

STATE OF MINNESOTA

IN SUPREME COURT

CO-85-2205

C5-84-2139

C2-84-2163

C9-81-1206

Order Prescribing and Promulgating
Rules of the Minnesota Client Security
Board, Imposing A Special Assessment,
And Amending the Rules of the Supreme
Court for Registration of Attorneys

WHEREAS, the regulation of the practice of law lies within the exclusive jurisdiction of this Court; and

WHEREAS, this Court has a responsibility to protect the public, the administration of justice, and the integrity of the legal profession; and,

WHEREAS, the Minnesota Client Security Board has petitioned for the adoption of proposed rules for its operation and a public hearing on the petition was held, with prior notice given, on March 19, 1987;

WHEREAS, the Board of Law Examiners, the Board of Continuing Legal Education and Lawyers Professional Responsibility Board have petitioned for an increase in the attorney registration fee to support rising costs and a public hearing on the petition was held, with prior notice given, on March 19, 1987;

NOW, THEREFORE, IT IS HEREBY ORDERED that the annexed Rules of the Minnesota Client Security Board be, and the same hereby are, adopted, prescribed and promulgated to be effective on July 1, 1987;

IT IS FURTHER ORDERED that a Client Security Fund shall be established and financed in part by an assessment of licensed lawyers pursuant to Rule 2.02(c) of the Rules of the Minnesota Client Security Board in the following manner:

- a. A lawyer admitted to practice law in this state for more than three years and a member of the judiciary who is required to be admitted to practice as a prerequisite to holding office shall pay \$100 in the fiscal year of July 1, 1987 - June 30, 1988;
- b. A lawyer or judge whose permanent residence is outside the State of Minnesota and who does not practice law within this state, a lawyer who has been admitted to practice for three years or less and a lawyer on duty in the armed forces of the United States shall pay \$50 in the fiscal year of July 1, 1987 - June 30, 1988, and \$50 in the fiscal year the lawyer becomes subject to the first paragraph of Rule 2, Rules of the Supreme Court for Registration of Attorneys;
- c. A lawyer or judge 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 or she is so retired or disabled and not engaged in the practice of law shall be exempt from the assessment.
- d. A lawyer or judge who is currently retired or disabled or who is not otherwise engaged in the active practice of law or who is currently suspended from the practice of law shall pay \$100 in the fiscal year in which he or she resumes active status.

Nothing in this order shall preclude this Court from imposing further assessments as may become necessary;

IT IS FURTHER ORDERED that, effective July 1, 1988, Rule 2, Rules of the Supreme Court for Registration of Attorneys is amended to read:

Rule 2. Registration Fee

In order to defray the expenses of examinations and investigations for admission to the bar and disciplinary proceedings, over and above the amount paid by applicants for such admission, with exceptions hereinafter enumerated, each attorney 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 hereafter annually pay to the clerk of the supreme appellate courts a registration fee in the sum of ~~Eighty-two Dollars (\$82.00)~~ One Hundred Two Dollars (\$102.00) or in such lesser sum as the court may annually hereafter determine.

Such fee, or a portion thereof, shall be paid on or before the first day of January, April, July, or October of each year as requested by the clerk of the supreme appellate courts.

All sums so received shall be allocated as follows:

~~\$7.00~~ \$15.00 to the State Board of Law Examiners

~~\$5.00~~ \$ 7.00 to the State Board of Continuing Legal Education

~~\$70.00~~ \$80.00 to the Lawyers Professional Responsibility Board.

The following attorneys and judges shall pay an annual registration fee of ~~Twenty-seven Dollars (\$27.00)~~ Thirty-nine Dollars (\$39.00):

(a) Any attorney or judge whose permanent residence is outside the State of Minnesota and who does not practice law within this state;

(b) Any attorney who has not been admitted to practice for more than three years;

(c) Any attorney while on duty in the armed forces of the United States; The ~~Twenty-seven Dollars (\$27.00)~~ Thirty-nine Dollars (\$39.00) so received shall be allocated as follows:

\$ ~~7.00~~ \$15.00 to the State Board of Law Examiners

\$ ~~5.00~~ \$ 7.00 to the State Board of Continuing Legal Education

~~\$15.00~~ \$17.00 to the Lawyers Professional Responsibility Board.

Any attorney admitted to practice law on or after July 1, 1988, shall pay to the Minnesota Client Security Fund \$50 in the fiscal year of admission and an additional \$50 in the fiscal year the attorney becomes subject to the first paragraph of this rule.

