D) The unreimbursed amounts of claims recognized by the Board as meriting reimbursement but for which complete reimbursement has not been made;
- (E) The degree of hardship suffered by the claimant as compared with that suffered by other claimants; and
- (F) Any negligence or conduct of the claimant that may have contributed to the loss.

**Section 4.** The Board may require any claimant, as a condition of any payment from the Fund, to execute such instruments, to take such action, and to enter into such agreements as the Board may direct, including assignments, subrogation agreements, trust agreements, and promises to cooperate with the Board in making and prosecuting claims or charges against any person.

**Section 5.** The Board may issue a subpoena requiring the attendance and testimony of a witness, including the disbarred or suspended attorney, to appear before the Board or its counsel at a specified date and time. The subpoena shall specify any evidence relating to the Board investigation that the witness shall produce to the Board, including but not limited to books, records, correspondence, or documents. The Board may record testimony electronically or otherwise. The Board shall use the recording for its own administrative purposes.

**Section 6.** 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 claim forms, investigations, and proceedings. This provision shall not be construed to:

- (A) 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 applicant for governmental employment;
- (B) prohibit the release of statistical or summary information that does not disclose the identity of the parties; or
- (C) prohibit the release of publicity in a manner that is consistent with the provisions of this section.

#### Rule 4:06. Miscellaneous Powers and Duties of Clients' Security Board

**Section 1.** In addition to other powers the Board may:

(A) adopt, with the approval of this court, rules that are consistent with these rules;

(B) enforce, in its discretion, claims for restitution arising by subrogation, assignment, or otherwise;

(C) invest or direct the investment of the Fund, or any portion thereof, in such investments as the Board may deem appropriate, and may cause funds to be deposited in any bank, banking institution, savings bank, or federally insured savings and loan association in this Commonwealth provided, however, that the Board shall have no obligation to cause the Fund or any portion thereof to be invested;

(D) employ and compensate consultants, agents, legal counsel, and employees;

(E) enter into contracts for goods and services as are necessary for the Board to carry out its duties;

(F) obtain surety bond or insurance coverage useful or appropriate in providing protections to clients of attorneys;

(G) assign for administrative purposes its duties under subsections (D) and (E) to the Executive Director of the Board of Bar Overseers, in accordance with the Board's written directions, which the Board may amend or rescind at any time;

(H) sue in the name of the Board without joining any or all of its individual members; and

(I) perform other acts necessary or proper for the efficient administration of the Fund.

**Section 2.** The Board shall authorize disbursement of money from the Fund only after issuing a written order pursuant to this Chapter Four.

**Section 3.** At least once each year, and at such additional times as the court may order, the Board shall file with this court a written report of its administration of the Fund. The written report shall include a list of any material written contracts into which the Board entered, including the name of the contracting party, the amount of the contract, the beginning and end date of the contract, and the scope of work to be accomplished.

**Section 4.** The Board shall annually, and at such other times as this court may direct, obtain an independent audit by a certified public accountant of funds received and paid out in connection with the administration of the Fund. The Fund shall pay the cost of any such audit.

#### Rule 4:08. Interpretation of Chapter Four of These Rules

**Section 1.** The Board of Bar Overseers or the Clients' Security Board may request this court for an interpretation of any portion of this Chapter Four, and for advice and instructions as to their powers and duties. Either of these boards may submit to the court suggestions or proposals for revisions, modifications, or improvement of this Chapter Four, including proposals for affording protection to clients by surety bonds, group insurance of attorneys, or other means of insurance or indemnity coverage.

**Section 2.** Except where powers are expressly given to the full court, or the context indicates clearly that the full court alone is to have the power, the powers of this court may be exercised by a justice, subject to any appropriate review.

#### Rule 4:09. Amendment, Modification, Repeal

This court may amend, modify, or repeal this Chapter Four of these rules at any time without prior notice and, in its discretion, may provide for the dissolution and winding up of the Fund.