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APPELLATE COURTS
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WAYNE TSCHIMPERLE
CLERK

STATE OF MINNESOTA
IN SUPREME COURT

Case No. CO-85-2205

In the Matter of the Petition of the
Client Security Board for Adoption
of Proposed Rules.

PETITION

TO THE SUPREME COURT OF MINNESOTA:

Petitioner, The Minnesota Client Security Board, states:

1. The Supreme Court of the State of Minnesota, by its
Order dated April 15, 1986, created The Minnesota Client Security
Board.

2. The Supreme Court of the State of Minnesota, by its
Order dated July 18, 1986, appointed the following members to The
Minnesota Client Security Board:

Melvin I. Orenstein
Ronald B. Sieloff
Nancy L. Vollertson
James B. Vessey
Gilbert W. Harries
Constance Otis
Jean King

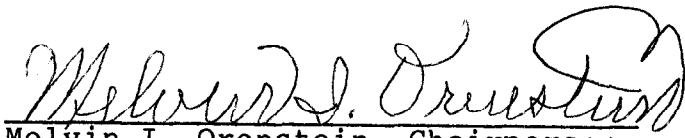
3. The Minnesota Client Security Board, as a part of its
duties and responsibilities, was charged with the responsibility
for the development of rules of procedure for the administration
of The Minnesota Client Security Board, said rules to be submitted
to the Supreme Court of the State of Minnesota for review and
public hearing.

4. The Minnesota Client Security Board has developed and adopted Rules of Procedure pursuant to the foregoing charge and herewith submits the said Rules of Procedure, a copy of which is attached hereto and expressly incorporated herein for the approval of the Supreme Court of the State of Minnesota.

WHEREFORE, The Minnesota Client Security Board requests adoption of the attached Rules of Procedure, and for such further relief as the Court shall deem just.

Dated: Dec 16, 1986

Respectfully submitted


Melvin I. Orenstein
Melvin I. Orenstein, Chairperson
Client Security Board

PROPOSED RULES OF THE MINNESOTA

CLIENT SECURITY BOARD

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CLIENT SECURITY FUND

I. ESTABLISHMENT OF THE FUND. There is created a Minnesota Client Security Fund to aid those persons directly injured by the dishonest act of any lawyer during an attorney-client relationship.

100. Financing. The Fund shall be financed from:

- a. Lawyer restitution and subrogation for claims paid;
- b. Gifts and contributions;
- c. Upon order of the Supreme Court, periodic assessments of licensed lawyers.

101. Subrogation. A claim paid pursuant to these Rules shall be repaid to the Fund by the lawyer. If the lawyer is unable to pay or cannot be found, the Board shall obtain a subrogation agreement from the claimant for the claimant's rights to compensation. The Board may bring an action against the lawyer, the lawyer's assets, or the lawyer's estate, or may file liens against the property of the lawyer in the name of the Fund, in the amount paid the claimant. The claimant may join in the action to press a claim for the loss in excess of the amount paid by the Fund, but the Fund shall have first priority to any recovery in the suit.

102. Assessments. Subject to Rule 103, lawyers licensed in the State shall pay an assessment of \$100 to the Fund at the time the lawyer's license is renewed, in amounts as follows:

- a. A lawyer or judge whose permanent residence is outside the State of Minnesota and who does not practice law within this state, lawyers who have been admitted to practice for three years or less, and a lawyer while on duty in the armed forces of the United States, shall pay \$50.00 per year until \$100 is paid;
- b. A lawyer who is retired from any gainful employment or permanently disabled, and who files annually with the Clerk of the Appellate Courts an affidavit that he is so retired or disabled and not engaged in the practice of law shall be exempt from the fee;
- c. Other lawyers admitted to practice law in this state and those members of the judiciary who are required to be admitted to practice as a prerequisite to holding office shall pay \$100.00.

103. Cancellation of Assessments. The Supreme Court may suspend or reinstate collection of assessments depending on the financial condition of the Fund certified by the Client Security Board in its annual report.

104. Failure to Pay Assessment. Upon failure to pay the assessment when due, the lawyer's right to practice law in the state shall be automatically suspended, and the lawyer may not hold himself out as qualified to practice while in default.

105. Disbursements from the Fund.

A. Upon written authorization of the Board, claims may be paid from the Fund.

B. The Board shall annually prepare an administrative budget to be approved by the Supreme Court, from which the Board may pay necessary expenses.

