

PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY BOARD
RULES OF PROCEDURE

1. General Statement

These Rules of Procedure have been adopted pursuant to Pennsylvania Rule of Disciplinary Enforcement 503(d)(5). These Rules of Procedure provide for the administration of the Pennsylvania Lawyers Fund for Client Security (the "Fund"), the procedures for the presentation, consideration and payment of claims, procedures for conducting inquiries in accordance with Rule of Disciplinary Enforcement 221 regarding Mandatory Overdraft Reporting and, the exercise of the investment powers of the Fund's Board of Trustees (the "Board").

2. Organization of Board

2.1 Organization Meeting: The Board shall hold an organization meeting in the first quarter of the calendar year at such time and place as the incumbent Board Chair shall specify. If there is a vacancy in the office of Board Chair, the Board Member having the shortest remaining term of office shall specify the time and place of the organization meeting.

2.2 Duties of Officers:

- (a) The Board Chair shall preside at all meetings of the Board, and generally coordinate and supervise the administration of the Fund.
- (b) The Vice Chair shall act in the absence of the Board Chair and shall perform such other duties as may be required.
- (c) The Treasurer shall have the responsibility of arranging, through the Executive Director, for the proper custody of the monies and other assets of the Fund, the reception of all payments, the making of all disbursements from the Fund authorized by the Board, the causing of an annual audit to be made of the Fund, the maintenance of appropriate financial records and the filing of such tax or information returns as may be required.
- (d) The Executive Director shall prepare minutes of each meeting of the Board and shall preserve the original records in accordance with the Record Retention Policy which may include original financial records of the Board, including a separate file for each claim for reimbursement filed with the Fund. The Executive Director shall receive in the first instance all claims for reimbursement filed with the Fund. The Executive Director shall have the responsibility for the day-to-day functions of the Fund and shall perform such other duties as may be required or assigned by the Board.

2.3 Investment of the Fund: The money paid into the Fund shall be invested in such investments as may be directed by the Investment Advisory Board.

3. Claims for Reimbursement

3.1 Filing Claims:

- (a) Claims for reimbursement from the Fund shall be submitted to the Executive Director, in writing, under oath or affirmation. The original claim shall become a part of the official record of the Fund, and a synopsis of the claim shall be sent to each Board Member by the Executive Director.
- (b) Each claim shall set forth all pertinent facts and information required to establish eligibility under Rules of Disciplinary Enforcement 501 et seq.
- (c) The Board or the Executive Director may request a claimant or covered attorney to submit supplemental information.
- (d) The Board may hold such conferences or hearings as deemed necessary.

3.2 Consideration of Claims:

- (a) In authorizing payment of claims, the Board shall not award more than \$150,000.00 to any one claimant unless otherwise authorized by the Supreme Court of Pennsylvania.
- (b) Upon consideration of a claim, the Board may approve or deny the claim or defer action pending the receipt of further information, or pending the occurrence of further events.
- (c) No claim which is approved by the Board shall be paid until the claimant has executed such instruments, taken such action or entered into such agreements as the Board shall require.
- (d) The Board will consider for payment only those claims arising out of an attorney-client relationship or claims arising under Rule of Disciplinary Enforcement 514.
- (e) The Board will not pay interest on the misappropriated money or property.
(NOTE: Interest actually received before the monies are misappropriated shall be considered part of the reimbursable loss, but interest that could have been earned but was not, is not within the award).
- (f) The Board may reconsider a prior determination of a claim sua sponte.

- (g) The Board will reconsider a prior determination of a claim upon the written request of either the claimant or the covered attorney, provided:
 - (1) the request for reconsideration is submitted in writing to the Executive Director;
 - (2) the request for reconsideration is received by the Executive Director within 30 days of the date of the notification of the denial of a claim or the approval of an award; and
 - (3) the request for reconsideration is accompanied by and/or includes newly discovered documentation and/or information which was not previously available for submission to and consideration by the Board.

- (h) Should the claimant or covered attorney fail to make a request for reconsideration in accordance with Rule of Disciplinary Enforcement 521 and Rule of Procedure 3.2(g), or should the request for reconsideration be denied, or should the Board grant the request for reconsideration and upon reconsideration determine to affirm the prior decision, the decision of the Board is final and there is no further right of appeal.

- (i) The Board may determine to rescind an approved award:
 - (1) if the claimant has received payment from the covered attorney or a third party in an amount equal to, or in excess of, the approved award; or
 - (2) if the claimant has not executed any requisite document as determined by the Board; or
 - (3) if the claimant has not performed such other condition(s) as the Board determined to be a prerequisite to the payment of the approved award; or
 - (4) when the Board determines, in its sole discretion, that the payment of the approved award would be contrary to the mission and objective of the Fund.

