

## **CHAPTER 7. CLIENTS' SECURITY FUND RULES**

### **7-1. GENERALLY**

#### **RULE 7-1.1 GENERALLY**

The board of governors may provide monetary relief to persons who suffer reimbursable losses as a result of misappropriation, embezzlement, or other wrongful taking or conversion of money or other property that comes into the possession or control of a member of The Florida Bar as provided elsewhere in these rules, including, but not limited to, attorney's fees.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); July 1, 2009, by the Board of Governors of The Florida Bar; amended May 28, 2010, by the Board of Governors of The Florida Bar, effective July 1, 2010.

#### **RULE 7-1.2 FUND ESTABLISHED**

Pursuant to the authority granted by rule 1-8.4 of these Rules Regulating The Florida Bar, the board of governors hereby establishes a separate fund designated "Clients' Security Fund of The Florida Bar."

#### **RULE 7-1.3 ADMINISTRATION**

The fund shall be administered in accordance with regulations adopted by the board of governors.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

#### **RULE 7-1.4 DEFINITIONS**

For this rule the following terms shall have the following meanings:

**(a) Claimant.** "Claimant" means a person or persons or any legal entity that has filed a claim with The Florida Bar for a grant of monetary relief from the fund based on a claim that the person or entity has suffered a reimbursable loss.

**(b) The Bar.** "The bar" means The Florida Bar.

**(c) The Board.** "The board" means the board of governors of The Florida Bar.

**(d) The Committee.** The "committee" means the "Clients' Security Fund Committee," a standing committee of the bar.

**(e) The Fund.** "The fund" means the Clients' Security Fund of The Florida Bar.

**(f) Reimbursable Loss.** "Reimbursable loss" means a loss suffered by a claimant by reason of misappropriation, embezzlement, or other wrongful taking or conversion of money or other property by a member of The Florida Bar when acting: (1) as a lawyer; or (2) in a fiduciary capacity customary to the practice of law as a lawyer for the claimant and related to the

representation of the claimant as the claimant’s lawyer; or (3) as an escrow holder or other fiduciary having been designated as such by a client in the matter in which the loss arose or having been so appointed or selected as the result of a lawyer and client relationship; or (4) as a lawyer within a law firm of the member of The Florida Bar who was hired by the claimant to provide the legal service; or (5) as the claimant’s lawyer where a nonlawyer employee commits the misappropriation, embezzlement, or other wrongful taking or conversion provided, however, that such a relationship was not for a wrongful purpose and the claimant was not guilty of any bad faith in putting the money or other property in possession or control of the lawyer.

**(g) CSF Contribution.** “CSF Contribution” means the total amount of the annual membership fee allocated to the fund as determined each fiscal year.

**(h) Fee Claim.** “Fee claim” means a reimbursable loss based on fees paid to a member of The Florida Bar for services to be rendered.

**(i) Misappropriation Claim.** “Misappropriation claim” means a reimbursable loss for misappropriation, embezzlement, or other wrongful taking or conversion of money or other property by a member of The Florida Bar.

#### COMMENT

Rule 7-1.4 is the definitional section of the Clients’ Security Fund rules. Subsection (f) defines what is a reimbursable loss. If a claim does not fall within the definition of a reimbursable loss, a claim cannot be paid.

Central to the definition of a reimbursable loss is the existence of a lawyer-client relationship. If the lawyer was not acting in the capacity of a lawyer, the loss is not reimbursable. For this reason, subsection (f)(2) states that the lawyer must be acting in a fiduciary capacity customary to the practice of law. This requires that but for the fact that the individual was a lawyer, the individual would not have been acting in the fiduciary capacity. For instance, if the lawyer is appointed by the court to act as personal representative, the relationship would be customary to the practice of law and the loss reimbursable. On the other hand, if an individual is acting in a capacity unrelated to a lawyer-client relationship where their status as a lawyer is not material to the claim, the loss would not be reimbursable.

