

CLIENT SECURITY FUND COMMITTEE CHARGE

General:

1. Provide input, analysis and evaluation of the program to the program manager and/or BOG.
2. Make recommendations to the program manager regarding how the program can be improved.
3. Serve as volunteers for program elements.

Specific Program Outcomes:

1. Conduct high quality investigations, and make prompt determinations on claims.
2. Maintain policies and procedures to assure strict compliance with statutory requirements, to meet standards of due process and fairness, and to address problem claim areas for improved loss prevention.
3. Maintain an appropriate assessment and reserve in light of changes in claims experience.
4. Continue efforts to recover money from lawyers for whom CSF claims have been paid.
5. Continue to increase member and public awareness of the Client Security Fund Program, how it operates, and the awards it makes.
6. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other state, local and national awards for lawyers who make a contribution to serving the legal needs of Oregonians.

Oregon State Bar

CLIENT SECURITY FUND HANDBOOK

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OSB CLIENT SECURITY FUND Primary Authorities

OREGON REVISED STATUTES

9.615 Definition for ORS 9.615 to 9.665. As used in ORS 9.615 to 9.665, “client security fund” means a fund created under ORS 9.625. [1967 c.546 §2]

9.620 [Repealed by 1953 c.609 §2]

9.625 Plan to relieve client losses; rules. The board of governors may adopt a plan to relieve or mitigate pecuniary losses to the clients of active members caused by dishonest conduct of those members in their practice of law. The plan may provide for establishing, administering and dissolving a separate fund and for payments from that fund to reimburse losses and costs and expenses of administering the fund. The board may adopt rules of procedure to carry out the plan. The insurance laws of the state shall not apply to this fund. [1967 c.546 §3; 1975 c.641 §10; 1989 c.1052 §12]

9.630 [Repealed by 1953 c.609 §2]

9.635 Sources of client security fund. A client security fund may include:
(1) Transfers by the board of governors from other funds of the state bar;
(2) Voluntary contributions and payments by members under ORS 9.645;
(3) Claims recovered under ORS 9.665; and
(4) Income from investments of the fund. [1967 c.546 §4]

9.640 [Repealed by 1953 c.609 §2]

9.645 Annual payment by state bar members. To establish and maintain a client security fund, the board of governors may require an annual payment by each active member of the state bar. The payment authorized by this section shall be due at the same time, and enforced in the same manner, as payment of the annual membership fee. [1967 c.546 §5; 1975 c.641 §11; 1979 c.314 §1; 1983 c.122 §1; 1989 c.1052 §25; 1991 c.726 §6]

9.650 [Repealed by 1953 c.609 §2]

9.655 Investigation of claim of loss; subpoena. (1) Upon the filing of a claim, verified under oath, by a client claiming a pecuniary loss payable from the client security fund, the board of governors or its designated representative shall determine if the person named in the claim as the attorney whose dishonest conduct caused the loss was an active member of the Oregon State Bar engaged in the practice of law in Oregon at the time of the transaction out of which

the claim arose and whether the transaction arose out of the person's practice of law in Oregon. The board or designated representative shall then determine whether the loss was caused by the person's dishonest conduct and if the person:

- (a) Has been found guilty of a crime arising out of the dishonest conduct;
- (b) In the case of a claim of loss of \$5,000 or less, has been disbarred, suspended or reprimanded in disciplinary proceedings or has resigned from the bar due to circumstances arising out of the dishonest conduct; or
- (c) Is a judgment debtor under the money award portion of a judgment entered in favor of the client in a proceeding arising out of the dishonest conduct, and execution issued on the judgment has been returned uncollected or issuance of execution would be a useless act.

(2) At any time after a claim is filed by a client claiming a pecuniary loss payable from the client security fund, the board or the board's representative may compel by subpoena the person named in the claim as the attorney whose dishonest conduct caused the loss, or any other person having knowledge of the matter, to appear for the purpose of giving testimony, and may compel by subpoena the production of records and documents pertinent to the claim. The subpoena shall have the same force and effect as in a civil action in the circuit court, and may be enforced by order of the circuit court for the county in which the person was served. [1967 c.546 §6; 1975 c.641 §12; 1979 c.383 §1; 1989 c.1052 §13; 2003 c.576 §279; 2005 c.347 §4; 2007 c.59 §1]

9.657 Immunity from civil liability. (1) Any person who has made a claim with the client security fund committee of the bar concerning a loss allegedly caused by the intentional dishonest conduct of the person's lawyer, or who has given information to the bar relative to a proposed or pending client security fund claim shall be absolutely immune from civil liability for such acts.

(2) The Oregon State Bar, its officers, the members of the client security fund committee, the board of governors, bar counsel, investigators and employees of the bar shall be absolutely immune from civil liability in the performance of their duties relative to proposed or pending client security fund claims. [1989 c.1052 §4]

9.660 [Repealed by 1953 c.609 §2]

9.665 Authority for reimbursement of client; waiver of conditions; subrogation for amount paid. (1) Except as provided in this section, reimbursement from the client security fund is discretionary with the board of governors.

(2) The board shall not authorize payment unless the conditions of ORS 9.655 (1) have been found to exist. However, the board may, in its sole discretion, waive one or more of the conditions of ORS 9.655 (1) in cases of extreme hardship or special and unusual circumstances. The state bar is subrogated, in the amount that a client's claim is reimbursed from the client security fund, to all rights and remedies of that client against the attorney whose dishonest conduct caused the loss, against the estate of the attorney or against any other person liable for the loss. [1967 c.546 §7; 1989 c.1052 §14; 1991 c.726 §7; 2003 c.14 §10]

OSB Bylaws

Section 15.5 Client Security Fund

The bar operates a Client Security Fund pursuant to the Bar Act and rules adopted by the Board. The Chief Executive Officer or General Counsel of the Bar will continue, as feasible, collection efforts in each instance in which Client Security Fund ("CSF") money is paid out. In each of these cases, the Bar will obtain an assignment of judgment in the amount paid out. The status of any such outstanding judgments shall be reviewed at least annually by the CSF Committee and the Board.

Client Security Fund Rules

(As approved by the Board of Governors through January 1, 2022)

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Section 1. Definitions.

For the purpose of these Rules of Procedure, the following definitions shall apply:

- 1.1 “Administrator” means the OSB executive director or other person designated by the executive director to oversee the operations of the Client Security Fund.
- 1.2 “Bar” means the Oregon State Bar.
- 1.3 “Claimant” means one who files a claim with the Fund.
- 1.4 “Client” means the individual, partnership, corporation, or other entity who, at the time of the act or acts complained of, had an established attorney-client relationship with the lawyer.
- 1.5 “Committee” means the Client Security Fund Committee.
- 1.6 “Dishonest conduct” has the meaning prescribed in Rule 2.1.2.
- 1.7 “Fund” means the Client Security Fund.
- 1.8 “Lawyer” means the person named in a statement of claim as the attorney whose dishonest conduct caused the loss, and who, at the time of the act or acts complained of, was an active member of the Oregon State Bar.
- 1.9 “Statement of Claim” means the form designated by the administrator pursuant to CSF Rule 3.1.

Section 2. Reimbursable Losses.

- 2.1 A loss of money or other property of a lawyer’s client is eligible for reimbursement if:
 - 2.1.1 The claim is made by the injured client or the client’s conservator, personal representative, guardian ad litem, trustee, or attorney in fact.
 - 2.1.2 The loss was caused by the lawyer’s dishonest conduct. For purposes of this rule, dishonest conduct includes: (i) a lawyer’s willful act against a client’s interest by defalcation, embezzlement, or other wrongful taking; (ii) a lawyer’s misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee; or, (iii) a lawyer’s wrongful failure to maintain the advance payment in a lawyer trust account until earned. A lawyer’s failure to perform or complete a legal engagement does not constitute, in itself, evidence of misrepresentation, false promise, or dishonest conduct.
 - 2.1.3 The loss is not covered by any similar fund in another state or jurisdiction, or by a bond, surety agreement or insurance contract, including losses to which any bonding agent, surety or insurer is subrogated.
 - 2.1.4 The loss is not incurred by a financial institution covered by a “banker’s blanket bond” or similar insurance or surety contract.
 - 2.1.5 The loss arose from, and was because of: (i) an established lawyer-client relationship; or, (ii) the failure to account for money or property entrusted to the lawyer in connection

with the lawyer's practice of law or while acting as a fiduciary in a matter related to the lawyer's practice of law.