- (j) If during the pendency of a claim, documentation is provided by the covered attorney that payment has been made to the claimant in the full amount of the alleged loss set forth on the Statement of Claim filed by the claimant:
 - (1) the Executive Director shall correspond with the claimant and request the claimant to provide a written confirmation within 30 days of the date of the letter, of the receipt of the covered attorney's payment and the withdrawal of the claim, or that no payment has been received and the claim should continue to be processed;
 - (2) if the claimant fails to respond to the Executive Director's initial inquiry within 30 days, a second inquiry will be sent via regular and certified mail, return receipt requested, requesting written confirmation of the receipt of the payment and the withdrawal of the claim, or that no payment has been received and the claim should continue to be

processed. The second inquiry letter will advise the claimant if no response is received within 30 days of the date of the second inquiry letter, the file will be administratively closed without review or action by the Board.

- 3.3 Limitation of Actions: Subject to individual extenuating circumstances, the Board will normally consider a claim to be timely filed if the claim is filed within two years of the date upon which the claimant knew or should have known of the conversion of his/her funds or property.

Comment: Rule of Procedure 3.3 is not a strict statute of limitations. A claimant may not be aware of the opportunity to file a claim with the Fund; or a claimant may attempt to resolve the matter by first pursuing other remedies, such as a civil suit; or a claimant may wait until the conclusion of a criminal proceeding in which restitution has been ordered; or the conduct of the covered attorney may have dissuaded the claimant from filing a claim. The reason(s) a claimant has not filed a claim within two years of learning of the loss, or within two years of when a claimant should have known of the loss, will be relevant information that the Board will consider when reviewing a claim.

- 3.4 Procedural Rules:

- (a) The proceedings shall be non-adversarial in nature.
- (b) A copy of the Statement of Claim and supporting documentation submitted by the claimant shall be provided to the covered attorney via regular mail, and certified mail, return receipt requested or such other form of delivery that may be tracked. Notice mailed to the covered attorney at the address of record with Attorney Registration per Rule of Disciplinary Enforcement 219 (relating to annual registration of attorneys) shall satisfy this notice requirement. A copy of the covered attorney's response to the claim shall be provided to the claimant. The information provided to the covered attorney and claimant in accordance with these Rules of Procedure are subject to the confidentiality provisions of Rule of Disciplinary Enforcement 504 and Rule of Procedure 3.6.
- (c) The Board shall not be bound by technical or formal rules of procedure or evidence. The Board shall be the sole judge of the relevancy and materiality of the evidence offered.
- (d) There shall be no stenographic record of the proceedings, unless the Board determines, in its sole discretion, there is a need for a stenographic record.
- (e) The claim shall be proved by a preponderance of the evidence.

- (f) Written notice of the Board's determination shall be provided to both the claimant and the covered attorney. If the Board determines that an opinion is necessary, it shall be in summary form.
- (g) Hearings are granted at the discretion of the Board. Scheduled hearings will be held unless a request for a continuance is received at least 24 hours in advance, and such continuance is granted by the Board or Hearing Committee. Hearings will not be continued on the day of the hearing other than for exceptional circumstances.

3.5 Claimants Represented by Counsel:

- (a) No lawyer shall accept any payment for assisting a claimant with the filing of a claim with the Fund, unless such payment has been approved by the Board.
- (b) The Board will approve an attorney's fee for representation with the filing of a claim with the Fund only in exceptional circumstances. The Board's decision is final and not appealable to any court.
- (c) Any lawyer who is requesting the approval of a fee from a claimant for representation with the claim filed with the Fund shall submit the request to the Executive Director prior to the review of the claimant's claim by the Board. Such request for approval of a fee shall include the following information and documentation and must be received prior to the Board's review of the claimant's claim:
 - (1) The signed fee agreement between the claimant and the attorney requesting the fee; and
 - (2) Itemized time records to support extraordinary efforts and the time expended to advance the claimant's claim before the Fund.
- (d) The lawyer and the claimant will be advised in writing whether the fee request has been approved or denied by the Board.
- (e) In the event the Board approves an attorney fee, the payment of the approved attorney fee will be the responsibility of the claimant and will not be deducted or paid by the Fund from an approved award.

3.6 Confidentiality:

- (a) All claims filed with the Fund shall be confidential in accordance with Rule of Disciplinary Enforcement 504.

- (b) For all awards approved after September 4, 2007, in accordance with Rule of Disciplinary Enforcement 504, the Fund may release:
 - (1) the name of the covered attorney;
 - (2) the amount claimed;
 - (3) the amount awarded; and,
 - (4) a summary of the claim.

