

FILED

December 19, 2019

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8005

**ORDER ESTABLISHING PUBLIC COMMENT PERIOD
ON PROPOSED AMENDMENTS TO THE
RULES OF THE MINNESOTA CLIENT SECURITY BOARD**

The Client Security Board filed a petition on November 15, 2019, proposing amendments to Rule 1.09 of the Rules of the Minnesota Client Security Board, which governs the confidentiality of records of the Board. A copy of the Board's petition is attached to this order. The court will consider the proposed amendments after reviewing any public comments on those proposals.

IT IS HEREBY ORDERED that any person or organization wishing to provide written comments in support of or in opposition to the proposed amendments to the Rules of the Minnesota Client Security Board shall file those comments with the Clerk of the Appellate Courts, using the appellate courts' e-filing application, E-MACS, if required to do so. *See* Minn. R. Civ. App. P. 125.01(a)(1). All comments shall be filed so as to be received no later than January 21, 2020.

Dated: December 19, 2019

BY THE COURT:



Lorie S. Gildea
Chief Justice

FILED

November 15, 2019

**OFFICE OF
APPELLATE COURTS**

FILE NO. ADM10-8005

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition to Amend the
Rules of the Minnesota
Client Security Board

PETITION OF THE CLIENT
SECURITY BOARD TO AMEND
RULE 1.09, RULES OF THE MINNESOTA
CLIENT SECURITY BOARD

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE
STATE OF MINNESOTA:

Petitioner Client Security Board (CSB) respectfully requests this Court to amend
Rule 1.09, Rules of the Minnesota Client Security Board (RMCSB), as set forth in
Attachment A.

In support of this petition, the CSB states the following:

1. Petitioner is a board established by this Court to investigate and pay claims against lawyers whose dishonest conduct has caused a loss of property or money to a client.
2. This Court has the inherent authority, expressly recognized by the Minnesota Legislature, to administer justice and adopt rules and procedures regarding administration of the Client Security Fund. *See* Minn. Stat. §§ 480.05 and 481.20.
3. This Court has adopted the RMCSB to establish standards for administering the Client Security Fund.
4. An ambiguity has been identified in the current version of the RMCSB as it relates to confidentiality. Specifically, it appears that the intent of Rule 1.09, RMCSB, is to keep all records of the CSB confidential except for enumerated

information regarding approved claims. However, language in Rule 1.09--“until the Board authorizes reimbursement to the claimant” —could be read to suggest all information regarding a claim is public if a claim is approved.

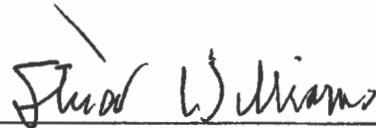
5. Moreover, Rule 1.09, RMCSB, does not address (i) the use of information for subrogation purposes, which is needed to protect the interests of the Board, (ii) the fact that press releases are generally issued after CSB approval, but before payment is actually made to an individual claimant, and (iii) the fact that statistical information is used to publicize the work of the Board.
6. In making proposed amendments to Rule 1.09, RMCSB, Rule 18 of the Model Rule for Lawyers’ Funds for Client Protection was consulted.
7. In furtherance of its duties enumerated under Rule 1.06(1), RMCSB, to “make recommendations to the Supreme Court on rule changes,” the Board voted to recommend to this Court proposed amendments to Rule 1.09, RMCSB, as described below.
 - a. Rule 1.09, RMCSB. The CSB proposes adding to Rule 1.09, RMCSB, the word “records” to make clear that all materials pertaining to the work of the CSB are confidential until payment is authorized pursuant to Rule 1.09(a), RMCSB, at which time only certain information, as further defined in Rule 1.09(a), RMCSB, will become public.
 - b. The CSB further proposes removing from Rule 1.09, RMCSB, the language “until the Board authorizes reimbursement to the claimant” as this tends to imply that all information relating to a claim becomes public once a claim is authorized for payment. Rather, only certain information becomes public as enumerate within Rule 1.09(a), RMCSB, *i.e.*, the nature of the claim, the amount of the reimbursement and the name of the lawyer (and name and address of the claimant with specific permission of the claimant).

- c. Rule 1.09(a), RMCSB. The CSB proposes replacing the word “payment” with the word “authorization” which would allow the CSB to issue a press release upon Board approval of a claim rather than upon payment of a claim, which may take a few weeks following a board meeting.
 - d. Rule 1.09(b), RMCSB. The CSB proposes amending Rule 1.09(b), RMCSB, to include other state client security agencies in addition to professional disciplinary and law enforcement agencies. The CSB also proposes adding a sentence to Rule 1.09(b), RMCSB, which permits the CSB to use information that may otherwise be deemed confidential to pursue and enforce its subrogation rights pursuant to Rule 3.17, RMCSB. The CSB proposes amending Rule 1.09(b), RMCSB, to eliminate reference to statistical information which the CSB proposes be addressed with the addition of a new subdivision to Rule 1.09, RMCSB.
 - e. Rule 1.09(c), RMCSB. The CSB proposes adding a new Rule 1.09(c), RMCSB. Pursuant to Rule 1.10, RMCSB, the CSB is required to file with this Court an annual report. In its annual report, the CSB discloses statistical information relating to claims and the work of the CSB. The addition of Rule 1.09(c), RMCSB, makes clear that statistical information is public and properly disclosed by the CSB.
6. The Board has consulted with the Rules Committee of the Minnesota State Bar Association regarding these amendments. At its meeting on August 27, 2019, the members of the committee raised no concerns regarding the proposed changes.
7. Based upon the foregoing, petitioner respectfully requests this Honorable Court amend Rule 1.09, RMCSB, as set forth in Attachment A.

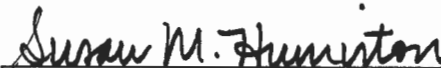
Dated: 10/30, 2019. Respectfully submitted,

CLIENT SECURITY BOARD

By



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FILED

November 15, 2019

ATTACHMENT A

RULE 1.09 CONFIDENTIALITY

**OFFICE OF
APPELLATE COURTS**

Claims, proceedings, records and reports involving claims for reimbursement are confidential ~~until the Board authorizes reimbursement to the claimant~~, except as provided below.

a. After authorization ~~payment~~ of ~~the~~ reimbursement, the Board shall publicize the nature of the claim, the amount of reimbursement and the name of the lawyer. The name and the address of the claimant shall not be publicized by the Board unless specific permission has been granted by the claimant.

b. This Rule shall not be construed to deny access to relevant information by professional disciplinary, law enforcement or client security agencies in furtherance of their duties. ~~The Board may also use such relevant information as is necessary to pursue subrogation rights pursuant to Rule 3.17. or other law enforcement authorities as the Board shall authorize the release of statistical information which does not disclose the identity of the lawyer or the parties.~~

c. Statistical information such as the number of claims presented to the Board, the number and amount of claims paid, the restitution collected from each attorney, the subrogation lawsuits filed, and the amount in the Fund shall be public information.