2.1.6 As a result of the dishonest conduct, either: (i) the lawyer was found guilty of a crime; (ii) a civil judgment was entered against the lawyer, which remains unsatisfied; (iii) the claimant holds an allowed claim against the lawyer's probate or bankruptcy estate, which remains unsatisfied; or (iv) in the case of a claimed loss of \$5,000 or less, the lawyer was disbarred, suspended, or reprimanded in disciplinary proceedings, or the lawyer resigned from the Bar.

2.1.7 A good faith effort has been made by the claimant to collect the amount claimed, to no avail.

2.1.8 The statement of claim was filed with the Bar within two years after the latest of the following: (i) the date of the lawyer's conviction; or (ii) in the case of a claim of loss of \$5,000 or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar; or (iii) the date a judgment is obtained against the lawyer, or (iv) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event may the Committee approve a claim for reimbursement if the statement of claim is submitted more than six years after the date of the loss.

2.1.9 The loss arose from the lawyer's practice of law in Oregon. In determining whether the loss arose from the lawyer's practice of law in Oregon, the Committee may consider all relevant factors including the parties' domiciles, the location of the lawyer's office, the location where the attorney-client relationship was formed, and the location where legal services were rendered.

2.2 Reimbursement of a legal fee will be allowed only if: (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting or other evidence acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee may exceed the actual fee that the client paid the lawyer.

2.3 In the event that a client is provided equivalent legal services by another attorney without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.

2.4 A claim approved by the Committee may not include attorney's fees, interest on a judgment, prejudgment interest, any reimbursement of expenses of a claimant in attempting to make a recovery, or prevailing party costs authorized by statute, except that a claim may include the claimant's actual expense incurred for court costs, as awarded by the court.

2.5 Members of the Bar are encouraged to assist claimants without charge in preparing and presenting a claim to the Fund. Nevertheless, a member of the Bar may contract with a claimant for a reasonable attorney fee, which contract must be disclosed to the Committee at the time the claim is filed or as soon thereafter as an attorney has been retained. The

Committee may disapprove an attorney fee that it finds to be unreasonable. No attorney shall charge a fee in excess of the amount the Committee has determined to be reasonable, and the attorney fee shall be paid from, and not in addition to the award. In determining a reasonable fee, the Committee may refer to factors set out in ORS 20.075.

2.6 In cases of extreme hardship or special and unusual circumstances, the Committee may approve or recommend for payment a claim that would otherwise be denied due to noncompliance with one or more of the provisions in Section 2 of these rules.

Section 3. Statement of Claim for Reimbursement.

3.1 All claims for reimbursement must be submitted in a format designated by the administrator.

3.2 The statement of claim must include, at a minimum, the following information:

3.2.1 The name and address of the lawyer alleged to have engaged in dishonest conduct;

3.2.2 The amount of the alleged loss;

3.2.3 The date or period of time during which the alleged loss occurred;

3.2.4 A general statement of facts relative to the claim, including a statement regarding efforts to collect any judgment against the lawyer;

3.2.5 The name and address of the claimant and a verification of the claim by the claimant under oath; and

3.2.6 The name of the attorney, if any, who is assisting the claimant in presenting the claim to the Committee.

3.3 The statement of claim must contain substantially the following statement: "ALL DECISIONS REGARDING PAYMENTS FROM THE CLIENT SECURITY FUND ARE DISCRETIONARY. Neither the Oregon State Bar nor the Client Security Fund are responsible for the acts of individual lawyers."

Section 4. Processing Claims.

4.1 All statements of claim must be submitted to Client Security Fund, Oregon State Bar, 16037 SW Upper Boones Ferry Rd., P. O. Box 1689, Tigard, Oregon 97281-1935.

4.2 The administrator shall assign each statement of claim to a member of the Committee for investigation and report, and the Bar shall reimburse such member for reasonable out of pocket expenses incurred in making such investigation. The administrator shall send a copy of the statement of claim to the lawyer who is the subject of the claim at the lawyer's last known address. Before assigning a statement of claim for investigation, the administrator may request of the claimant further information with respect to the claim.

4.3. A Committee member to whom a statement of claim is referred for investigation shall conduct such investigation as seems necessary and desirable to determine whether the claim is for a reimbursable loss and is otherwise in compliance with these rules in order to guide the

Committee in determining the extent, if any, to which the claimant may receive an award from the Fund.

4.4 The Committee member to whom a claim is assigned for investigation shall submit an investigative report to the administrator within a reasonable time after the assignment of the claim to that member. The member shall include in such report a discussion of the criteria for payment set by these rules and a recommendation regarding payment on such claim from the Fund.

4.5 At any meeting of the Committee, claims may be considered for which an investigation has been completed.

4.6 No award may be made to any claimant if the statement of claim has not been submitted and reviewed pursuant to these rules, and approved at a duly noticed meeting of the Committee.

4.7 No award from the Fund, on any one claim arising from attorney misconduct which occurred before January 1, 2022, may exceed \$50,000. No award from the Fund, on any one claim arising from attorney misconduct which occurred on or after January 1, 2022, may exceed \$100,000. For the purposes of this rule, attorney misconduct arises on the earlier of:

4.7.1 The date that the attorney-client relationship is terminated;

4.7.2 The date that claimant demanded payment from the attorney;

4.7.3 The date that the attorney was disbarred or suspended; or

4.7.4 The date that the claimant knew of the attorney misconduct.

4.8 The Committee shall determine the amount of loss, if any, for which any claimant may receive an award from the Fund. The Committee may give final approval to an award of less than \$5,000 and shall submit regular reports to the Board of Governors reflecting all awards finally approved by the Committee since the Board's last meeting.

4.9 The Committee's denial of a claim is final unless a claimant's written request for review by the Board of Governors is received by the administrator within 20 days of the Committee's decision. The 20 days runs from the date the Committee's decision is sent to the claimant by mail, exclusive of the date of mailing.

4.10 If the Committee determines that a claim should be approved in an amount of \$5,000 or more, the Committee must submit its recommendation to the Board of Governors for approval. When reviewing such claims, the Board of Governors shall conduct its review pursuant to the provisions of these rules. The Board of Governors may approve or deny each claim presented to it for review, or it may refer a claim back to the Committee for further investigation prior to making a decision.

4.11 Awards from the Fund are discretionary. The Committee or Board of Governors may deny claims in whole or part for any reason.

4.12 The Board of Governors may determine the order and payment of awards; may defer or pro-rate awards based on funds available in any calendar year; and may allow a further award

in any subsequent year to a claimant who received only partial payment of an award. In exercising its discretion, the Board of Governors shall consider the following objectives:

- 4.12.1 Timely and complete payment of approved awards;
- 4.12.2 Maintaining the integrity and stability of the Fund; and
- 4.12.3 Avoiding frequent or significant fluctuations in the member assessment.

4.13 A finding of dishonest conduct by the Committee is for the sole purpose of resolving a claim and is not to be construed as a finding of misconduct for purposes of any other proceeding.

4.14 The Committee may provide information obtained by the Committee about a lawyer's conduct to any agency or entity that the Committee determines may be helpful in resolving the claimant's concerns. S

Section 5. Subrogation for Reimbursements Made.

5.1 As a condition of receiving an award, a claimant shall provide the Bar with a pro tanto assignment of the claimant's rights against the lawyer, the lawyer's legal representative, estate and assigns, and of the claimant's rights against any person or entity who may be liable for the claimant's loss. Upon receipt of such assignment, the following rules govern the relationship between the Bar and the claimant:

5.1.1 Upon commencement of an action by the Bar as subrogee or assignee of a claim, the administrator shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

5.1.2 In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another person or entity who may be liable for the claimant's loss, the claimant shall notify the Bar of such action in writing, within 14 days of the commencement of such action.

5.1.3 The claimant shall cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.

5.1.4 The claimant shall not release the lawyer from liability or otherwise impair the Bar's assignment of judgment or subrogated interest without the prior approval of the Board of Governors.

