

# **Rules of the Trustees of the Lawyers' Fund for Client Protection of the Supreme Court of Delaware**

## **Rule 1. Meetings and Quorum**

- (a) Meetings. Meetings of the Trustees of the Lawyers' Fund for Client Protection (the "Trustees" of the "Lawyers' Fund") shall be held at the call of the Chair or a majority of the Trustees and shall be held at least once each year, upon reasonable notice. The Chair shall preside at all meetings of the Trustees at which the Chair is present. If the Chair is absent from any meeting, the Chair or a majority of the Trustees present at the meeting shall designate another Trustee to preside.
- (b) Quorum. Seven Trustees shall constitute a quorum. A majority of the Trustees present at a duly constituted meeting may exercise any powers held by the Trustees, except to the extent that this rule provides otherwise.

## **Rule 2. Maintaining the Lawyers' Fund**

- (a) Accounts. The Chair, with the assistance of the Executive Director, shall maintain the Lawyers' Fund in such separate banking or investment accounts as the Trustees may from time to time direct in accordance with Supreme Court Rule 66 and these rules.
- (b) Disbursements. Checks or withdrawal authorizations on accounts maintained under Rule 2(a) shall be made only on the dual signatures of a Trustee and the Executive Director or two Trustees. A disbursement for the payment of a claim made under Rule 3 shall be made only upon the action of the Trustees in accordance with Rule 3(e).
- (c) Recordkeeping. The Chair, with the assistance of the Executive Director, shall insure that accurate records of all receipts and disbursements of the Lawyers' Fund are kept. The Executive Director, or another person designated by the Chair, shall keep minutes of the meetings of the Trustees and shall furnish a copy thereof to each Trustee. The Executive Director shall maintain any other records and papers of the Trustees.

## **Rule 3. Claims for Reimbursement from the Lawyers' Fund**

- (a) Grounds for Claims. The Trustees will consider for reimbursement from the Lawyers' Fund claims for losses, the reimbursement of which will advance the purpose of the Lawyers' Fund as determined by the Trustees in the exercise of their discretion, and which arise from (1) the misappropriation or dishonesty of a member of the Delaware Bar, or (2) the death or incapacity of a Delaware lawyer. The spouse, law partner, attorney stockholder in a professional corporation, associate or conspirator of any defaulting attorney shall not have any right to file claims for reimbursement from the Lawyers' Fund.
- (b) Time limitations. Claims for losses must be filed with the Trustees within two years after the claimant discovered or should have discovered the misappropriation or dishonesty. No claim shall be recognized which is based upon a misappropriation or dishonest act or acts that occurred before January 1, 1967.
- (c) Submission of claims. Claims shall be submitted in writing on a form approved by the Trustees, which may be found on the Lawyers' Fund website. The claim form must be

signed by the claimant or the claimant's personal representative under oath and provide the facts and information requested by the form.

- (d) Investigation of claims. Upon the filing of a claim the Chair shall assign it to one or more Trustees for investigation. Such Trustees may take testimony under oath of the claimant and any other witnesses and may employ the services of a reporter to make a record of the proceedings if they deem it necessary. Such Trustees may compel by subpoena the appearance of witnesses (including the claimant) and the production of pertinent books, papers and documents for investigatory, or hearing purposes. Application may be made to the Supreme Court to enforce the appearance and testimony of any witnesses and the production of any documents subpoenaed. Upon conclusion of the investigation, the assigned Trustees shall submit a report and recommendation to the Chair, with a copy to the Executive Director. The claim will then be submitted for consideration by the Trustees.
- (e) Determination of merits. The Trustees shall determine, by an affirmative vote of at least seven Trustees at a duly constituted meeting and in their sole discretion, whether a claim merits reimbursement from the Lawyers' Fund; the amount of any such reimbursement; the time, place, and manner of its payment; the conditions upon which payment shall be made; and the order in which reimbursements shall be made. In exercising their discretion, the Trustees may consider such factors as they deem appropriate, including:
  - (1) the amounts available and likely to become available to the Lawyers' Fund for payment of claims;
  - (2) the size and number of claims that are likely to be presented in the future;
  - (3) the total amount of losses caused by misappropriations of any one attorney or associated groups of attorneys;
  - (4) the unreimbursed amounts of claims recognized by the Trustees in the past as meriting reimbursement, but for which reimbursement has not been made in the total amount of the loss sustained;
  - (5) the amount of the claimant's loss as compared with the amount of the losses sustained by others who may merit reimbursement from the Lawyers' Fund;
  - (6) the degree of hardship the loss has caused the claimant; and
  - (7) the extent to which any negligence of the claimant contributed to the loss.
- (f) Limitations on payments. No payment on an allowed claim shall exceed 10% of the Lawyers' Fund balance at the time of payment. The total of all payments to claimants in a calendar year shall not exceed 25% of the Lawyers' Fund balance. Trustees may make partial payments on claims allowed, and any unpaid portion of an allowed claim may, in the Trustees' discretion, be carried forward to succeeding years. No claim shall be allowed to the extent that the member of the Bar was bonded or the loss otherwise covered.
- (g) Subrogation and conditions of payments. Where a claim is allowed by the Trustees, the Trustees shall be subrogated to the amount of such claim paid or to be paid by the Lawyers' Fund, and the Trustees may require each claimant, as a condition of payment, to execute such instruments, to take such action, and to enter into such agreements as the Trustees