C. Funds which are not required for the administrative budget or to pay claims shall be invested as provided by law.

II. CREATION OF THE BOARD. The Supreme Court shall appoint seven members to the Client Security Board, of whom five shall be lawyers actively practicing in the state and two shall be public members. The members shall elect a chairperson from among the members.

201. Terms of Office. Two members of the Board shall be appointed for one year, two members for two years and three members for three years, and thereafter appointments shall be for three-year terms. The terms of public members shall be staggered. Any vacancy on the Board shall be filled by appointment of the Supreme Court for the unexpired term. No members may serve more than two consecutive three-year terms.

202. Reimbursement. Members shall serve without compensation, but shall be paid their regular and necessary expenses.

203. Meetings. The Board shall meet at least annually, and at other times as scheduled by the chairperson. A quorum shall consist of four members.

204. Immunity. The Board and its staff are absolutely immune from civil liability for all acts in the course of their official duties.

205. Duties of the Board. The Board is authorized:

- a. To make final determinations on disbursement of funds;
- b. To administer and operate the Fund, pursuant to statutes, court rules and internal procedures;
- c. To recommend to the Supreme Court limits for the amount payable per claim, and for total reimbursement for claims arising from one lawyer's misconduct;
- d. To undertake investigation of claims, coordinating with the Office of Lawyers Professional Responsibility;
- e. To recommend to the Supreme Court means as are available to cover extraordinary losses in excess of the assets of the Fund;
- f. To annually establish an administrative budget which may be paid from the Fund;
- g. To enforce subrogation and lien rights of the Fund;
- h. To sue in the name of the Fund for restitution of payments made pursuant to claims;
- i. To cooperate in education activities for theft prevention, risk management, and remedial services for problem lawyers;
- j. To certify the financial condition of the Fund;
- k. To employ and compensate consultants, legal counsel and employees;
- l. To adopt internal rules of procedure not inconsistent with these rules, and make recommendation to the Supreme Court on rule changes.

206. Staff Responsibility. The Board may designate a Director to perform duties assigned to the Board, including but not limited to:

- a. Screening claims, coordinating investigations with the Office of Lawyers Professional Responsibility, and presenting claims at Board hearings;
- b. Coordinating enforcement of liens, restitution and subrogation rights of the Fund;
- c. Maintaining records of the Board, suitable for audit of the Fund;
- d. Keeping current on legal and procedural developments of client security funds in other states;
- e. Performing other duties as assigned by the Board.

207. Annual Report. At least once a year and at such other times as the Supreme Court may order, the Board shall file with the Court a written report reviewing in detail the administration of the Fund, its operation, its assets and liabilities.

III. CLAIM PROCESS. Reimbursements of losses by the Board are discretionary, and not a matter of right. No person shall have a right in the Fund as a third party beneficiary or otherwise either before or after allowance of a claim.

301. Conflict of Interest.

A. A member of the Board who has or had a lawyer-client relationship or financial relationship with a claimant or the lawyer subject to the claim shall not participate in the investigation or adjudication of the matter.

B. A member of the Board who is a member or of counsel in the same law firm or company as the lawyer subject to the claim shall not participate in the matter.

302. Filing Claims. The Board shall consider a claim filed on forms provided by the Board if:

a. The claimant experienced a loss of money or property, excluding loss of profit, consequential damages, interest, and costs of recovery; and

b. The loss of the client arose out of and during the course of a lawyer-client relationship of a matter in this state, or a fiduciary relationship between the lawyer and the claimant in this state; and

c. The loss was caused by the intentional dishonest act of the lawyer and the claim was not based on negligence; and

d. There is no reasonably available collateral source for reimbursement to the claimant, such as insurance, surety, bond, or some other fund; and

e. Reasonable efforts have been made by the claimant to exhaust administrative and civil remedies; and

f. The lawyer was licensed to practice law in this state at the time of the misconduct or was licensed within three years prior to the misconduct; and

g. Less than three years have elapsed between the filing of the claim and the date the claimant knew or should have known of the dishonest conduct; and

h. The dishonest conduct occurred on or after January 1, 1964.

303. Privileged Complaints. A claim filed pursuant to these Rules is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the claimant.