5.2 The administrator shall be responsible for collection of Fund receivables and shall have sole discretion to determine when such efforts would be futile. The administrator may undertake collection efforts directly or may assign subrogated claims to a collection agency or outside counsel. The administrator may authorize the expenditure of money from the Fund for reasonable costs and expenses of collection.

Section 6. General Provisions.

6.1 The members and officers of the Committee will be appointed and discharged pursuant to applicable provisions of the Bar Bylaws.

6.2 The Committee may only act pursuant to the quorum provisions contained in section 14.9 of the Bar Bylaws.

6.3 The Committee shall meet from time to time upon the call of the chairperson. At the request of at least two members of the Committee and with reasonable notice, the chairperson shall promptly call a meeting of the Committee.

6.4 These Rules may be changed at any time by a majority vote of the entire membership of the Committee, subject to approval by the Board of Governors of the Bar.

6.5 When investigating, reviewing, or acting on a claim, the Committee and its members are deemed to be the representative of the Board of Governors and, as such, shall be vested with the authority conferred by ORS 9.655.

6.6 Records of the Fund are public records within the meaning of the Oregon's public records law and meetings of the Committee are public meetings within the meaning of Oregon's public meetings law. The claimant, the claimant's attorney, the lawyer or the lawyer's attorney may attend meetings and, at the discretion of the chair, present their respective positions on a claim.

6.7 A member of the Committee who has or has had an attorney-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim may not participate in the investigation or review of any claim involving the claimant or lawyer. A member who is subject to this provision shall disclose the nature of the relationship before the Committee begins consideration of such claim, and the member may not participate in the Committee's discussion of the claim without leave of the chair.

6.8 These Rules apply to all claims pending at the time of their enactment.

6.9 The administrator shall prepare an annual report to the Bar membership, and may from time to time issue press releases or other public statements about the Fund and awards that have been made. The annual report and any press releases and other public statements shall include the name of the lawyer, the amount of the award, the general nature of the claim, the lawyer's status with the Bar, and whether any criminal action has been instituted against the lawyer for the conduct giving rise to the loss. If the claimant has previously initiated criminal or civil action against the lawyer, the press release or public statement may also include the claimant's name. The annual report, press release or other public statement may also include general information about the Fund, what claims are eligible for reimbursement, how the Fund is financed, and who to contact for information.

CSF Operations and Procedures

CLAIMS INTAKE AND PROCESSING

A. Initial Inquiries

1. Requests for information and general inquiries about the Fund are generally handled by the CSF Administrator's assistant. Inquirers are directed to the CSF page on the OSB website (www.osbar.org/csf) or, if necessary, the claim form, a copy of the rules, and general information / FAQs about the Fund is mailed to the inquirer.

B. Applications for Reimbursement

1. All claims must be submitted on the CSF Application for Reimbursement form and must have the notarized signature of the claimant. Claimants are required to provide, to the extent possible, documents to support the claim such as canceled checks, receipts, or other evidence that the lawyer received the client's funds or property.
2. Each new claim is reviewed by the Administrator to ensure the application is in proper form and to determine if the claim on its face is properly within the jurisdiction of the CSF. For instance, if there are no allegations of dishonesty, the Administrator may return the claim and ask the claimant for additional information. If the claim is complete on its face, a file is opened and the claim is assigned a number indicating the year it was received and the sequential number of the claim (i.e., 2016-07 is the seventh claim received in 2016).
3. The Administrator assigns the claims to a committee member for investigation. If possible, the assignment will be made to a committee member whose office is in the same geographical location as the claimant or the lawyer named in the claim. Multiple claims against the same lawyer are usually, but not always, assigned to the same committee member. Consideration is also given, when assigning claims, to whether the committee work load is evenly distributed or whether a particular committee member has a special expertise that will be helpful in evaluating the claim.
4. The Administrator notifies the assigned committee member and provides copies of the claim form, any supporting documents submitted by the claimant, and the name of who to contact for information about any pending or completed disciplinary investigation involving the lawyer. The Administrator also notifies the claimant of the receipt and assignment of the claim. Copies of all correspondence are sent to the lawyer named in the claim. Note: communication with the committee members and the named lawyers is by email to the extent possible.
5. The bar maintains a list of lawyers who are willing to assist claimants in presenting their claims to the CSF. If an unrepresented claimant appears to need counsel and qualifies

for the assistance of volunteer counsel, the Administrator will ask a member of the volunteer panel to provide assistance to the claimant.

C. *Committee Investigation and Report*

1. The scope of the committee member's investigation will depend on the nature of the claim.
 - a. The claimant should be interviewed to verify the facts alleged in the application for reimbursement and to obtain any other information necessary for considering the eligibility of the claim.
 - b. The lawyer named in the claim of should also be interviewed if at all possible, particularly where the claim is for the refund of an unearned fee where it is important to know what, if any, services were performed by the lawyer. If the lawyer's file on the client's matter is available, it should be examined. Claimants are asked to authorize the release of their files, which is helpful when they are in the possession of the PLF or some other person or entity.
 - c. Additional information about the lawyer may be available from Disciplinary Counsel's office. If there are pending disciplinary proceedings, or if the lawyer has been disciplined in connection with the same or a similar transaction, this information should be included in the report.
 - d. In some cases, there may be other sources of information that should be explored. The claimant's successor counsel, if any, can often provide a good assessment of the amount of work done on the client's matter. Opposing counsel are also good sources of information about the work that was done on the matter. The Bar has authority to subpoena documents pertinent to the claim such as bank records, and will do so on request of the investigating committee member. In cases involving litigation, a review of the court file will often be helpful in determining the scope of work done by the lawyer.
2. Upon completion of the investigation, the committee member prepares a written report for the Committee, using the Claim Checklist to ensure that all elements have been considered. The report should include the factual basis for the claim, a discussion of any disputed facts, and a recommendation for the committee. The report should address the eligibility criteria directly, indicating whether all criteria are met and, if all criteria are not met, whether there is "extreme hardship or special circumstances" that warrant waiving those criteria. (A checklist and sample report form are included at the end of this handbook.)
3. Completed reports should be submitted to the Administrator (electronically) for inclusion in the committee agenda packet that is distributed approximately one week prior to each scheduled meeting.

D. Claim Determination by the Committee.

1. Based on its review of the investigative report and discussion at the meeting, the committee makes findings of fact and conclusions as to whether the claim should be approved or denied, and if approved, in what amount. The committee may also vote to waive any of the eligibility requirements in cases of extreme hardship or unusual circumstances, as provided in CSF Rule 2.11. These findings and conclusions are included in the minutes of the meeting. The minutes will indicate any minority view expressed and the reasons therefore.
2. If the claimant is represented by counsel in connection with making the CSF claim, CSF Rule 2.10 requires that the Committee approve a reasonable fee to be paid by the claimant from the CSF reimbursement.
3. Claimants or their representatives may attend a meeting at which the claim is discussed (or may be invited by the committee to attend).
4. The Administrator informs the claimant of the committee's decision immediately following the meeting. If the committee voted to deny the claim, the claimant is informed of the opportunity to seek BOG review pursuant to CSF Rule 4.10.1. If the committee voted to recommend an award of less than \$5,000, the Committee's decision is final and the claimant is instructed how to obtain the award. If the Committee recommends an award of \$5,000 or more, the claimant is notified that the recommendation will be forwarded to the BOG and advised of the date of the next BOG meeting.

E. Board of Governors Review of Committee Action.

1. The Administrator provides a report to the BOG at each meeting of awards of less than \$5,000 that were made by the Committee.
2. Claims that the committee recommends for awards of \$5,000 or more are forwarded to the BOG, pursuant to CSF Rule 4.10.2, for consideration at its next meeting. The Administrator prepares a memo to the BOG summarizing the committee's findings and conclusions, including any minority views expressed. The BOG memo typically includes a copy of the committee member's report and the claimant's application.
3. If the Committee denies a claim, the claimant may ask for BOG review. In those situations, the Administrator submits a memo to the BOG explaining the Committee's assessment of the claim, together with the claimant's request for review.
4. The BOG's decision on a claim is final. There is no process for a claimant to request review of the BOG's denial of a claim. However, the BOG may send a claim back to the committee for further investigation or evaluation.

