

## **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 establishes a separate fund designated "Clients' Security Fund of The Florida Bar."

Amended and effective March 29, 2019 by the Board of Governors of The Florida Bar.

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

The Clients' Security Fund Program serves as the staff agency for Clients' Security Fund matters with primary responsibility for:

(a) investigating and reporting on claims for amounts of \$1,000 or less;

(b) closing claims that are clearly not covered by the fund;

(c) closing claims when the underlying grievance matter has been closed by the bar without discipline, the lawyer remains a member in good standing, the claimant has died before a recommendation has been made by the committee, or the claimant has withdrawn the claim, except as provided in this chapter;

(d) preparing the committee agenda and recording the minutes of the committee meetings;

(e) presenting claims to the board of governors;

(f) notifying claimants of ultimate disposition;

(g) coordinating payouts with the finance and accounting department;

(h) monitoring subrogation rights on previously paid claims; and

(i) preparing an annual report detailing the financial activities of the fund to be approved by the committee chair and published in *The Florida Bar Journal* or *News*.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended and effective March 29, 2019 by the Board of Governors of The Florida Bar; amended March 3, 2022, effective May 2, 2022 (SC20-1467).

## **RULE 7-1.4 DEFINITIONS**

For this chapter these terms have the following meanings:

**(a) Claimant.** “Claimant” means a person or 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 an actual loss suffered by a claimant by 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;

(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;

(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;

(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.

**(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. Subdivision (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, subdivision (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 that person's status as a lawyer is not material to the claim, the loss would not be reimbursable. For example, if the lawyer was acting as a financial advisor or was involved in a business transaction outside of the lawyer-client relationship, even if there otherwise is a lawyer-client relationship between the claimant and the lawyer, the loss would not be reimbursed by the fund.

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. Subdivision (f)(4) recognizes this. As a result, for purposes of determining whether the claimed loss is a reimbursable loss, it is assumed that the relationship is with both the individual lawyer and the law firm. Therefore, if a client enters into a lawyer-client relationship with lawyer A but another lawyer 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 lawyer no longer be a member in good standing. However, it is not required that the lawyer the claimant hired, lawyer A, be disciplined or no longer be in good standing as lawyer 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 lawyer A to discipline for theft by others over whom the lawyer has no control.

Subdivision (f)(5) creates an exception for the requirement that a lawyer-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 lawyer 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; amended and effective March 29, 2019 by the Board of Governors of The Florida Bar; amended March 3, 2022, effective May 2, 2022 (SC20-1467). Amended and effective December 2, 2022 by The Florida Bar Board of Governors.

## **7-2. COMMITTEE**

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

**(a) Duties Assigned by Board.** The committee has duties in the administration of the fund as prescribed by the board.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended and effective March 29, 2019 by the Board of Governors of The Florida Bar.

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

**(a) Investigation Required.** The committee investigates every claim for relief that appears to meet the requirements of this chapter. Investigating members of the committee prepare a written report on a form furnished by the bar on all claims assigned to each of them. The investigating member may recommend that the claim be approved and provide a loss amount; denied and state all reasons for denial; or deferred and state the reason. The committee will consider the claim at the next scheduled meeting. While the recommendation of the investigating member will be given deference, the committee may disagree with the recommendation, including the loss amount. 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) Designated Reviewer.** The committee's recommendation is forwarded to the designated reviewer. The designated reviewer promptly reviews the report of the committee and reports recommendations to staff for inclusion in the agenda for the consideration of the board. The designated reviewer may recommend that the claim be approved and provide a loss amount; denied and state all reasons for denial; or sent back to the committee for further investigation. To the extent possible, guidance will be provided to the committee. While the recommendation of the committee will be given deference, the designated reviewer may disagree with the recommendation, including loss amount.

**(c) Board of Governors.** On receipt of the report of the designated reviewer, the claim is placed on the agenda of the board. The board may recommend that the claim be approved and provide a loss amount; denied and state all reasons for denial; or sent back to the committee for further investigation. While the recommendation of the designated reviewer will be given deference, the board may disagree with the recommendation, including loss amount.

**(d) 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 disagrees with the recommendation or 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.

**(e) Form for Claim.** A form prescribed by the bar must be completed to initiate a claim. A lawyer representing a claimant must give to the committee a written statement that the lawyer will not accept a fee from the claimant for services rendered in connection with a claim against the fund.

**(f) Responsibility of Claimant.** A claimant has a responsibility to respond to requests from staff for information that is necessary to process the claim. If a claimant fails to provide staff with the requested information after staff has made three attempts to obtain the information, staff may recommend to the chair of the committee that the claim be closed without further action. If the chair agrees, the claim will be closed without referral to the committee or designated reviewer.