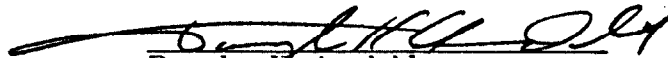
Any attorney who is retired from any gainful employment or permanently disabled, and who files annually with the clerk of the supreme appellate courts an affidavit that he or she is so retired or disabled and not engaged in the practice of law, shall be placed in a fee-exempt category and shall remain in good standing. An attorney claiming retired or permanently disabled status who subsequently resumes active practice of law shall promptly file notice of such change of status with the clerk of the supreme appellate courts and pay the annual registration fee.

Any judge who is retired from any gainful employment or permanently disabled, who no longer serves on the bench or practices law, and who files annually with the clerk of the supreme appellate courts an affidavit that he or

she is so retired or disabled and not engaged in the practice of law, shall be placed in a fee-exempt category and shall remain in good standing. A judge claiming retired or permanently disabled status who subsequently resumes service on the bench or the active practice of law shall promptly file notice of such change of status with the clerk of the supreme appellate courts and pay the annual registration fee.

Dated April 2, 1987.

BY THE COURT



Douglas W. Amdahl
Chief Justice

OFFICE OF
APPELLATE COURTS
FILED

APR 7 1987

WAYNE TSCHIMPERLE
CLERK

RULES OF THE MINNESOTA CLIENT SECURITY BOARD

I. Rules Governing the Client Security Board

Rule 1.01. Membership of the Board

The Supreme Court shall appoint seven members to the Client Security Board. Five shall be lawyers actively practicing in the state, three of whom shall be nominees of the Minnesota State Bar Association, and two shall be public members. The board shall elect a chairperson from its members.

Rule 1.02. 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 member may serve more than two consecutive three-year terms.

Rule 1.03. Reimbursement

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

Rule 1.04. Meetings

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

Rule 1.05. Immunity

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

Rule 1.06. Duties of the Board

The Board is authorized:

- a. To administer and operate the Minnesota Client Security Fund, pursuant to statutes, court rules and internal procedures;
- b. To make final determinations on disbursement from the Fund;
- c. To recommend to the Supreme Court limits for the amount payable per claim against the Fund, 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 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 educational activities for theft prevention and risk management, and for 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 recommendations to the Supreme Court on rule changes.

Rule 1.07. 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.

Rule 1.08. Duties of the Director

The Board may recommend to the Supreme Court a director, who shall serve at the pleasure of the court, to perform duties assigned to the Board, including but not limited to:

- a. Screening claims, coordinating investigations with the Lawyers' Professional Responsibility Board, 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 the client security funds in other states;
- e. Performing other duties as assigned by the Board.

Rule 1.09. 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.

Rule 1.10. 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.

II. RULES GOVERNING THE FUND

Rule 2.01. 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.

Rule 2.02. 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, assessments of licensed lawyers.

Rule 2.03. Ordering, Reinstatement and Cancellation of Assessments

The Supreme Court may order, reinstate or cancel the collection of assessments after review of the financial condition of the Fund certified by the Client Security Board in its annual report.

Rule 2.04. 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.

Rule 2.05. 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.

III. RULES GOVERNING THE CLAIM PROCESS

Rule 3.01. Claims Payment Discretionary

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.

Rule 3.02. 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 dishonesty 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.

Rule 3.03. 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.

Rule 3.04. 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.

Rule 3.05. 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.

Rule 3.06. 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.

Rule 3.07. 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.

Rule 3.08. 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.

Rule 3.09. 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.

Rule 3.10. 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 Lawyer's Professional Responsibility Board, the Chairperson shall determine whether additional investigation should be conducted, a hearing should be held, or a determination may be immediately rendered.

Rule 3.11. 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.

Rule 3.12. Request for Hearing

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

Rule 3.13. 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.

Rule 3.14. 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 effort made by the claimant to exhaust administrative and civil remedies;
 - (9) Other factors as appear to be just and proper.

Rule 3.15. Denial

If the Board determines that the criteria of Rule 3.02 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.

Rule 3.16. Reconsideration

If a claim has been reduced or denied by the Board, a claimant or the lawyer subject to the claim 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.

Rule 3.17. 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 right to restitution. 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 an amount equal to the sum paid the claimant plus the Board's attorney fees and costs. 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.

Rule 3.18. 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 the status of any file on the lawyer.

Rule 3.19. 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. RULE GOVERNING EDUCATION

Rule 4.01. Education

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