F. Payment of Approved Claims; Closing the File.

1. Upon approval of an award by the Committee or the BOG, the Administrator forwards to the claimant an assignment of the claim or of the claimant's judgment, as appropriate, for the claimant's execution. Claimants are also asked to sign a W-9. Upon receipt of the executed documents, a check is sent to the claimant or to some other person designated by the claimant to receive the reimbursement.
2. If the claimant has assigned a judgment, the assignment is filed with the appropriate court to record the bar's interest. If the claimant has not already done so, the judgment may also be recorded in other counties where the defalcating lawyer may have real property. A demand to pay the judgment is sent to the lawyer at the lawyer's last known address.
3. Assigned judgments are monitored for renewal ten (10) years after the date each judgment was entered.
4. When a claim is completed, the CSF database is updated to include information on the resolution of the claim. Original assignments of claims are maintained in paper form; the remainder of the file is scanned and discarded. A copy of a "claim sheet" containing basis information about the claim is forwarded to disciplinary counsel's office to be placed in the lawyer's membership file.

COLLECTION OF CSF RECEIVABLES

A. *Notice to Lawyer.* At the time a claim is paid, the defalcating lawyer is notified of the committee's action and demand is made for payment. (As indicated, the lawyer receives copies of all correspondence during the processing of a claim.)

B. *Collection Efforts.* The Administrator undertakes collection efforts as deemed appropriate and reports to the committee and the BOG annually on the results of those efforts. Committee members have sometimes assisted with collection activities, such as judgment-debtor examinations of lawyers living outside the Portland metropolitan area. In complex cases, Committee members have also volunteered to represent the bar in litigation against the defalcating lawyer. The Administrator may assign receivables to a collection agency for further handling.

C. *Write-Offs.* The Administrator may recommend that the committee write-off judgments or claims that are deemed uncollectible, generally either because the judgment or claim has expired, the lawyer is deceased and no recovery is available from the estate, or the lawyer has disappeared. If the committee agrees, the committee's recommendation will be submitted to the BOG for its approval. Upon the BOG's approval, the obligations are deleted from the bar's accounts receivable.

CSF FINANCES AND BUDGETING

A. *Dedicated Fund.* The Client Security Fund is a dedicated fund comprised entirely of member assessments and the interest earned on invested funds. Revenue and expenses are charged to the Fund and do not come from the OSB general fund.

B. *Member Assessment.* The annual assessment is set each year by the BOG, generally following the recommendation of the committee.

1. It has been the goal of the committee and the BOG to establish the assessment at the lowest level possible to continue operating and maintain an adequate reserve, and to keep the assessment at the same level from year to year insofar as possible rather than to have it change annually.
2. Since the Fund's inception in 1967, the assessment has ranged from \$5 to \$45. Between 1998 and 2002 the assessment was \$15. From 2003 through 2009, the assessment was \$5. It was raised to \$15 in 2010. In 2013 the assessment was increased to \$45 as a consequence of the reserve being exhausted due to the volume of claims against one lawyer. In 2015 the \$45 assessment was reduced by \$30 back to \$15.

C. *CSF Budget.* The Fund's annual budget is developed by the Administrator and approved by the BOG. The committee reviews monthly income and expense statements and may make recommendations for adjustments in the budget as deemed appropriate.

1. The CSF budget line item for committee expense is intended to cover the cost of investigating claims, including such things as obtaining copies of bank records and long distance telephone calls. Committee members who incur such expense may seek reimbursement. Committee members are not entitled for reimbursement of the cost of attending meetings.
2. The budget includes a travel allowance for the committee chair or secretary to attend the National Client Protection Forum, an annual continuing legal education program sponsored by the ABA Standing Committee on Client Protection.

D. *Reserve.* For many years, the CSF maintained a reserve equal to two times the average of the three highest of the last five years' claims paid, or a minimum of \$500,000. In 2014, the BOG voted to increase the reserve to \$1 million as protection against another situation of extraordinary claims that exhausted the smaller reserve.

E. *Collections.* Recently, the Oregon State Bar entered into an agreement with the Oregon Department of Revenue, based on new statutory authority, to collect outstanding judgments held by the Client Security Fund. This collaboration has the potential to aid CSF collection efforts for years to come.

F. *Claims.* In 2020 the Board voted to increase the claims cap for Oregon clients from \$50,000 to \$100,000, for losses that occur on or after January 1, 2022.

CLIENT SECURITY FUND Committee Information

1. *Nature of the Client Security Fund.* The Client Security Fund is a statutorily-enabled program of the OSB Board of Governors. The CSF Committee serves as an advisory body to the OSB Board of Governors in its role as trustees of the fund. The day-to-day operation of the program is the responsibility of the CSF Committee and the Administrator.
2. *The CSF Committee.* The Committee generally consists of 12 lawyers and one public member who are appointed by the BOG to serve three-year terms. The Administrator, in consultation with the Committee chair, prepares and distributes the agenda, attends all meetings, and oversees the administration of claims and the collection of receivables. The committee secretary records the minutes. OSB staff sends out the meeting notices.
3. *Meeting Schedule.* The Committee meets approximately six times a year. Meetings are generally held on Saturdays beginning at 9:30 a.m., but can be set at any time that is convenient for the Committee members. Consistent with Bar policy, a meeting schedule for the year is established at the first meeting to allow for planning and to avoid scheduling conflicts. Meetings generally last 2 hours, depending on the agenda.
4. *Meeting Notices and Agendas.* A meeting notice is sent by e-mail from the bar two or three weeks prior to each meeting with instructions on how to let the Committee secretary know whether the member will be attending. The Administrator distributes a meeting packet by e-mail to committee members about one week prior to the meeting. It includes the agenda for the upcoming meeting, minutes of the prior meeting, copies of reports to be considered at the meeting, and other information of interest. Members with reports to present at the meeting are encouraged to get their reports to the Administrator in time to be included in the meeting packet. Members are also encouraged to review the agenda materials prior to the meeting in order to be ready to discuss the items presented. If a committee member has a report for consideration at the meeting that was not included in the agenda packet or sent separately to the entire committee, hard copies should be brought to the meeting for distribution.
5. *Attendance at Meetings.* A quorum consisting of a majority of the committee membership (7 members) is required for any decision of the committee. Moreover, decisions of the Committee have more integrity if they are informed by the views of the entire group. Personal attendance by remote means is strongly encouraged. Members may attend by teleconference and the toll-free call-in number is included on the meeting agenda. Members are responsible for calling in at the appropriate time.

6. *MCLE Credits.* Members of the Client Security Fund Committee are entitled to claim two (2) hours of MCLE ethics credit for each year of service on the Committee. The reporting form can be downloaded from the bar's web site at www.osbar.org in the OSB Forms Library.
7. *Reimbursement of Expenses.* There is no reimbursement for committee members' expenses related to attending meetings or providing refreshments. However, expenses incurred in investigating claims (copying costs, long distance telephone, etc.) can be reimbursed from the CSF's budget.
8. *Public Meetings and Records.* CSF Committee meetings are public meetings and committee records, including the committee members' investigative reports and the minutes of meetings are public records.

OSB CLIENT SECURITY FUND

Claim Checklist

CSF Claim No. _____

CSF Investigator: _____

Claimant: _____

Attorney: _____

Amount Claimed: _____

Actual Loss: _____

Eligibility Requirements: (Questions 1-12 must be answered "yes." If the answer to any of those questions is "no," the claim is not eligible for reimbursement unless the Committee finds hardship or special circumstances.)

