

3.08.02 Client Security Fund

(A) Purpose. The State Bar shall maintain and administer a Client Security Fund. The purpose of the Fund is to protect the integrity of the legal profession through discretionary grants to clients who have been harmed by their lawyers' dishonest conduct.

(B) Administration of the Fund. The Client Security Fund shall be administered through the Office of the Chief Disciplinary Counsel and the Client Security Fund Subcommittee ("the Subcommittee"). The Client Security Fund Subcommittee operates as a standing subcommittee of the Discipline and Client Attorney Assistance Committee.

(C) Subcommittee Meetings. Meetings of the Subcommittee may be held at a place and time fixed by the chair or the vice-chair or by the Subcommittee. The meetings may be in person or by any means of telephonic or electronic communication. Notice of the time and place of each meeting shall be given at least one day before the meeting and the notice may be given orally or by mail, facsimile, or telephone or other electronic communication, addressed to the member of the Subcommittee at the member's office or at such other place designated by the member. The Subcommittee shall have authority to adopt administrative rules for the prompt and efficient processing and resolution of applications, provided that those rules shall not be inconsistent herewith. A quorum of the members, consisting of at least 51% of the members, is necessary for action to be taken by the Subcommittee. Decisions will be made by a majority of the members present.

(D) Funding of the Client Security Fund.

(1) Corpus. The Client Security Fund corpus shall be maintained at an amount of not less than \$2,000,000. Any amount exceeding \$2,000,000 in the corpus may be withdrawn to fund grants.

(2) Investment Portfolio. The Executive Director shall establish a separate portfolio of investments to constitute the assets of the Client Security Fund.

(3) Funding for Grants. Funding sources include:

- (a)** An appropriation of not less than \$300,000 made annually from the State Bar's general fund;
- (b)** Interest earned on the corpus during the fiscal year;
- (c)** Restitution and/or reimbursements to the Fund during the fiscal year;
- (d)** Any funds deposited into the corpus through funds collected from outside sources; and
- (e)** Any funds deposited into the corpus from unused money available for grants.

(E) Application Forms

(1) The Subcommittee shall prepare a form of application for grant.

(2) The application shall be sworn and executed by the applicant under penalty of perjury and shall require, as minimum information, the following:

- (a)** The name and address of the lawyer;
- (b)** The amount of alleged loss;
- (c)** The date or period of time during which the alleged loss was incurred;

- (d) The date on which the alleged loss was discovered;
- (e) The name and address of the applicant;
- (f) A general statement of facts relative to the application;
- (g) A statement that the applicant has read these rules and agrees to be bound by them;
- (h) A statement that the loss was not covered by any insurance, indemnity, or bond or, if so covered, the name and address of the insurance or bonding company, if known, and the extent of the coverage and the amount of payment, if any, made; and
- (i) A statement that the applicant agrees that the result of the investigation together with all evidence in connection with it shall remain confidential.

(3) The form or application shall contain the following statement in bold type:

"THE STATE BAR OF TEXAS HAS NO LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS. NO ONE HAS A RIGHT TO A GRANT FROM THE CLIENT SECURITY FUND. AVAILABLE AMOUNTS ARE LIMITED, AND GRANTS ARE MADE ONLY IN THE SOLE AND FINAL DISCRETION OF THE STATE BAR OF TEXAS."

(F) *Publication of Application Process.* The Office of the Chief Disciplinary Counsel shall publish the rules and procedures governing the Client Security Fund to the chair of each grievance committee, along with application forms and brochures.

(G) *Rules and Procedures.* These rules shall govern proceedings conducted on applications for grant from the Client Security Fund of the State Bar. These rules shall be applied in such a manner to achieve the objective of protecting the integrity of the legal profession. Accordingly, the Subcommittee may, in its sole and absolute discretion, and in cases of extreme hardship or special and unusual circumstances, authorize payment of a grant that would otherwise be excluded by technical adherence to these rules. These rules will become effective immediately upon Board approval and shall apply to all pending applications.