### **Comment**

When a claim is received by the Clients' Security Fund department, it is reviewed by staff for completeness. For example, staff reviews the claim to determine whether proof of loss has been provided. Staff writes the claimant requesting any missing information that is necessary and an essential element to process the claim. The claimant is given a total of 90 days in 30 day increments to provide information that is necessary and an essential element in processing a claim. If the claimant fails to respond after 3 written attempts have been made, staff may recommend to the chair of the committee that the claim be closed. If the chair agrees, the claim will be closed without further review. Should the claimant provide the necessary information at a later date, the claim will be reopened. For purposes of determining whether the claim is timely, the date the claim was first filed will be used.

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; amended and effective March 29, 2019 by the Board of Governors of The Florida Bar.

## **RULE 7-2.3 PAYMENTS**

**(a) Payment is Discretionary.** The board or the committee may grant monetary relief up to the amount of its authority as set forth in this chapter if either determines that a reimbursable loss has been sustained by a claimant and the circumstances warrant relief, taking into consideration the resources of the fund and the claim's priority. Any grant of monetary relief is solely at the board or the committee's discretion within its respective authority and is not a right of any claimant. No reimbursement will be made from the fund unless and until reimbursement has been authorized by the board or the committee within its respective authority, and the claimant has executed assignments or other documents as reasonably requested by the board or committee. Staff may require appropriate documentation that conditions imposed on reimbursement of the claim have been satisfied and that the identity of the proper party or party's representative is verified before payment. Neither the bar, the board, the committee, nor staff will incur any liability for nonpayment of claims or for erroneous payments. The decision of the board is final and not subject to appeal or other review.

### **(b) Determination of Amount and Manner of Payment.**

(1) *Determination of Amount and Conditions of Payments.* The board will determine the amount of relief and the manner, conditions, and terms on which claims will be paid.

(2) *Fee Claims.* The maximum amount payable for an individual fee claim is \$5,000. Fee claims may be paid on approval except as provided elsewhere in this chapter.

(3) *Misappropriation Claims.*

(A) The maximum amount payable for a misappropriation claim is \$250,000.

(B) Misappropriation claims with an approved loss amount of \$1,000 or less may be paid on approval.



(C) All approved misappropriation claims of more than \$1,000 will be held for payment until the end of the fiscal year in which they were approved and will be pooled for payment.

(D) Misappropriation claims that relate to services under a contingent fee or sliding scale agreement will be considered in the same manner as other claims. If a copy of the written fee agreement is unavailable, or the agreed-on fee cannot be determined, it is presumed that the fee agreement contained the standard language mandated by the Rules Regulating The Florida Bar or Florida law. In the absence of other evidence, the committee will presume that the fee charged under the fee agreement was the maximum permitted by the rules or Florida law.

(4) *Unclaimed Funds.* If any approved payment remains unclaimed at the close of the fiscal year following the fiscal year in which the claim is approved, those funds will be returned to the fund. A final request for response will be sent to the claimant(s) prior to the return of the funds.

**(c) No Right to Payment.** No claimant has any right, legal or equitable, contractual or statutory, to a grant of monetary relief from the fund. Neither a determination by the board to pay any portion or all of any claim, nor partial payment, vests 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 these rules and the amount in the fund. Approved claims may include only 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 lawyer. If it is determined that part of the money misappropriated by the lawyer included sums to be used to pay a claimed lien, the amount of the lien will not be deducted from the loss. The claimant is liable for the lien.

Before payment, staff will contact the claimant to obtain information necessary for payment. If staff learns that the claimant has died, staff will request documentation regarding the claimant's estate and may only issue payment after the documentation has been provided and the proper payee is identified. If staff is in doubt regarding the proper payee, staff will seek guidance from a designated reviewer.

As an example, in misappropriation claims where copies of the contingent fee or sliding scale agreements are not available, the permissible maximum contingent fee contract for a settlement reached without litigation in a personal injury or wrongful death case is capped in these rules. If the gross proceeds from the personal injury or wrongful death settlement totaled \$15,000.00, and the fee is capped at 33 1/3%, the committee will presume that the fee agreed to was \$5,000, and the amount misappropriated would be \$10,000. If the underlying claim was against the state or any of its agencies or subdivisions, then the maximum allowable contingency fee is 25% per Fla. Stat. § 768.28(8).

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; amended and effective March 29, 2019 by the Board of Governors of The Florida Bar; amended March 3, 2022, effective May 2, 2022 (SC20-1467). Amended and effective December 2, 2022 by the Board of Governors of The Florida Bar.