Yes No

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Is the claimant the injured client or the client's conservator, personal representative, guardian ad litem, trustee or attorney in fact? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Was the attorney an active member of the Oregon bar at the time of the loss? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Did the attorney maintain an office in Oregon? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Did the loss arise from and was it because of: |
| <input type="checkbox"/> | <input type="checkbox"/> | a) an established attorney-client relationship? or |
| <input type="checkbox"/> | <input type="checkbox"/> | b) the lawyer's failure to account for money or property entrusted to the lawyer in connection with the lawyer's practice of law or while the lawyer was acting as a fiduciary in a matter related to the lawyer's practice of law? |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Was the loss caused by: |
| <input type="checkbox"/> | <input type="checkbox"/> | a) the attorney's failure to refund an unearned fee (including a false promise to provide services in exchange for an advance payment)? or |
| <input type="checkbox"/> | <input type="checkbox"/> | b) misappropriation or failure to account for money held by attorney? or |
| <input type="checkbox"/> | <input type="checkbox"/> | c) embezzlement? |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. If the loss was caused by failure to refund an unearned fee: |
| <input type="checkbox"/> | <input type="checkbox"/> | a) did the attorney provide any services of value? (If yes, explain in report how the value was calculated.) |
| <input type="checkbox"/> | <input type="checkbox"/> | b) has there been an independent determination of the amount of refund due? (If no, explain how the claimant's refund should be calculated.) |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Has it been determined that the loss is <u>not</u> covered by a bond, surety agreement or insurance contract? |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. Did the attorney's conduct result in: |
| <input type="checkbox"/> | <input type="checkbox"/> | a) a criminal conviction? or |
| <input type="checkbox"/> | <input type="checkbox"/> | b) a civil judgment? or |
| <input type="checkbox"/> | <input type="checkbox"/> | c) a disciplinary sanction (for claims of \$5,000 or less)? |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. Has the claimant made a good faith effort to collect the loss from the attorney? |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. Was the claim filed within two years of the conviction, judgment or discipline? |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. Is the dollar amount claimed <i>exclusive of</i> interest, attorney fees or court costs? |
| <input type="checkbox"/> | <input type="checkbox"/> | 12. If the claimant is represented by counsel: |
| <input type="checkbox"/> | <input type="checkbox"/> | a) is a copy of the fee agreement included with the claim? |
| <input type="checkbox"/> | <input type="checkbox"/> | b) are the fees charged reasonable? |
| <input type="checkbox"/> | <input type="checkbox"/> | 13. Is there an extreme hardship or special and unusual circumstance that would justify waiving any of the above requirements? |
| <input type="checkbox"/> | <input type="checkbox"/> | 14. Should the attorney's conduct be reported to a District Attorney or the Department of Justice? |

**Client Security Fund
Investigative Report**

Re: [Claim number]
Claimant: [Name of claimant]
Lawyer: [Name of attorney who is subject of claim]
Investigator: [Your name]

RECOMMENDATION

I recommended [denial of the claim] /[approval of the claim in the amount of ____].*

*No award for any one claim can exceed \$50,000. *See* CSF Rule 4.7.

CLAIM INVESTIGATION SUMMARY

[Details of investigation, such as background information regarding the claim and parties, summaries of relevant witness interviews and documentation, and a timeline of relevant events if you have one].

FINDINGS AND CONCLUSIONS

[Add any necessary explanations to the below statements]

1. The claim [is]/[is not] timely. *See* CSF Rule 2.1.8.
2. Claimant [is]/[is not] the injured client. *See* CSF Rules 1.4 and 2.1.1.
3. The loss [was]/[was not] caused by the lawyer’s dishonest conduct. *See* CSF Rule 2.1.2.
4. The loss [is]/[is not] covered by any similar fund in another state. *See* CSF Rule 2.1.3.
5. The loss [was]/[was not] incurred by a financial institution covered by a “banker’s blanket bond” or similar insurance or surety contract. *See* CSF Rule 2.1.4.
6. The loss [did]/[did not] arise from, and [was]/[was not] because of, an established lawyer-client relationship. *See* CSF Rule 2.1.5(ii) for alternative.
7. CSF Rule 2.1.6 satisfied?
8. Claimant [has]/[has not] made a good-faith effort to collect the amount claimed. *See* CSF Rule 2.1.7.
9. The loss [did]/[did not] arise from the lawyer’s practice of law in Oregon. *See* CSF Rule 2.1.9.

10. CSF Rule 2.2 satisfied?

11. The Claimant [did]/[did not] receive equivalent legal services by another attorney without cost to the Claimant. *See* CSF Rule 2.3.

If necessary, add the following:

Although the claim should be denied because [list reasons], approval of the claim in the amount of [amount] is appropriate because extreme hardship or special and unusual circumstances exist. [Describe situation in detail]. *See* CSF Rule 2.6.

Elements Needed for Award of Reimbursement

Claim filed with the bar within 2 years by the injured client, client's conservator, personal representative, guardian ad litem, trustee, or attorney in fact after the latest:

- Lawyer's conviction; or
- If claim is \leq 5,000 Lawyers disbarment, suspension, reprimand, or resignation; or
- Judgment is obtained against the lawyer; or
- The date that the claimant knew of the loss; but no if claim is submitted $<$ 6 years after date of the loss.

Loss caused by lawyer's dishonest conduct:

- Embezzlement
- False promise to provide legal service for advanced payment
- Lawyer's failure to perform or complete legal engagement (that is none of the above)

Results of Dishonest Conduct:

- Lawyer found guilty of crime; or
- Civil judgment enter against lawyer, which remains unsatisfied; or
- Claimant holds claim against lawyer's probate or bankruptcy estate, which remains unsatisfied; or
- If claim is \leq 5,000 the lawyer was disbarred, suspended, or reprimanded in discipline proceeding; or
- Is loss not covered by similar fund in other state, bond, surety agreement, or insurance contract.

Loss arose from:

- Lawyer-Client Relationship
- Failure to account for money or property entrusted to them as a fiduciary
- Lawyer's practice of law in Oregon

Good Faith Effort to Collect

- Wrote Demand Letter to Attorney
- Police Report
- Professional Liabilities Fund Claim
- Client Security Fund Claim in another state
- Client Assistance Office Complaint made
- Law Suit Filed
- Other

RETAINER OR LEGAL FEE CLAIMS

Claim filed with the bar within 2 years by the injured client, client's conservator, personal representative, guardian ad litem, trustee, or attorney in fact after the latest:

- Lawyer's conviction; or
- If claim is $\leq 5,000$ Lawyers disbarment, suspension, reprimand, or resignation; or
- Judgment is obtained against the lawyer; or
- The date that the claimant knew of the loss; but no if claim is submitted < 6 years after date of the loss. (Rule 2.1.1 and 2.1.2)

Elements Needed for an Award of Reimbursement

- Dishonest conduct in the form of a misrepresentation, or false promise, to provide legal service in return for advance fee; or

Additional Factors to Reimbursement of Legal Fees:

- Lawyer's failure to perform or complete legal engagement (Rule 2.1.2 (i))
 - Legal services provided were (ii) none; or (ii) minimal or insignificant (Rule 2.1.2 (ii)(iii))
 - Reimbursement may also be allowed when the claim for a refund of fees is supported by a determination of (1) a court, (2) a fee arbitration award, or (3) an acceptable accounting
- Rule 2.2

Documents and information to obtain

- Proof of payment (cancelled checks, receipts, etc...)
- Retainer agreement (fee agreement or copy of written retainer)
- Extent of legal work provided, meetings, telephone calls, etc.
- Copy of any judgment or determination awarding a refund of fee
- Lawyer's disciplinary or criminal status when fee accepted
- Status of any disciplinary complaint
- Legal file & copy of any papers or letters prepared by lawyer

A lawyer's failure to perform or complete legal work is not, in itself, evidence of misrepresentation, false promise or dishonest conduct. Example: fee paid to lawyer who dies soon thereafter (Rule 2.1.2)

Good Faith Effort to Collect

- Wrote Demand Letter to Attorney
- Police Report
- Professional Liabilities Fund Claim
- Client Security Fund Claim in another state
- Client Assistance Office Complaint made
- Law Suit Filed
- Other

Calculation of Loss

- Client was provided with equivalent legal services by another attorney without cost to client (Rule 2.3)
- Reimburse cost amount of any judgment or court determination (actual expense of court costs including original judgment amount) (Rule 2.4)
- No award shall exceed actual fee paid the lawyer (Rule 2.2)
- Amount of documented advance fee if claim is eligible

SETTLEMENT LOSS

Claim filed with the bar within 2 years by the injured client, client's conservator, personal representative, guardian ad litem, trustee, or attorney in fact after the latest:

- Lawyer's conviction; or
- If claim is \leq 5,000 Lawyers disbarment, suspension, reprimand, or resignation; or
- Judgment is obtained against the lawyer; or
- The date that the claimant knew of the loss; but no if claim is submitted $<$ 6 years after date of the loss. (Rule 2.1.1 and 2.1.2)

Elements Needed for Reimbursement:

- Attorney-client privilege
- Misappropriation of funds within practice of law
- Lawyer's failure to maintain advance in IOLTA

Documents and information to obtain

- Copy of cancelled check (front & back) converted by lawyer.
- Copy of written retainer agreement.
- Legal fee agreement - contingent or flat fee?
- Copy of release and stipulation of discontinuance.
- Was settlement made with claimant's consent or knowledge?
- Do they have an agreement with another bar member to assist with claim? Get contract between them and Committee may disapprove an attorney fee if they find it unreasonable.