may deem appropriate, including but not limited to assignments, subrogation agreements, trust agreements, and promises to cooperate with the Trustees in making and prosecuting claims or charges against any person.

- (h) No attorneys' fees. No attorney's fee shall be paid by a claimant in connection with any allowance made by the Trustees, and any attorney representing a claimant shall be required to give to the Trustees a written statement that the attorney will accept no fee from the claimant for services rendered in connection with any recovery from the Lawyers' Fund.
- (i) No appeals. No person has a legal right to reimbursement from the Lawyers' Fund, and there shall be no appeal from a decision of the Trustees.

#### **Rule 4. Conflicts of Interest**

- (a) A Trustee who has or has had a client-lawyer relationship or a financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.
- (b) A Trustee with a past or present relationship, other than as provided in subsection (a) above, with a claimant or the lawyer whose alleged conduct is the subject of the claim, or who has another potential conflict of interest, shall disclose such relationship to the Trustees and, if the Trustees deem appropriate, that Trustee shall not participate in any proceeding relating to such claim.

#### **Rule 5. Immunity**

All communications to and from the Trustees relating to claims made pursuant to Rule 3 of these rules, all evidence given in claim investigations, and discussions relating thereto shall be absolutely privileged, and no civil suit predicated thereon may be instituted against any claimant, witness or lawyer. Trustees, auditors and staff, and receivers and their agents and staff shall be immune from civil suit for any conduct in the discharge of their official duties.

#### **Rule 6. Confidentiality**

- (a) Claims, proceedings, and reports involving claims for reimbursement are confidential until the Trustees authorize reimbursement to the claimant, except as provided in subsection (b) of this rule, unless provided otherwise by law. After payment of a reimbursement, the Trustees may publicize the nature of the claim, the amount of the reimbursement, and the name of the lawyer. The name and the address of the claimant shall not be publicized by the Trustees unless the claimant has explicitly granted permission.
- (b) This rule shall not be construed to prohibit (1) access to relevant information by professional disciplinary agencies or such other law enforcement authorities as the Trustees shall authorize, (2) the release of statistical information that does not disclose the identity of the lawyers or the parties, or (3) the use of such information as is necessary to pursue the Lawyers' Fund's subrogation rights under Rule 3.