## **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. A claim against a member in good standing will be held until final disposition of the disciplinary matter. A claim alleging that a suspended lawyer took fees for legal services after the entry of an order of suspension will be processed in accordance with these rules. A claim alleging that a lawyer who has had the lawyer's status as a member of The Florida Bar revoked or terminated took fees for legal services after the lawyer's status was revoked or terminated will be closed by staff.

**(b) Complaints Required.** The filing of a grievance complaint with The Florida Bar against the lawyer claimed against may be required as a prerequisite to the consideration of a Clients' Security Fund claim. The committee may require as prerequisites to the granting of relief from the fund that the claimant file a complaint against the lawyer with the appropriate state attorney's office; file a civil suit in an appropriate court; or cooperate with the committee in appropriate proceedings against the lawyer. It is not a prerequisite to claims against deceased members that discipline was imposed or pending at the time of the death.

**(c) Timeliness.** A claim will not be considered unless it has been filed within 3 years after the date the disciplinary action becomes final. If the claim is against a deceased lawyer, the claim will not be considered unless it has been filed within 3 years of the date of the lawyer's death.

**(d) Exhaustion of Remedies.** Claimants should reasonably exhaust other remedies before seeking reimbursement from the fund. Other remedies include bonds, professional liability policies, third party responsibility, the defalcating lawyer's partners, and a deceased lawyer's estate. In determining whether a claimant has met this requirement, the factors which the committee may consider include, but are not limited to, the:

- (1) availability of funds;
- (2) likelihood of collection;
- (3) amount of the loss;

(4) ability of the claimant to retain legal counsel or to proceed pro se; and

(5) ability to locate the lawyer.

**(e) Proof of Payment.** A claimant must provide credible evidence that the funds the claimant seeks to recover were in the lawyer's possession or control before a claim may be approved. The following may be used to establish the payment, the amount of the payment, or the amount of the loss:

(1) documentary evidence;

(2) a finding by a court of competent jurisdiction;

(3) an admission by the lawyer; or

(4) a finding in an audit performed by a Florida Bar staff auditor.

### **Comment**

At times, the fund receives claims against a lawyer 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 lawyer. 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 lawyer would remain in good standing. As the claimant hired the lawyer 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, under this rule, the status of the lawyer, 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 civil 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; amended and effective March 29, 2019 by the Board of Governors of The Florida Bar; amended March 3, 2022, effective May 2, 2022 (SC20-1467). Amended and effective December 2, 2022 by the Board of Governors of The Florida Bar.

## **RULE 7-2.5 CLAIMS ORDINARILY DENIED**

**(a) Claims by Relatives, Partners, or Other Close Associates.** Claims by relatives, partners, or other close associates of the lawyer will ordinarily be denied.

**(b) Lawyer-Client Relationship.** The committee will consider for payment only those claims arising out of a lawyer-client relationship, except as provided elsewhere in this chapter. The claim will be denied where the lawyer, unrelated to a lawyer-client relationship, is a personal representative, testamentary trustee, guardian, or escrow agent for the claimant, and the lawyer's status as the personal representative, testamentary trustee, guardian, or escrow agent is not due to or the result of an existing lawyer-client relationship with the claimant.

**(c) Claims by Entities.** The committee and the board ordinarily will not consider claims by government agencies, institutional lenders, insurance companies, publicly owned entities including their subsidiaries and affiliates, entities that fail to disclose to the committee the names and addresses of their direct and indirect beneficial and record owners, and subrogees, brought on their behalf and not as representatives.

**(d) Payment from Other Sources.** No claim will be approved where the defalcating lawyer was bonded in any capacity that protected the rights of the claimant, where the defalcating lawyer was insured under a lawyers' professional liability policy or a policy of a similar nature that protected the rights of the claimant, or where the claim is payable from any other source. However, the committee, may recommend payment of the difference of what the claimant received from the bond, insurance policy, or other source

and the amount of the loss if the monies from the bond, insurance policy, or other source were exhausted and additional recovery cannot be sought from the bond, insurance policy, or other source.

**(e) Useful Services.** The claim may be denied if services were performed that were useful to the claimant.

(1) A lawyer may be deemed to have provided useful services to a claimant when, after accepting a fee from the client, the lawyer:

(A) files a pleading or other document on behalf of the claimant that moves the claimant 's case or matter forward or protects the claimant 's interests, regardless of the quality of the pleading or other document;

(B) engages in substantive communication about the matter for which the lawyer was hired;

(C) attends a court proceeding or proceedings that advance the case or cause of the claimant or protects the claimant 's interests;

(D) engages in investigation or discovery;

(E) attends a mediation or arbitration or other alternative dispute resolution proceeding;

(F) prepares a document or documents minimally suitable for use by the claimant in a legal proceeding or transactional matter; or

(G) provides legal advice and counsel to the claimant.