Good Faith Effort to Collect

- Wrote Demand Letter to Attorney
- Police Report
- Professional Liabilities Fund Claim
- Client Security Fund Claim in another state
- Client Assistance Office Complaint made
- Law Suit Filed
- Other

CALCULATION OF LOSS

SETTLEMENT AUTHORIZED -Deduct expected legal fee

UNAUTHORIZED -Do not deduct expected legal fee if settlement unreasonable

PARTIALLY SUCCESSFUL RECOVERY ACTION

-Reimburse difference between the claimant's eligible loss and net recovery (this will take into account the legal fees the claimant incurred in recovery efforts).

Please Contact the Complainant if you do not have documents you need and with updates on their cases.

Client Security Fund Application for Reimbursement

Return completed form to:

Oregon State Bar
Client Security Fund
PO Box 231935
Tigard, OR 97281-1935

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar.
Submission of this claim does not guarantee payment.
The Oregon State Bar is not responsible for the acts of individual lawyers.

*Please note that this form and all documents received in connection with your claim are public records.
Please attach additional sheets if necessary to give a full explanation.*

1. Information about the client(s) making the claim:

- a. Full Name: _____
- b. Street Address: _____
- c. City, State, Zip: _____
- d. Phone: (Home) _____ (Cell) _____
(Work) _____ (Other) _____
- e. Email: _____

2. Information about the lawyer whose conduct caused your claim *(also check box 10A on page 3)*:

- a. Lawyer's Name _____
- b. Firm Name _____
- c. Street Address: _____
- d. City, State, Zip: _____
- d. Phone: _____
- e. Email: _____

3. Information about the representation:

- a. When did you hire the lawyer? _____
- b. What did you hire the lawyer to do? _____

- c. What was your agreement for payment of fees to the lawyer? *(attach a copy of any written fee agreement)*

- d. Did anyone else pay the lawyer to represent you? _____
- e. If yes, explain the circumstances *(and complete item 10B on page 3)*:

- f. How much was actually paid to the lawyer? *(please attach proof of payment, if any)* _____
- g. What services did the lawyer perform? _____

h. Was there any other relationship (personal, family, business or other) between you and the lawyer?

4. Information about your loss:

a. When did your loss occur? _____

b. When did you discover the loss? _____

c. Please describe what the lawyer did that caused your loss _____

d. Total amount of your loss _____

e. How did you calculate your loss? _____

f. Amount you are requesting to be reimbursed _____

5. Information about your efforts to recover your loss:

a. Have you been reimbursed for any part of your loss? *If yes, please explain:* _____

b. Do you have any insurance, indemnity or a bond that might cover your loss? *If yes, please explain:* _____

c. Have you made demand on the lawyer to repay your loss? When? *Please attach a copy of any written demand.*

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? *If yes, please explain:* _____

e. Have you sued the lawyer or made any other claim? *If yes, please provide the name of the court and a copy of the complaint.* _____

f. Have you obtained a judgment? *If yes, please provide a copy* _____

g. Have you made attempts to locate assets or recover on a judgment? *If yes, please explain what you found:* _____

6. Information about where you have reported your loss:

District attorney

Police

Oregon State Bar Professional Liability Fund

Client Security Fund Claim in Another State — *If yes, list state(s):* _____

If yes to any of the above, please provide copies of your complaint and any decisions, if available.

Oregon State Bar Client Assistance Office or Disciplinary Counsel

7. Did you hire another lawyer to complete any of the work? *If yes, please provide the name and telephone number of the new lawyer:* _____

8. Please give the name and the telephone number of any other person who may have information about this claim: _____

9. Agreement and Understanding

The claimant agrees that, in exchange for any award from the Oregon State Bar Client Security Fund (OSB CSF), the claimant will:

- a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the CSF award.
- b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.
- c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.
- d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer or any other person on entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

- a. Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.
- b. Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name: _____

Address: _____

Phone: _____

11. Claimant's Signature and Verification

(Each claimant must have a notarized signature page. Please photocopy this page for each person listed in question 1.)

I HEREBY DECLARE THAT I HAVE READ THE RULES OF THE CLIENT SECURITY FUND AND THE FOREGOING APPLICATION FOR REIMBURSEMENT; AND SUBMIT THIS CLAIM SUBJECT TO THE CONDITIONS STATED THEREIN. I DECLARE THE INFORMATION WHICH I HAVE PROVIDED IN THIS APPLICATION IS COMPLETE AND TRUE TO, THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF. I UNDERSTAND THIS APPLICATION IS MADE FOR USE IN OFFICIAL PROCEEDINGS AND IS SUBJECT TO PENALTY FOR PERJURY.

Dated this _____ day of _____, 20____.

Claimant's Signature

Please complete page 4 if an attorney is representing you for this claim.

You are not required to have an attorney in order to file this claim. The CSF encourages lawyers to assist claimants in presenting their claims without charge. A lawyer may charge a fee for such work only if the following information is provided.

1. I authorize _____ *(print name of attorney)*
to act as my attorney in presenting my claim.

Claimant's Signature

2. I have agreed to act as the claimant's attorney: *(check one below)*

- Without charge
- Under the attached fee agreement

Attorney's Signature

Attorney's Bar No.

Attorney's Phone

Attorney's Address

[Date]

Via email only at

"[CSF Investigator]"

Re: "[Case Number and Case Name]"
Assignment of CSF Claim to Investigator

Dear "[First Name]" :

Enclosed is a copy of an Application for Reimbursement in the referenced matter. –[DCO Attorney] is the Disciplinary Counsel handling the current prosecutions (see enclosed DCO/CAO report).

Please investigate this claim for the Client Security Fund and prepare a report for presentation to the committee as soon as possible.

Thank you for your assistance.

Sincerely,

Ankur Doshi
Client Security Fund Bar Liaison
adoshi@osbar.org
503-431-6312

Enclosures

cc: [Chairperson] , CSF Committee Chair
[Lawyer]
[Claimant] , claimant
"[DCO Atty]"
CAO Attorneys [IF ANY]

[Date]

Via email only at "[email address]"

"[Claimant Name and address]"

Re: "[CSF Case No.]" "[Attorney last name (Claimant last name)]"
Lawyer: "Lawyer Name"

Dear [Claimant] :

At its meeting on [Date] , the Oregon State Bar Board of Governors approved the recommendation of the Client Security Fund that you be reimbursed in the amount of \$[amt] for the loss caused by [Lawyer] .

CSF Rule 5.1 requires, as a condition of payment from the Fund, that you, the claimant, execute an assignment of all such claims to the extent of the amount reimbursed. Enclosed is an Assignment of Claim for your signature. Please note that you must sign the Assignment in the presence of a notary public.

Also enclosed is an IRS Form W-9 requesting your Social Security Number. We inform the IRS of all payments from the Fund and you will receive a Form 1099-MISC next January reflecting your award. You should consult with a tax advisor to determine whether you need to report the award as income or otherwise.

Also enclosed is an ACH Electronic Funds Transfer Authorization Form. Please complete this form if you prefer to have the funds remitted electronically directly into your bank account instead of receiving a paper check in the mail from the Bar.

The original Assignment of Claim, W-9 (and ACH form if direct deposit is requested) should be mailed to:

Oregon State Bar
Accounts Payable
16037 SW Upper Boones Ferry Rd.
PO Box 231935
Tigard, OR 97281-1935

When we have received the **original** completed W-9 and the notarized Assignment from you, we will transmit our check to reimburse your loss (or, if ACH form completed, by direct deposit).

Please feel free to contact me if you have any questions.