The above information may be disclosed regardless of the attorney's status, i.e. active, inactive or, disability status. Nothing in Rule of Disciplinary Enforcement 504(b) or Rule of Procedure 3.6(b) confers a right to anyone to receive information or documentation relative to any claims(s) filed with the Fund where an award has been approved.

- (c) For all awards approved after September 4, 2007, in accordance with Rule of Disciplinary Enforcement 504, the Fund may release the name of the claimant if the claimant has granted written permission to disclose the claimant's name.

3.7 \$1,000,000 Aggregate Per Attorney Cap:

Upon determination by the Staff that claims being made against a covered attorney have the potential to exceed the \$1,000,000 aggregate per attorney cap imposed by Rule of Disciplinary Enforcement 514(b):

- (a) Review of all such pending claims by the Board will be deferred until after the expiration of one year from the date of the filing of the first pending claim regarding the subject covered attorney.
- (b) When reviewing the claims in accordance with Rule of Procedure 3.7, the Board will make a determination of the compensability of each claim and, the amount of the reimbursable loss, without regard to the Rule of Disciplinary Enforcement 514(b) aggregate cap. Each claimant and the covered attorney will be notified of the determination by the Board regarding compensability only, pending a determination by the Board whether or not to seek a waiver of the aggregate cap as permitted by Rule of Disciplinary Enforcement 514(b). The decision to seek a waiver of the aggregate cap is within the sole discretion of the Board and such decision will be made within six months of the determination by the Board regarding compensability of the claims and the aggregate amount of the reimbursable losses.
- (c) Should the Board determine to seek a waiver of the aggregate cap, the Board will submit a written request to the Supreme Court of Pennsylvania providing:
 - (1) the reimbursable losses as determined by the Board regarding the covered attorney;
 - (2) the impact of the reimbursable losses on the Fund's existing reserve;

- (3) the impact of the recovery to each claimant if the requested waiver is not granted; and
 - (4) such other information which the Board determines is relevant in order for the Court to consider and act upon the request. It is within the Court's sole discretion to grant the waiver, grant a partial waiver or, deny the requested waiver.
- (d) Subsequent to the Court's decision regarding a requested waiver or, subsequent to the determination by the Board not to seek a waiver of the aggregate cap, the claimant and the covered attorney will be notified of the amount of the reimbursable loss that has been approved for payment.
- (e) Reimbursable losses computed in accordance with Rule of Disciplinary Enforcement 514(b) may be reduced on a pro rata basis.

4. Overdraft Inquiries in Accordance with Rule of Disciplinary Enforcement 221

4.1 Initial Inquiry: Upon receipt of the Mandatory Overdraft Report from the Approved Financial Institution, a letter of inquiry will be sent by the Executive Director to the attorney/law firm named in the report.

- (a) The inquiry letter will request the attorney/law firm to provide a written explanation as to the circumstances surrounding the referenced item being presented against insufficient funds.
- (b) The written explanation must be signed by an attorney who has signing authority on the subject account.
- (c) The written explanation must include the following statement:

I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

- (d) The written explanation must also provide the following documents:
 - (1) copies of the bank statements for the subject account for the three most recent months, unless the Executive Director determines that additional months are necessary based upon the particular circumstances involved;
 - (2) a receipted, dated deposit slip or other documentation confirming the deposit of funds to correct the shortfall in the subject account, together with a description of the funds comprising such deposit; and
 - (3) any additional documentation that the Executive Director may determine is necessary to fully investigate the shortfall in the subject account.

(e) The written explanation must be submitted to the Executive Director within ten business days of the date of the inquiry letter.

4.2 Attorney/Law Firm Response: The attorney/law firm shall respond to the initial inquiry in accordance with Rule of Procedure 4.1. An attorney/law firm may, for good cause, request a brief extension of time within which to respond to the initial inquiry, which extension may be granted at the discretion of the Executive Director.

4.3 Resolution: Upon receipt of the attorney/law firm's written response, the Executive Director:

(a) May request additional information and/or documentation;

(b) Close the file if the explanation is satisfactory and all necessary documentation has been provided; or

(c) Refer the matter to the appropriate Office of Disciplinary Counsel for possible further inquiry based upon the information provided in the explanation and/or documentation.

4.4 If no response is received, the matter shall be forwarded to the appropriate Office of Disciplinary Counsel for possible further inquiry.

5. Effective Date, Implementation and Amendments

5.1 Effective Date: These Rules of Procedure shall become effective on December 2, 1982.

5.2 Temporary Methods and Procedures: Pending full implementation of these Rules of Procedure, the Board may authorize such temporary methods of operation and procedure as may be necessary or desirable for the investment and administration of the Fund.

5.3 Amendment: These Rules of Procedure may be amended by a vote of at least five of the Board Members.

5.4 Quorum: A majority of the members in office shall constitute a quorum.