As noted in the Rules of Professional Conduct, when a client contracts for legal services, the client establishes a relationship not only with the individual lawyer but may also establish a relationship with the law firm. Subsection (f)(4) recognizes this. As a result, for purposes of determining whether the claimed loss is a reimbursable loss, it will be assumed that the relationship is with both the individual lawyer and the law firm. Therefore, if a client enters into an attorney-client relationship with attorney A but another attorney in the law firm commits the misappropriation, embezzlement, or other wrongful taking or conversion of money or other property, the claim may be considered a reimbursable loss. All other prerequisites to payment apply to the claim and will be considered in analyzing the claim and recommending denial or payment. This includes, but is not limited to, the requirement that the defalcating attorney no longer be a member in good standing. However, it is not required that the attorney the claimant hired, attorney A, be disciplined or no longer be in good standing as attorney A may be innocent

of any ethical wrongdoing not having taken part in the theft. Failure to consider such a loss a reimbursable loss will unjustly penalize the claimant and subject attorney A to discipline for theft by others over whom the attorney has no control.

Subsection (f)(5) creates an exception for the requirement that an attorney-client relationship exist if the theft is by a nonlawyer employee of the lawyer or law firm. As noted above, the claimant has hired the attorney and/or law firm and should not be penalized for theft by a nonlawyer employee of the firm over whom The Florida Bar does not have disciplinary jurisdiction. Consequently, if the theft is by a nonlawyer employee, the claim may be considered a reimbursable loss and analyzed as provided elsewhere in this chapter.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended May 29, 2009 by the Board of Governors of The Florida Bar, effective July 1, 2009; amended May 28, 2010, by the Board of Governors of The Florida Bar, effective July 1, 2010; amended July 27, 2012 by the Board of Governors of The Florida Bar, effective July 27, 2012.

## **7-2. COMMITTEE**

### **RULE 7-2.1 COMMITTEE'S DUTIES**

**(a) Duties Assigned by Board.** The committee shall have such duties in the administration of the fund as shall from time to time be prescribed by the board.

**(b) Adoption of Regulations.** The committee may adopt additional regulations for the efficient administration of the fund as approved by the board.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

### **RULE 7-2.2 INVESTIGATIONS**

**(a) Investigation Required.** The committee shall investigate every claim for relief that appears to meet the requirements of this chapter. As part of the investigation, the committee may request the issuance of subpoenas for the production of documentary evidence before an investigating member of the committee or the committee. The subpoena will be issued by the designated reviewer assigned to that claim. The subpoena will be served by an investigator employed by The Florida Bar or in the manner provided by law for the service of process. Any persons who without adequate excuse fail to obey such a subpoena served upon them may be cited for contempt of the Supreme Court of Florida in the manner provided by rule 3-7.11.

**(b) Payment of Meritorious Claims.** The committee may approve for payment from the fund claims up to a limit of \$10,000 unless, within 14 days from the date of assignment for review, the designated reviewer notifies fund staff to agenda the claim for board action. The board may otherwise approve for payment from the fund claims found to be meritorious and in accordance with the Clients' Security Fund Rules.

**(c) Form for Claim.** A form prescribed by The Florida Bar must be completed to initiate a claim.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252) Amended December 15, 2000 by the Board of Governors of The Florida Bar; Amended May 29, 2009, effective July 1, 2009, by the Board of Governors of The Florida Bar. Amended and effective October 5, 2012, by the Board of Governors of The Florida Bar.

### **RULE 7-2.3 PAYMENTS**

**(a) Payment is Discretionary.** If, in the judgment of the board or the committee, as the case may be, a reimbursable loss has been sustained by a claimant and the circumstances warrant relief, then, after taking into consideration the resources of the fund and the priority to be assigned to such claim, the committee or the board may, in the exercise of their respective discretion, as a matter of grace and not of right, grant monetary relief within the amount of their respective authority as set forth in rule 7-2.2(b). The decision of the board is final and not subject to appeal.