Sincerely,

Courtney C. Dippel
Client Security Fund Bar Liaison
cdippel@osbar.org
503-431-6318

cc: Melissa May, CSF Committee Chair
[Lawyer]
[Investigator] , CSF Investigator
OSB Accounts Payable

ASSIGNMENT OF CLAIM

THIS ASSIGNMENT is made by [CLIENT] ("Assignor"), to the OREGON STATE BAR, ("OSB"):

WHEREAS Assignor has a claim against [ATTORNEY] ("Attorney") for the loss of Assignor's funds misappropriated by Attorney;

WHEREAS OSB has agreed to pay Assignor the sum of \$[amount] ("Award") from the Client Security Fund of the OSB as reimbursement for the above loss;

NOW, THEREFORE, in consideration of the Award, Assignor hereby assigns to OSB, to the extent of such Award, all rights, claims and judgments that Assignor has or may have against Attorney, Attorney's heirs, assigns, estate, law partners, law partnerships or successors in interest, and any other person, entity or organization that may be liable in whole or in part for Assignor's loss, (including without limitation, financial institutions, financial advisors, accounting and bookkeeping personnel, and other third parties), with the exception of any claim for professional legal negligence.

Assignor agrees to cooperate fully with OSB in the pursuit of any such claim or claims, which cooperation shall include, without limitation: (1) Assignor promptly providing OSB with all documentation concerning Attorney's representation of Assignor, and any additional information or records that Assignor may have related in whole or in part to the loss for which the Award has been paid, and (2) Assignor's appearance, as reasonably necessary, at depositions and at trial or hearing if OSB pursues legal action. Assignor further agrees to promptly notify OSB of any action taken by Assignor to recover Assignor's unreimbursed loss against Attorney or any other person or entity who may be liable for the loss, and to notify OSB immediately if Assignor receives notice of any bankruptcy proceeding involving Attorney.

IN WITNESS WHEREOF, Assignor has signed this instrument as Assignor's free and voluntary act.

[CLIENT]
Assignor

STATE OF OREGON)
)ss.
County of _____)

This instrument was acknowledged before me on _____, _____ by [CLIENT] .

Notary Public for Oregon
My commission expires:_____

ASSIGNMENT OF CLAIM

THIS ASSIGNMENT is made by RHEE CORPORATION ("Assignor"), to the OREGON STATE BAR, ("OSB"):

WHEREAS Assignor has a claim against _____ ("Attorney") for the loss of Assignor's funds misappropriated by Attorney;

WHEREAS OSB has agreed to pay Assignor the sum of _____ ("Award") from the Client Security Fund of the OSB as reimbursement for the above loss;

NOW, THEREFORE, in consideration of the Award, Assignor hereby assigns to OSB, to the extent of such Award, all rights, claims and judgments that Assignor has or may have against Attorney, Attorney's heirs, assigns, estate, law partners, law partnerships or successors in interest, and any other person, entity or organization that may be liable in whole or in part for Assignor's loss, (including without limitation, financial institutions, financial advisors, accounting and bookkeeping personnel, and other third parties), with the exception of any claim for professional legal negligence.

Assignor agrees to cooperate fully with OSB in the pursuit of any such claim or claims, which cooperation shall include, without limitation: (1) Assignor promptly providing OSB with all documentation concerning Attorney's representation of Assignor, and any additional information or records that Assignor may have related in whole or in part to the loss for which the Award has been paid, and (2) Assignor's appearance, as reasonably necessary, at depositions and at trial or hearing if OSB pursues legal action. Assignor further agrees to promptly notify OSB of any action taken by Assignor to recover Assignor's unreimbursed loss against Attorney or any other person or entity who may be liable for the loss, and to notify OSB immediately if Assignor receives notice of any bankruptcy proceeding involving Attorney.

IN WITNESS WHEREOF, Assignor has signed this instrument as Assignor's free and voluntary act.

_____, President

CORPORATION
Assignor

STATE OF OREGON)
)ss.
County of _____)

This instrument was acknowledged before me on _____, 2022 by _____, President of _____ CORPORATION, an Oregon domestic business corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

Notary Public for Oregon
My commission expires: _____

Via email only at

Claimant Name & Address

Re: Client Security Fund Claim No.
Lawyer:

Dear Claimant:

At its meeting on Date, the OSB Board of Governors reviewed the decision of the Client Security Fund Committee to deny your claim for reimbursement. The Board also reviewed your appeal request. After consideration of the facts and circumstances, the Board of Governors affirmed the Committee's denial of the claim.

You may feel free to contact me if you have any questions about the Board's consideration of your claim. However, the Board's decision is final and our file on this matter is now closed.

Sincerely,

Ankur Doshi
Client Security Fund Liaison
adoshi@osbar.org
503-431-6312

cc: , CSF Committee Chair
, Attorney
, CSF Investigator

May 10, 2021

Via email only

Client Security Fund Committee

Re: Request for investigator files

Dear CSF Committee:

Thank you very much for your work on all the claims you have been assigned. The Bar greatly appreciates your time and service to the Client Security Fund.

On all claims that are closed, you should send your complete investigative file to Jerri Shay, via email or first class mail, within 14 days. If the Fund made a reimbursement, the bar will likely rely on your investigatory file to initiate a collections action against the attorney at issue. Key documents, notes from witnesses and contact information is crucial to our later collection efforts.

Unless there is an active litigation hold in place (check with [OSB Staff Designee] if you are unsure), it is not necessary to send documents sent to you from the Bar as we already have those on file. Currently the only litigation holds related to the CSF are the Andrew Long claims.

Please note that your investigative files are subject to public records laws and can be produced in the event of a public records request to the Oregon State Bar.

Thanks again for your assistance.

Sincerely,

Courtney Dippel
Client Security Fund Bar Liaison
cdippel@osbar.org
503-431-6318

**Client Security Fund
Investigative Report**

Re: 2018-10
Claimant: *****
Lawyer: Lori Deveny
Investigator: Melissa May

RECOMMENDATION

I recommended approval of the claim in the amount of \$50,000. The total amount of Ms. ***'s claim is \$51,666.67 (\$92,500 settlement proceeds less \$30,833.33 contingent fee, less \$10,000 Deveny paid to Ms. ****).

CLAIM INVESTIGATION SUMMARY

Claim

Ms. *** was injured in a motor vehicle accident on August 16, 2014. She retained Deveny in December of that year. Deveny eventually settled the case with the other driver's insurance company for \$92,500. Ms. *** indicated that their fee agreement was for 1/3 of the recovery. (I could not find a written fee agreement in the file.) Deveny apparently deposited the check, and eventually paid \$10,000 of the proceeds to Ms. *** Ms. ***'s portion of the recovery should have been \$61,666.67.

Investigation

I spoke with Ms. *** and reviewed Deveny's client file for Ms. ***'s case, including pleadings, numerous medical invoices, and correspondence regarding medical bills and liens. In the past, Deveny has been unresponsive to requests for information regarding other investigations; I did not attempt to contact her regarding this matter.

The file includes an original, partially executed settlement agreement referencing the \$92,500 settlement amount. The file also includes the "check stub" statement from Zurich American Insurance Company, to which the \$92,500 check presumably was attached.

I could not find any evidence (copies of checks, transmittal correspondence, or anything else) in the file indicating that Deveny paid any of Ms. ***'s medical bills. Ms. *** reports that she and her husband paid numerous medical bills directly, some bills were paid by their insurance company, and at least one insurance company is still pursuing her for payment of their lien from the settlement proceeds.

FINDINGS AND CONCLUSIONS

1. The claim is timely. *See* CSF Rule 2.1.8.
2. Claimant is the injured client. *See* CSF Rules 1.4 and 2.1.1.
3. The loss was caused by the lawyer's dishonest conduct. *See* CSF Rule 2.1.2.
4. The loss is not covered by any similar fund in another state. *See* CSF Rule 2.1.3.
5. The loss was not incurred by a financial institution covered by a "banker's blanket bond" or similar insurance or surety contract. *See* CSF Rule 2.1.4.
6. The loss arose from, and was because of, an established lawyer-client relationship.
7. CSF Rule 2.1.6 has not been satisfied because Deveny has not been convicted of a crime and the claimant has not obtained a civil judgment. However, I recommend waiver of this rule because of the special and unusual circumstances present here.
8. Claimant has made a good-faith effort to collect the amount claimed. *See* CSF Rule 2.1.7.
9. The loss arose from the lawyer's practice of law in Oregon. *See* CSF Rule 2.1.9.
10. CSF Rule 2.2 is satisfied. Claimant is not seeking reimbursement of a legal fee.
11. The Claimant did not receive equivalent legal services by another attorney without cost to the Claimant. *See* CSF Rule 2.3.