## **Rule 7. Audits**

- (a) At the direction of a Justice of the Supreme Court, upon request of the Office of Disciplinary Counsel, or as the Trustees deem appropriate in their own discretion, the Trustees shall cause an audit to be made of the books and records of a member of the Bar or of the member's law firm under Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct. The audit shall cover those books and records which a member of the Bar is required to maintain under Rule 1.15. The audit shall be subject to the rule of confidentiality set forth in Professional Conduct Rule 1.15(e). Audits will be conducted in accordance with the Audit Program located on the Lawyers' Fund website.
- (b) On or before January 1 of each year, the Trustees will select and notify sixty members of the Delaware Bar who are the Delaware lawyer in charge of the firm's books and records, whose books and records shall be audited during the next twelve months solely for the purpose of verifying the accuracy of the lawyers' certifications of compliance filed under Supreme Court Rule 69. The Trustees may, in their discretion, select more or fewer than sixty such lawyers in any given year, based on the cost of the audits, the resources of the Lawyers' Fund, or other circumstances.
- (c) The Trustees shall select a certified public accountant to make any such audit.
- (d) The cost of any such audit shall be paid by the Trustees from the Lawyers' Fund as an expense thereof. Whenever an audit discloses material failures to comply with the applicable rules and the Trustees require the lawyer to undergo a reaudit of the books and records, the attorney will bear the cost of the reaudit.
- (e) Attorneys or law firms may precertify their compliance with Rule 1.15 and 1.5(f) of the Delaware Lawyers' Rules of Professional Conduct by filing with the Trustees a Precertification Letter and completed Audit Program in the forms provided on the Lawyers' Fund website. The Precertification Letter and Audit Program must be prepared by an Approved Precertification Provider listed on the Lawyers' Fund website. Such filing shall not preclude a compliance audit at the discretion of the Trustees.

## **Rule 8. Unidentifiable or Unclaimed Funds Under Professional Conduct Rule 1.15**

- (a) Fund remittance. A lawyer, law firm, or estate of a deceased lawyer who is required to remit unidentifiable or unclaimed funds to the Lawyers' Fund under Rule 1.15(d)(12)(F) of the Delaware Lawyers' Rules of Professional Conduct shall (1) complete the Unidentifiable or Unclaimed Funds Remittance Report ("Remittance Report") available on the Lawyers' Fund website and (2) send the Remittance Report and a check made payable to the Lawyers' Fund for Client Protection in the amount of the unidentifiable or unclaimed funds to the address of the Lawyers' Fund published on the website.
- (b) Recordkeeping. A person or entity who remits funds under Rule 9(a) shall keep a record of (1) the remittance, including the amount and date of the remittance and the Remittance Report; (2) the name and last known address of the owner of the funds, if the owner of the funds is known; (3) the date of death of a deceased owner, if the owner of the funds is known; (4) the efforts made to identify or locate the owner of the funds or a deceased

owner's heirs or personal representative; and (5) the period for which the funds were held in the lawyer's or law firm's trust account. If, after remitting funds under this rule, a lawyer or law firm determines both the identity and the location of the funds' owner or the owner's heirs or personal representative, the person shall submit a request for return of the funds as provided in Rule 8(c).

(c) Request for return of funds.

- (1) By lawyer or law firm who remitted the funds. A lawyer or law firm who remits funds under this rule and later determines both the identity and location of the funds' owner or the owner's heirs or personal representatives shall request return of the funds by sending a letter to the Executive Director stating that the owner of the funds has been both identified and located and identifying both the amount of the funds remitted to the Lawyers' Fund and the date of the remittance. If the Trustees verify that a remittance of unclaimed funds was received from the lawyer or law firm on the date specified and in at least the amount specified, the Executive Director will mail a refund check to the lawyer or law firm, who shall return the funds to the owner or the owner's heirs or personal representative. If the remittance cannot be verified, the Executive Director will notify the lawyer in writing.
- (2) If a lawyer or law firm is not required to request the return of funds under this rule, the owner of the remitted funds or the owner's heirs or personal representative may request return of the funds. The person seeking return of the funds under this subsection shall submit a request in writing to the Executive Director. The request shall identify the person requesting the return of funds, the lawyer or law firm that held the funds, the matter for which the funds were held, the amount of funds claimed, and as many additional details relating to the funds or the circumstances under which they were remitted to the Lawyers' Fund as are available to the requestor. After reviewing the request and conducting any additional investigation that they deem appropriate, the Trustees will determine whether the funds were remitted to the Lawyers' Fund and whether the person seeking their return is entitled to them. The Executive Director will notify the person requesting the return of funds of the Trustees' determination, which shall be final and not subject to appeal.
- (3) Any funds that are returned under this rule will be in the amount of the unclaimed or unidentifiable funds remitted to the Lawyers' Fund and will not include interest.