(2) The lawyer will not be deemed to have provided useful services when the services were rendered for a claimant who hired the lawyer:

(A) after the entry of an order of suspension; or

(B) before the entry of an order of suspension if the services were on a new matter accepted or begun after the entry of the order of suspension.

**(f) Investment Advice.** Investment advice given by the claimant's lawyer, in and of itself, is not a ground for seeking reimbursement from the fund regardless of whether the advice results in a loss to the claimant. The board or committee may consider a claim for reimbursement when a lawyer accepts money or property from a claimant to be used for investment purposes when the lawyer does not actually invest the money, the lawyer steals the money or property, or the lawyer engages in fraud to obtain the money or property. The loss due to lawyer theft or fraud under these circumstances must be the result of a direct and current lawyer-client relationship to be considered for reimbursement.

**(g) Unclean Hands.** A claim may be denied if the committee finds that the claimant entered into the lawyer-client relationship for a wrongful purpose; acted in bad faith in putting the money or other property in possession or control of the lawyer; used the lawyer-client relationship or knowingly permitted the lawyer to use the lawyer-client relationship to commit fraud, deception, theft, or other misconduct; or if the claimant's conduct reflects acts or omissions amounting to unclean hands on the part of the claimant in connection with the claimed loss or the underlying lawyer-client relationship.

### **Comment**

The existence of a lawyer-client relationship is central to the issue of whether a loss is reimbursable. If the lawyer is not acting in the capacity of a lawyer, the loss is not reimbursable. Therefore, the loss will be denied if an individual is acting in a capacity unrelated to a lawyer-client relationship where the status as a lawyer is not material to the claim.

The rules allow the committee to recommend payment of the difference between what the claimant received and the loss when

payment is available from specific other sources. However, the claim will be denied for failure to exhaust remedies if the claimant does not participate in the process to receive payment available from other sources.

Claims based on investment advice ordinarily are not reimbursable. Failure of an investment to perform as represented to or anticipated by the claimant is not a reimbursable loss. Theft or misappropriation of money or property by a lawyer where the lawyer represented to the claimant that the money or property would be used for an investment when no investment was made may be considered a reimbursable loss. In those circumstances the funds were obtained by fraud or a ruse for the purpose of being misappropriated by the lawyer. No investment existed, nor was it the intent of the lawyer to invest the funds. As with all other claims, all claim prerequisites must be met, including that the loss was the result of a direct and current lawyer-client relationship. Factors to consider in determining whether the loss was due to a direct and current lawyer-client relationship include the number, nature, and timing of prior transactions between the claimant and the lawyer.

Added and effective March 29, 2019 by the Board of Governors of The Florida Bar; amended March 3, 2022, effective May 2, 2022 (SC20-1467).

## **RULE 7-2.6 ASSIGNMENT IN FAVOR OF BAR**

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

**(b) Priority of Reimbursement to Bar.** In cases where the relief granted is 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 will not be reimbursed for the amount of the relief granted with respect to a claim until and unless the last moneys are recovered by reason of the subrogation or assignment.

**(c) Reassignment of Claim to Claimant.** The bar has the right but is under no obligation to any claimant to seek recovery from the offending lawyer or lawyers of all or any portion of a claimant's claim. If the bar elects not to pursue recovery, a claimant will be entitled to receive from the bar, as the owner of the claim or judgment, a reassignment sufficient to permit the claimant's collection thereof in the claimant's own name, provided that the reassignment reserves in favor of the bar a lien on the proceeds of any recovery to the extent of the relief paid to the claimant from the fund. In the event of reassignment, the claimant must 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; amended and effective March 29, 2019 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 bar members up to \$25 per member for the fund. In addition, the board will allocate up to \$25 per motion to appear pro hac vice or verified statement in arbitration filed pursuant to rules 1-3.10 and 1-3.11. The fund will operate on a fiscal year basis, concurrent with the fiscal year of the bar. Any sums remaining in the fund after all approved claims have been paid will be treated consistent with the Standing Board Policies.

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; amended and effective March 29, 2019 by the Board of Governors of The Florida Bar.

## **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 or final investigation reports, correspondence, memoranda, records of investigation, and records of the committee and the board involving claims for reimbursement from the clients' security fund are property of the bar and are confidential.

**(b) Publication of Payment Information.** After the board 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 remains confidential unless specific written permission has been granted by the claimant

permitting disclosure. Publicity of fund activities is at the discretion of the board.

**(c) Response to Subpoena.** The bar will, under 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 bar may charge a reasonable fee for the reproduction of the documents.

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

**(e) Statistical Information.** Statistical information or analyses that are compiled by the bar from matters designated as confidential by this rule are not 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; amended and effective March 29, 2019 by the Board of Governors of The Florida Bar.