**(b) Determination of Amount and Manner of Payment.** Such monetary relief shall be in such an amount as the board may determine and shall be payable in such a manner and upon such conditions and terms as the board shall prescribe.

**(c) No Right to Payment.** No claimant shall have any right, legal or equitable, contractual or statutory, to a grant of monetary relief from the fund, and neither a determination by the board to pay any portion or all of any claim, nor partial payment, shall vest any such right in the claimant.

### **COMMENT**

Payment from the Clients' Security Fund is discretionary. There is no right to payment. If approved, the amount of payment is limited by the regulations and the amount in the fund. Approved claims may only include the amount paid in attorney's fees or the amount of the misappropriation. Other damages incurred by the claimant will not be reimbursed. For example, the fund will not reimburse loss of interest, charges for telephone calls or travel, the difference between the settlement amount and the amount the claimant thought the matter should have been settled for, the loss in value of an item or property, or other sums not paid directly to the attorney.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); amended December 15, 2000 by the Board of Governors of The Florida Bar; Amended May 29, 2009, effective July 1, 2009, by the Board of Governors of The Florida Bar; amended May 28, 2010, by the Board of Governors of The Florida Bar, effective July 1, 2010.

### **RULE 7-2.4 PREREQUISITES TO PAYMENT**

**(a) Members in Good Standing.** Payments from the fund will not be made unless the lawyer is suspended, deceased, placed on the inactive list for incapacity not related to misconduct, or has had the member's status as a member of The Florida Bar revoked or terminated. However, if the theft is by a nonlawyer employee of the lawyer or law firm, a payment may be made even if the lawyer remains in good standing.

**(b) Complaints Required.** The filing of a grievance complaint with The Florida Bar against the attorney claimed against may be required as a prerequisite to the consideration of a Clients' Security Fund claim.

### COMMENT

At times, the fund receives claims against an attorney where the theft was by a nonlawyer employee of the lawyer or law firm. As stated elsewhere in these rules, the fund may require that the claimant file a grievance complaint against the attorney. Rather than resulting in suspension or disbarment, the grievance may result in diversion, a finding of minor misconduct, or a finding of probable cause. Should this be the case, the attorney would remain in good standing. As the claimant hired the lawyer and/or law firm, the claimant should not be penalized for theft by a nonlawyer employee of the firm and discipline should not be imposed for the sole purpose of meeting a prerequisite to payment. Therefore, pursuant to this rule, the status of the attorney, in and of itself, will not act as a bar to payment of claims where the theft is by a nonlawyer employee of the lawyer or law firm. All other prerequisites to payment, including, but not limited to, exhaustion of remedies, apply to the claim and will be considered in analyzing the claim and recommending denial or payment. The prerequisite of exhaustion of remedies may include the claimant filing a suit against the lawyer, law firm, or nonlawyer employee.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); amended May 28, 2010, by the Board of Governors of The Florida Bar, effective July 1, 2010; amended July 25, 2014 by the Board of Governors of The Florida Bar, effective July 25, 2014.

### RULE 7-2.5 ASSIGNMENT IN FAVOR OF BAR

**(a) Assignment as Prerequisite for Payment.** As a condition precedent to the grant of monetary relief, the claimant shall make an assignment in favor of the bar of the subrogation rights or of the judgment (or the unsatisfied portion thereof) obtained by the claimant against the offending member or members of the bar, and the bar shall be entitled to be reimbursed to the extent of the amount of the relief granted with respect to such claim from the first moneys recovered by reason of such subrogation or assignment.

**(b) Priority of Reimbursement to Bar.** Ordinarily, as a matter of policy, however, in cases where the relief granted shall have been for less than the full amount that would have been allowable except for considerations of allocating available resources of the fund or other reasons related to the administration of the fund, the bar shall not be reimbursed for the amount of the relief granted with respect to such claim until and unless the last moneys shall be recovered by reason of such subrogation or assignment.