RULE 1. Eligibility for Application—General Rule

- (A) The claimant must thoroughly complete the application for grant form approved by the Subcommittee and sign it under penalty of perjury.
- (B) Failure by an applicant to keep the Subcommittee apprised of his or her current address and telephone number is grounds for denial, rescission of approval, or rejection of the application.
- (C) The information provided in the application shall be either typewritten or printed. If not legible, it shall be returned to the applicant.
- (D) In order to prove eligibility, an applicant must prove:
 - (1) That one's lawyer engaged in dishonest conduct (as further defined in *Rule 2* and *Rule 3*);
 - (2) That he or she was a client of that lawyer (as further defined and limited in *Rule 4*);
 - (3) That the lawyer gained possession and control of the client's money or property (as further defined and limited in *Rule 5*);
 - (4) That he or she sustained a loss of money or property as a result of the dishonest conduct (as further defined and limited in *Rule 5*);

- (5) That he or she participates in the grievance process when required (as set forth in *Rule 6*); and
- (6) Timely filing of an application for grant (as defined in *Rule 7*).

RULE 2. Eligibility for Application—Dishonest Conduct by Lawyer

(A) The term “dishonest conduct” as used herein means wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money or property including those instances where an advance fee was not refunded when the contracted-for services were not rendered.

(B) If a lawyer accepts a fee [for professional legal services](#) while disciplinarily suspended or disbarred, [or after having resigned from the practice of law in the State of Texas](#), the lawyer may be deemed to have done so with no intent to render the services sought.

(C) The dishonest conduct must have occurred in Texas.

RULE 3. Eligibility for Application—Status of Lawyer

(A) In order to be eligible for an application for grant, the client’s loss must have been caused by dishonest conduct of a person:

- (1) acting as a lawyer;
- (2) acting in a fiduciary capacity customary to the practice of law (such as acting as an administrator, executor or trustee in a probate, guardianship or conservatorship proceeding or pursuant to an express trust agreement, but not including holding funds primarily for investment purposes); or
- (3) acting as an escrow holder or other fiduciary, having been designated as such by a client or having been so appointed or selected as a result of a client-attorney relationship in the matter in which the loss arose.

(B) The term “lawyer” as used herein means any person licensed to practice law in the State of Texas, including persons who have been suspended, disbarred, [or who have resigned](#) from the practice of law.

(C) Dishonest conduct by persons supervised or paid by the lawyer in the course of his practice of law, or those whom the lawyer should have been aware were conducting business on his behalf may, in the discretion of the Subcommittee, form the basis for a grant from the Fund.

RULE 4. Eligibility for Application—Status as a Client

(A) No person may be eligible for consideration of an application for grant unless sufficient proof demonstrates the existence of an attorney-client relationship between the applicant and the lawyer.

(B) A “client” is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from that lawyer.

(C) For the purposes of the application and grant from the Fund, a client may also include a person who paid or tendered money on behalf of the client.

(D) The following persons and entities are not eligible for application consideration:

- (1) the spouse or other close relative, partner, associate, employer, or employee of the lawyer;
- (2) an insurer, surety, or bonding agency or company;

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- (3) any business entity controlled by the lawyer;
- (4) any business entity controlled by any person or entity described in paragraphs (i) or (ii);
- (5) a governmental entity or agency;
- (6) any assignee of a client's claim, cause of action or settlement proceeds; or
- (7) any provider of services to a client through letters of protection or guarantee.

RULE 5. Eligibility for Application---Grants for Certain Losses

(A) A client may seek a grant only for money or property that actually came into the possession or control of the lawyer.

(B) The applicant must produce sufficient evidence to support allegations of such a loss.

(C) A client may not obtain a grant under the Fund for losses attributed to:

- (1) Disputes with a lawyer about the quality of services performed;
- (2) Disputes regarding the amount charged for services actually performed;
- (3) Consequential damages resulting from dishonest conduct or malpractice;
- (4) Any loss, or reimbursable portion thereof, covered by any insurance or by any fidelity or similar bond or fund, whether of the lawyer, the applicant or otherwise.
- (5) Any loss already recovered by the client through restitution or reimbursement from the lawyer or on the lawyer's behalf; or
- (6) Any loss already satisfied through payment of a civil or criminal judgment entered against the lawyer.

(D) If a client is required to file a grievance pursuant to *Rule 6(B)*, no grant may be obtained under the Fund if the final grievance process results in:

- (1) a dismissal of charges or
- (2) conclusions of law related only to violations for non-communication, failure to respond to the grievance committee or practicing while administratively suspended.

RULE 6. Eligibility for Application---Grievance Process

(A) Unless paragraph (B) applies, the applicant must first file a grievance against the lawyer and cooperate in all grievance proceedings by the Bar against the lawyer as a prerequisite to the application for grant.