304. Screening Claims. The Chairperson shall designate a Board member or the Director to screen a claim and to advise the lawyer named in the claim that he has 20 days to respond to the Board in writing. The lawyer shall receive a copy of the claim and be notified at the address on the records of the Supreme Court for his license.

305. Claim Investigation. If a claim is sufficient, the Director shall promptly request the Office of Lawyers Professional Responsibility to furnish a report on any investigation of the matter.

306. Rights of Lawyer Subject to Claim. A lawyer subject to a claim shall be entitled to receive a copy of the claim, to respond to the claim in writing to the Board, and to request a hearing as provided by these Rules.

307. Lawyer Cooperation. It shall be the duty of a lawyer subject to a claim to cooperate and comply with the reasonable requests of the Board and the Board's investigator by furnishing papers, documents or objects, providing a full written explanation, and appearing at conferences and hearings. Failure to respond or cooperate is grounds for discipline.

308. Investigatory Subpoena. With approval of the Board chairperson, the Director may subpoena and take testimony of any person believed to possess information concerning a claim.

309. Investigative Challenge. The district court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the investigation of a claim.

310. Action after Investigation. No later than 120 days from the date of the notification to the Office of Lawyers Professional Responsibility, whether or not the Director has received a report from the Office Lawyers Professional Responsibility, the chairperson shall determine whether additional investigation should be conducted, a hearing should be held, or a determination may be immediately rendered.

311. Panels. The Chairperson may divide the Board into panels, each consisting of not less than three Board members and at least one of whom is a nonlawyer, and shall designate a chairperson for each panel. A panel may be assigned to hear a matter in lieu of a hearing before the entire Board.

312. Request for Hearing. If the claimant or the lawyer subject to the claim requests a hearing, the chairperson may order a hearing, defer the matter for further investigation or until any proceedings of the Office of Lawyers Professional Responsibility have been completed, or deny the request.

313. Hearing. If a hearing is ordered, both the claimant and the lawyer and their representatives may appear. The hearing shall be recorded and preserved for five years.

314. Determination.

A. Payment of a claim from the Fund shall be made only on affirmative vote of four members.

B. In determining the amount of any payment, the Board may consider:

1. Monies available and likely to become available to the Fund for payment of claims;

2. Size and number of claims presented and likely to be presented in the future;

3. The amount of a claimant's loss compared with losses sustained by others;

4. The comparative hardship suffered by a claimant because of a loss;

5. The total amount of losses caused by the dishonest conduct of any one lawyer;

6. The culpability or negligence of the claimant contributing to the loss;

7. The extent to which there is a collateral source for reimbursement to the claimant;

8. The efforts made by the claimant to exhaust administrative and civil remedies;

9. Other factors as appear to be just and proper.

315. Denial. If the Board determines that the criteria of Rule 302 have not been met, the Board may deny the claim. The Board may authorize payment of that portion of a claim proved, although the entire amount of a claim is undetermined. The Board may defer payment of a claim in order to await completion of investigations of related claims, or for payment in subsequent fiscal years.

316. Reconsideration. If a claim has been reduced or denied by the Board, a claimant may request reconsideration of the determination within 30 days by submitting a written request

to the Board. A claimant may not seek reconsideration if the full claim is allowed but a lesser amount has been authorized for payment.

317. Subrogation. The Board shall obtain a subrogation agreement from the claimant for the claimant's rights to compensation from the lawyer subject to the claim.

318. Confidentiality. The files, records and proceedings of the Board and Director, as they may relate to or arise out of any claim are confidential and shall not be disclosed except as provided in these rules or the Rules of Lawyers Professional Responsibility.

319. Notification of Claim Paid.

A. The Board shall advise the Office of Lawyers Professional Responsibility and the National Conference of Bar Examiners of any claim paid, the amount paid, and the name of the lawyer.

B. Upon request of the lawyer, the Board may advise a lawyer admission or discipline authority of another jurisdiction of the status of any file on the lawyer.

320. Information Released. Information on the number of claims presented to the Board, the number and amount of claims paid, the restitution collected, the suits filed, and the amount in the Fund shall be public information. The Board may disclose the fact that a claim is or is not being investigated or considered by the Board, and the Board's disposition of a claim.

IV. EDUCATION. The Board shall conduct research, analyze statistics, and categorize claims to determine those education methods and programs that minimize lawyer misconduct resulting in claims against the Fund.