Although the claim should be denied because CSF Rule 2.1.6 has not been satisfied, approval of the claim in the amount of \$50,000 is appropriate because extreme hardship or special and unusual circumstances exist. Deveny appears to be financially insolvent, so it would be pointless for Ms. *** to pursue a civil judgment at this point.



Client Security Fund Application for Reimbursement

2018-10

Return completed form to:

Oregon State Bar
Client Security Fund
PO Box 231935
Tigard, OR 97281-1935

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar.
Submission of this claim does not guarantee payment.
The Oregon State Bar is not responsible for the acts of individual lawyers.

Please note that this form and all documents received in connection with your claim are public records.
Please attach additional sheets if necessary to give a full explanation.

RECEIVED

1. Information about the client(s) making the claim:

a. Full Name: ***
b. Street Address: ***
c. City, State, Zip: Oregon City, Oregon 97045
d. Phone: (Home) _____ (Cell) 503***
(Work) 503-*** (Other) _____
e. Email: ***

FEB 28 2018

Oregon State Bar
Executive Director

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3):

a. Lawyer's Name Lori Deveny
b. Firm Name Lori Deveny
c. Street Address: 1020 SW Taylor, Suite 690
d. City, State, Zip: Portland, Oregon 97205
e. Phone: 503-225-0440; cell phone 503-360-8030
f. Email: none given to me

3. Information about the representation:

a. When did you hire the lawyer? December 31, 2014 sent letter with details
b. What did you hire the lawyer to do? Obtain settlement for MVA on August 16, 2013. I was rear-ended while sitting at a light. Their insurance paid for some 1st year medical bills and car damage, but not surgery (May 2014).
c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)
1/3 of settlement (I repeatedly asked for a copy of the settlement I signed, but was NOT given one)
d. Did anyone else pay the lawyer to represent you? No.
e. If yes, explain the circumstances (and complete item 10B on page 3)

f. How much was actually paid to the lawyer? (please attach proof of payment, if any) _____
g. What services did the lawyer perform? Settled the case about August 1, 2016. Deveny said the check arrived October 3, 2016. Settled for \$92,500.

h. Was there any other relationship (personal, family, business or other) between you and the lawyer?
No.

4. Information about your loss:

- a. When did your loss occur? Settlement received by Deveny Oct. 3, 2016.
- b. When did you discover the loss? Told me that my insurance had a lien against the settlement and was repeatedly putting someone else in charge of handling it. No return calls in 2018.
- c. Please describe what the lawyer did that caused your loss Never dispursed the remainder of the settlement nor paid all the medical bills as promised. We paid many Deveny has not paid me my share.
- d. Total amount of your loss \$51,666 (2/3 of settlement less \$10K pd. 4/2017)
- e. How did you calculate your loss? \$61,666 is 2/3 of the settlement (she dispursed \$10,000 in April 2017 to me).
- f. Amount you are requesting to be reimbursed \$51,666 minus medical bills she MAY HAVE paid (?)

5. Information about your efforts to recover your loss:

- a. Have you been reimbursed for any part of your loss? *If yes, please explain:* yes, \$10,000 dispursed in April 2017
- b. Do you have any insurance, indemnity or a bond that might cover your loss? *If yes, please explain:* No.
- c. Have you made demand on the lawyer to repay your loss? When? *Please attach a copy of any written demand. Demand? Not in writing, but have repeatedly requested settlement money and closure, leaving many messages.*
- d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? *If yes, please explain:* Yes, but she claims the money is being held up by a lien placed by my health insurance. 12-6-17 texted, "Just had a great call with the lien folks. Fingers crossed I thing we will be all done by Christmas" and 12-18-17, "I have bills that will come out of the settlement.... I can give you amounts... when I return to the office." Nothing
Since 12-26-17,
- e. Have you sued the lawyer or made any other claim? *If yes, please provide the name of the court and a copy of the complaint.* No.
- f. Have you obtained a judgment? *If yes, please provide a copy* No.
- g. Have you made attempts to locate assets or recover on a judgment? *If yes, please explain what you found:* No.

6. Information about where you have reported your loss:

- District attorney
- Police
- Oregon State Bar Professional Liability Fund
- If yes to any of the above, please provide copies of your complaint, if available.*
- Oregon State Bar Client Assistance Office or Disciplinary Counsel

7. Did you hire another lawyer to complete any of the work? *If yes, please provide the name and telephone number of the new lawyer:* No, but Sandra Stone, attorney, notarized this.

8. Please give the name and the telephone number of any other person who may have information about this claim: Dr. Patrick Hanley (503-256-5866)- medical bills ALL paid. Unable to verify WHO paid them from his business office (extension 225). May have been paid by Deveny. Unsure. Only able to verify paid in full.

9. Agreement and Understanding

The claimant agrees that, in exchange for any award from the Oregon State Bar Client Security Fund (OSB CSF), the claimant will:

- a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the CSF award.
- b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.
- c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.
- d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer or any other person on entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

- a. Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.
- b. Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name: _____

Address: _____

Phone: _____

11. Claimant's Signature and Verification

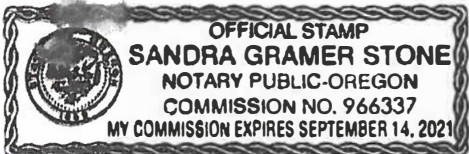
(Each claimant must have a notarized signature page. Please photocopy this page for each person listed in question 1.)

State of OREGON)
County of Clackamas) ss

Upon oath or affirmation, I certify the following to be true:
I have reviewed the Rules of the Client Security Fund and the foregoing Application for Reimbursement; and submit this claim subject to the conditions stated therein; and the information which I have provided in this Application is complete and true, to the best of my knowledge and belief.

Claimant's Signature

Signed and sworn (or affirmed) before me this 25 day of February 2018.



Notary's Signature Sandra Gramer Stone
Notary Public for OREGON
My Commission Expires 9-14-2021

Please complete page 4 if an attorney is representing you for this claim.

Enrolled Senate Bill 180

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Board of Governors)

CHAPTER

AN ACT

Relating to notifications required upon making payments to settle third-party liability claims.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2021 Act is added to and made a part of the Insurance Code.

SECTION 2. (1)(a) An insurer shall notify a claimant in writing at the time the insurer pays \$5,000 or more to settle a third-party liability claim if:

(A) The claimant is a natural person;

(B) The insurer or an agent or other representative of the insurer, including the insurer’s attorney, delivers the payment to the claimant or to the claimant’s attorney, agent or other representative by draft, check or other form of payment; and

(C) The claimant or the claimant’s attorney has provided contact information or a mailing address to the insurer.

(b) An insurer may comply with paragraph (a) of this subsection by sending to the claimant a copy of the cover letter that accompanies the insurer’s settlement payment to the claimant’s attorney. Any notice to the claimant other than a copy of the cover letter may not include more than:

(A) A statement that the insurer has paid a settlement;

(B) The amount of the settlement;

(C) The date on which the insurer paid the settlement;

(D) The insurer’s name; and

(E) Any identifying number for the claim.

(2) Subsection (1) of this section does not:

(a) Create a cause of action against an insurer for the insurer’s failure to provide the notice described in subsection (1) of this section; or

(b) Create for the claimant’s attorney a defense to any cause of action based on an insurer’s failure to provide the notice described in subsection (1) of this section.

(3) Subsection (1) of this section authorizes an insurer or the insurer’s attorney to communicate with the claimant for the purpose of delivering the notice described in subsection (1) of this section even if the insurer or the insurer’s attorney knows that the claimant is represented by an attorney.

(4) This section does not invalidate or otherwise affect a settlement for which an insurer made a payment.

Passed by Senate April 14, 2021

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 20, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

.....
Shemia Fagan, Secretary of State