(B) An applicant is not required to file a grievance against the lawyer as a condition precedent to filing an application if the lawyer:

- (1) is deceased,
- (2) has already been disbarred by the State Bar of Texas,

(3) has been adjudicated as mentally incompetent, or

(4) has resigned in lieu of discipline.

RULE 7. Eligibility for Application—Timely Filing of Application

(A) All applicants must file a timely application for grant with the Office of the Chief Disciplinary Counsel in Austin, Texas.

(B) When an applicant is required to file a grievance against the lawyer as set forth in *Rule 6(A)*, an application is considered timely if it is filed within 18 months after the final disciplinary judgment is rendered on that grievance.

(C) When an applicant is not required to file a grievance as set forth in *Rule 6(A)*, in no case shall a grant from the Fund be approved when it is filed longer than four years from the time the loss was discovered or should have been discovered.

(D) Failure to file a timely application for grant shall result in dismissal and rejection of the application unless the Subcommittee finds good cause for the late filing. The Subcommittee has the sole and final discretion to consider whether good cause exists for an applicant filing a late application for grant.

RULE 8. Investigation by the Subcommittee

(A) On receipt of a sworn application, the Subcommittee shall conduct such investigation and hold such hearings as it determines necessary to establish all relevant facts in connection with the application. The Subcommittee may delegate its investigative duties to one or more staff persons employed by the Chief Disciplinary Counsel.

(B) The applicant must cooperate during the investigative process and with all persons delegated to perform investigative duties. If the applicant fails to submit proof, or does not meet any of the eligibility requirements in *Rules 1-7*, the application may be rejected and/or returned to the applicant at any time.

RULE 9. Evidence and Burden of Proof

(A) The applicant bears the burden of proof on all issues of fact. All facts must be established by a preponderance of the evidence.

(B) Proceedings on applications need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common-law or statutory rule that might make improper the admission of the evidence over objection in civil actions.

RULE 10. Consideration by the Subcommittee

(A) In investigating an application for grant, the Subcommittee may consider, among other things:

(1) the negligence, if any, of the client that contributed to the loss;

(2) the comparative hardship of the client suffered by the loss;

(3) the total amount of reimbursable losses of the clients of any one lawyer or association of lawyers;

(4) the total amount of grants made in previous years for which total funding has not been made and the total assets of the fund;

(5) the total amount of insurance or other source of funds available to compensate the client for the loss occasioned by the dishonest conduct of the lawyer;

(6) the amount of restitution ordered in the disciplinary judgment, and when the restitution is ordered to be paid. In general, if restitution is ordered to be paid in the short-term, the Subcommittee may defer making an award to give the respondent the opportunity to satisfy the judgment. If restitution is ordered to be paid by a date further in the future or by no date certain, the Subcommittee may approve a grant from the Fund.

(7) the findings of fact and conclusions of law in the disciplinary judgment; and

(8) any other factual information that the subcommittee considers to be relevant.

(B) When the filing of a grievance is required, the Subcommittee will not investigate the application until final action has been taken on the grievance except as provided in *Rule 10(C)*.

(C) If a lawyer is under a disability suspension or cannot be served with process in the disciplinary proceeding, the Subcommittee may, in its discretion, review the application and approve or deny it.

RULE 11. Action by the Subcommittee

(A) The Subcommittee has the sole and final discretion to determine whether and to what extent any application for grant shall be approved and shall determine the order, manner (which may be in installments), and amount of any grant payments, subject to the limitation in *Rule 13*.

(B) Before the Subcommittee recommends a grant from the Client Security Fund, it must find that sufficient evidence establishes the claimant's eligibility and the extent of the loss.

(C) The Subcommittee, in its sole and final discretion, may require the exhaustion of some or all civil remedies before processing or approving applications for grant. The Subcommittee may require that an applicant prosecute or cooperate in appropriate civil proceedings against the accused lawyer as a prerequisite to approving a grant from the Fund. The Subcommittee may postpone consideration of any application until after any disciplinary action or court proceedings pending or contemplated have been completed.

RULE 12. Confidential Nature of Proceedings and Records

(A) The Subcommittee, during consideration of an application, may have access to any State Bar disciplinary files and records pertaining to the alleged loss. Any information or documents obtained by the Subcommittee from those files or records shall be used solely for the purpose of determining the validity of the application but otherwise shall constitute confidential information. No information concerning them and the matters to which they relate shall be subject to discovery, except such information may be disclosed as may be required by the Texas Disciplinary Rules of Professional Conduct or other applicable law.