**(c) Reassignment of Claim to Claimant.** The bar shall have the right but shall be under no obligation to any claimant to seek recovery from the offending lawyer or lawyers of all or any portion of such claimant's claim; and if the bar elects not to pursue recovery, a claimant shall be entitled to receive from the bar, as the owner of the claim or judgment, a reassignment thereof sufficient to permit the claimant's collection thereof in the claimant's own name, provided that such reassignment shall reserve in favor of the bar a lien upon the proceeds of any recovery to

the extent of the relief paid to the claimant from the fund. In the event of such reassignment, the claimant shall keep the bar fully informed of all the claimant efforts to obtain recovery.

**(d) Recoveries.** Recoveries or repayments to the bar on account of payments from the fund will be restored to the fund.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); May 29, 2009, effective July 1, 2009, by the Board of Governors of The Florida Bar.

### **7-3. FUNDS**

#### **RULE 7-3.1 MEMBERSHIP FEES ALLOCATION**

The board will allocate from the annual membership fees of the members of The Florida Bar up to \$25 per member for the fund. In addition, the board will allocate up to \$25.00 per motion to appear pro hac vice or verified statement in arbitration filed pursuant to rules 1-3.10 and 1-3.11.

May 29, 2009, effective July 1, 2009, former rule 7-3.1, relating to "Funding" was deleted and former rule 7-3.2 relating to membership fees allocation was renumbered to 7-3.1 by the Board of Governors of The Florida Bar; amended April 19, 2013, by Board of Governors of The Florida Bar, effective July 1, 2013.

#### **RULE 7-3.2 GIFTS**

The board is authorized to accept for the fund any contribution or gift offered to it for use in furtherance of the purposes of the fund.

Former Rule 7-3.2 relating to membership fee allocation, was amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); May 29, 2009, Board of Governors of The Florida Bar amended and renumbered rule 7-3.2 relating to fees as rule 7-3.1, effective July 1, 2009. Rule 7-3.3, relating to gifts, was renumbered as rule 7-3.2.

### **7-4. AMENDMENTS**

#### **RULE 7-4.1 GENERALLY**

The clients' security fund rules may be amended in accordance with rule 1-12.1.

Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

### **7-5. RECORDS**

#### **RULE 7-5.1 ACCESS TO RECORDS**

**(a) Confidentiality.** All matters, including, without limitation, claims proceedings (whether transcribed or not), files, preliminary and/or final investigation reports, correspondence, memoranda, records of investigation, and records of the committee and the board of governors involving claims for reimbursement from the clients' security fund are property of The Florida Bar and are confidential.

**(b) Publication of Payment Information.** After the board of governors has authorized payment of a claim, the bar may publish the nature of the claim, the amount of the reimbursement, and the name of the lawyer who is the subject of the claim. The name, address, and telephone number of the claimant shall remain confidential unless specific written permission has been granted by the claimant permitting disclosure.

**(c) Response to Subpoena.** The Florida Bar shall, pursuant to valid subpoena issued by a regulatory agency (including professional discipline agencies) or other law enforcement agencies, provide any documents that are otherwise confidential under this rule unless precluded by court order. The Florida Bar may charge a reasonable fee for the reproduction of the documents.

**(d) Response to False or Misleading Statements.** The Florida Bar may make any disclosure necessary to correct a false or misleading statement made concerning a claim.

**(e) Statistical Information.** Statistical information and/or analyses that are compiled by the bar from matters designated as confidential by this rule shall not be confidential.

**(f) Evidence of Crime.** The confidential nature of these proceedings will not preclude the giving of any information or testimony to authorities authorized to investigate alleged criminal activity.

Added effective October 29, 1992 (608 So.2d 472); amended December 13, 2013, by the Board of Governors of The Florida Bar, effective December 13, 2013.