

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8005



**ORDER PROMULGATING AMENDMENTS TO THE
RULES OF THE MINNESOTA CLIENT SECURITY BOARD**

The Client Security Fund was established by the Minnesota Supreme Court to aid those persons who suffer a loss because of dishonest conduct on the part of a lawyer during the course of an attorney-client relationship in this state. The Client Security Board filed a petition on April 21, 2023, proposing both housekeeping and substantive amendments to the Rules of the Minnesota Client Security Board. The reason for the Board’s petition is that the Rules of the Minnesota Client Security Board, which were first promulgated in 1987, Order Prescribing and Promulgating Rules of the Minnesota Client Security Board, No. CO-85-2205 (Minn. filed Apr. 7, 1987), have not been comprehensively revisited or amended in decades. We opened a public comment period. Two comments were filed. The Professional Regulation Committee of the Minnesota State Bar Association voiced its support for the Board’s proposed amendments, with the exception of its opposition to proposed Rule 3.19, which would preclude a lawyer from accepting any payment for assisting a claimant with prosecuting a claim to the Board unless the Board approved the payment. The National Client Protection Organization filed a comment voicing its support of the proposed Rule 3.19.

Having carefully considered the Client Security Board’s recommendations and the comments filed, we generally adopt the proposed amendments subject to three modifications.

First, we decline to adopt the Board’s proposed Rule 3.19, which would provide that “[n]o lawyer shall accept any payment for assisting a claimant with prosecuting a claim to the Board, unless such payment has been approved by the Board.” The Professional Regulation Committee of the Minnesota State Bar Association has raised concerns that proposed Rule 3.19, if adopted, could intrude upon the attorney-client relationship. We do not need to address the validity of those concerns because there does not appear to be any current need to adopt this rule. We observe that the Board’s proposal, that lawyers be precluded from accepting any payment for assisting a claimant with prosecuting a claim unless the payment has been approved by the Board, does not appear to have been motivated by any current problem within the State. Instead, the Board represents in its petition that the claimant-friendly process and assistance of CSB staff “obviate[es] in most if not all cases the need for assistance of counsel.” This is also an area where pro bono representation is encouraged.

Second, we modify the language proposed in Rule 3.15, which would have provided that “[t]he Board may, in its discretion, deny any claim. No person shall have the legal right to reimbursement from the Fund.” We affirm the Board’s discretion, so long as it based upon consideration of the factors in Rule 3.14.b. We thus modify the amendment to Rule 3.15 to provide that “[t]he Board may, in its discretion, upon consideration of the factors in Rule 3.14.b., deny any claim.”

Third, we do not adopt the proposal that “loss” be a formally defined term in the “Definitions” rule because, as the Client Security Board acknowledges, it is duplicative of Rule 3.02(a).

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the attached amendments to the Minnesota Client Security Board are adopted and effective as of July 1, 2024.

Dated: January 19, 2024

BY THE COURT:

A handwritten signature in cursive script that reads "Natalie E. Hudson".

Natalie E. Hudson
Chief Justice

AMENDMENTS TO THE RULES OF THE MINNESOTA CLIENT SECURITY BOARD

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

I. RULES GOVERNING THE CLIENT SECURITY BOARD

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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, in addition to any additional shorter term for which the person was originally appointed.

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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 conduct of any lawyer during an attorney-client relationship or a fiduciary relationship arising out of an attorney-client relationship.

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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 as provided in Rule 14 of the Rules of the Supreme Court on Lawyer Registration.

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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~~ ELIGIBLE CLAIMS

The Board shall consider a claim filed on forms provided by the Board. A claim is eligible for consideration, based upon the definitions provided in Rule 3.20, 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 claimant~~ 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 client ~~claimant~~ which arose out of a lawyer-client relationship in this state; and
- c. The loss was caused by the dishonest conduct 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
- eg. Less than five ~~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.~~
- i. ~~As used in these Rules, "dishonest conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:~~

~~(1) — Refusal or failure to refund an advance fee when the lawyer performed no work whatever, or an insignificant portion of the services that he or she agreed to perform. All other instances of a lawyer failing to return an unearned fee or the disputed portion of a fee are outside the scope of the Fund.~~

~~(2) — Obtaining money or property from a client representing that it was to be used for investment purposes when no such investment was made. The failure of an investment to perform as represented to, or anticipated by, the applicant is outside the scope of the Fund.~~

~~j. — For purposes of these Rules, including but not limited to those acts set out in Rule 3.02(i), all payments made by the lawyer to the client following the dishonest conduct, however denominated by the lawyer, shall be treated as restitution of principal.~~

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 or client.

RULE 3.04 SCREENING CLAIMS

The Chair shall designate a Board member or the Director to screen a claim and to advise the lawyer named in the claim that ~~he~~ the lawyer has 20 days to respond to the Board in writing. The lawyer shall receive a copy of the claim, by first class mail sent to the lawyer's last known address. Duplicative claims may be screened out by the Director, who shall report such screening at the next meeting of the Board.

RULE 3.05 CLAIM INVESTIGATION

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

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RULE 3.10 ACTION AFTER INVESTIGATION

No later than 120 days from the conclusion of any disciplinary actions, if applicable, date of the notification to the Office of Lawyers Professional Responsibility, whether or not the Director has received a report from the Lawyers Professional Responsibility Board, the Chair shall determine whether additional investigation should be conducted, a hearing should be held, or a determination may be immediately rendered.

* * *

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 whether to pay a claim and 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, such as insurance, surety, bond, or some other state's fund;

(8) The effort made by the claimant to exhaust administrative and civil remedies and the reasonableness of those efforts; and

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

c. In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion and consistent with the purpose of the Fund, recognize a claim that would otherwise be excluded under these Rules.

d. The maximum amount that may be paid to any claimant for a single claim is \$150,000. In exceptional circumstances, the Board may allow a greater or lesser amount based on the factors set forth in subdivision (b) of this rule.

~~ed.~~ The Board may, in its discretion, award interest on any award at the rate of interest payable under Minnesota § 549.049 from the date of filing the claim. In determining the amount of interest, if any, the Board may consider:

- (1) The length of time between filing the claim and its disposition;
- (2) The existence of third-party litigation; and
- (3) Other factors outside the control of the Board.

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, in its discretion, upon consideration of the factors in Rule 3.14.b, deny any 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. The claimant and the lawyer shall be notified in writing of the Board's determination.

RULE 3.16 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 under Rule 3.14(b) or ~~(de)~~, or on the basis that the Board did not award interest under Rule 3.14~~(ed)~~. Decisions of the Board upon reconsideration are final. There shall be no appeal from a final decision of the Board.

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RULE 3.19 DEFINITIONS

a. “Claimant” means a client of the lawyer or a third-party who provided money or property to the lawyer on behalf of the client. Claimant excludes a spouse (present or former), child, parent or grandparent, sibling, partner, associate or employee of the lawyer causing the loss. Claimant also excludes an insurer, surety, or bonding institution, financial institution, government entity, or business entity owned or controlled by the lawyer causing the loss.

b. “Dishonest conduct” means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:

(1) Refusal or failure to refund an advance fee when the lawyer performed no work whatsoever, or an insignificant portion of the services that he or she agreed to perform. All other instances of a lawyer failing to return an unearned fee or the disputed portion of a fee are outside the scope of the Fund.

(2) Obtaining money or property from a claimant representing that it was to be used for investment purposes when no such investment was made. The failure of an investment to perform as represented to, or anticipated by, the applicant is outside the scope of the Fund.

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