(B) The files and records pertaining to all applications for grant from the Fund and all investigations or proceedings conducted in connection with them are the property of the State Bar and are confidential. No information concerning them and the matters to which they relate shall be given to any person except on order of the Board, as provided herein or as may be required by any other applicable law.

(C) The proceedings conducted before the Subcommittee shall not be public.

RULE 13. Maximum Reimbursement Limits

Regardless of the amount of the loss proven in the application for grant, no application shall be approved for a grant in excess of \$40,000 for losses to any one applicant arising out of the dishonest conduct.

Multiple applicants having losses arising out of the same transaction may be considered by the Subcommittee to constitute one loss subject to the \$40,000 cap on grants.

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RULE 14. Grants at Sole and Final Discretion of State Bar

- (A) All grants from the Fund are made only in the sole and final discretion of the Subcommittee.
- (B) No liability to the Subcommittee, its members, or its staff shall result from any decisions of the Subcommittee, its members, or its staff.

RULE 15. Request for Reconsideration

- (A) If an applicant is dissatisfied with the grant or denial of their application by the Subcommittee, he or she may request reconsideration.
- (B) To request reconsideration, the applicant must give written notice of his request within 30 days after receiving notice of the grant approval or denial.
- (C) The Subcommittee has sole and final discretion to consider or reject the request for reconsideration. The applicant has no right of appeal.

RULE 16. Rejection of the Application by the Subcommittee

- (A) Whenever a majority of the members of the Subcommittee present at the meeting at which the application is considered determines that sufficient evidence has not been presented to establish eligibility, that determination shall constitute rejection of the application.
- (B) After an application has been rejected, the Subcommittee or delegated persons with the Office of the Chief Disciplinary Counsel shall advise the applicant of the rejection in writing at the applicant's last known address as listed in the application.

RULE 17. Assignment of Applicant's Rights, Subrogation and Reimbursement Required

- (A) *Assignments of Rights.* Grants on approved applications shall be made from the Client Security Fund only if the applicant assigns to the State Bar the applicant's rights against the lawyer involved or the lawyer's personal representative, estate, or assigns.
- (B) *Subrogation.* The collection of the assignment shall be handled by the office of the Chief Disciplinary Counsel of the State Bar under the supervision of the Subcommittee or in such other manner as may be directed by the Subcommittee. To effect collection of assignment, the Chief Disciplinary Counsel may disclose any information concerning the application and its consideration by the State Bar that the Chief Disciplinary Counsel deems necessary. On commencement of any action by the State Bar, pursuant to its subrogation rights, it shall give written notice thereof to the applicant at the applicant's last known address as listed in the application.
- (C) *Reimbursement to the Fund.* The applicant must also agree that if money paid to the applicant from the Fund is repaid by the lawyer or on the lawyer's behalf, then the applicant shall reimburse the amount of that grant to the Fund up to and including the full amount paid to the applicant from the Fund. The State Bar shall have the right to recover the full amount paid to the applicant out of the Fund from any liable person, firm, or corporation and take such legal action as it deems necessary. The applicant may only receive a part or portion of any recovery made by the State Bar after the State Bar has made a full recovery of the amount paid to the applicant by the Fund and attorneys' fees incurred by the State Bar in recovering the amount.

RULE 18. No Attorney's Fees Allowed

Except as provided in *Rule 17*, no attorney shall charge, attempt to collect, or collect any fee, retainer,

or contingent fee for the preparation, filing, negotiation, recovery, or any other act done or which may be done in connection with an application for grant before the Client Security Fund of the State Bar, whether the application is denied or approved for grant.

RULE 19. Applicant's Failure to Claim Grant

(A) Should the applicant not claim the grant within six months of the date of the approval by the Subcommittee of the grant, the grant shall revert to the Client Security Fund. [The chair of the Subcommittee may extend the time to claim the grant for an additional three months upon a showing by the applicant that failure to claim the grant within six months was due to extenuating circumstances out of the control of the applicant. Extenuating circumstances include, but are not limited to, a death in the applicant's family, an applicant's severe illness or medical condition requiring hospitalization, or military deployment of the applicant outside the country. The Subcommittee chair has sole and final discretion to extend the time to claim the grant.](#)

(B) In the event the grant reverts to the Fund as set forth in paragraph (A) above, the applicant may reapply to the Office of Chief Disciplinary Counsel. The applicant must show good cause for failing to claim the award. The Subcommittee has sole and final discretion to approve the grant or reject the grant at that time.