CLIENTS' SECURITY TRUST FUND

OF THE DISTRICT OF COLUMBIA BAR

RULES OF PROCEDURE

Pursuant to Section 6 of Rule XII of the District of Columbia Court of Appeals creating the Clients' Security Fund of the District of Columbia Bar, the following Rules of Procedure are adopted by the Trustees of such Fund for the management of the Trustees' funds and affairs and for the presentation of claims and the processing and payment thereof.

I. Definitions.

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

A. The "Fund" shall mean the Clients' Security Fund of the District of Columbia Bar.

B. The "Trustees" shall mean the Trustees of the Clients' Security Fund of the District of Columbia Bar.

C. The "Chair" shall mean the Chairman of the Trustees appointed by the District of Columbia Court of Appeals.

D. The "Board" shall mean the Board of Governors of the District of Columbia Bar.

E. The term “claimant” shall mean a person or entity that applies to the Clients’ Security Fund for reimbursement pursuant to the rules applicable to the Fund.

F. The term "lawyer" shall mean a member of the District of Columbia Bar. For the purposes of this Rule, “a member” shall include an individual disbarred by the

District of Columbia Court of Appeals no more than two years before the commencement of the client-attorney relationship if the client reasonably believed the lawyer was licensed to practice law in the District of Columbia at the time that the client retained the lawyer.

G. The words "dishonest conduct" shall mean wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value. (Amended 7/24/93). Dishonest conduct may include the failure to refund an unearned legal fee. For the purposes of this rule, if a lawyer dies or becomes incapacitated while representing the client, the lawyer's failure to properly safeguard the client's advanced unearned fees, rendering a refund unavailable to the client, may also be considered dishonest conduct. (Amended 6/10/2024). The dishonest conduct need not have taken place within the District of Columbia in order for an application to the Fund to be made or to be granted. (Amended 2/7/84, edited 5/4/89).

H. "Reimbursable Losses" are those losses of money, property or other things of value which meet all of the following tests:

1. The loss was caused by the dishonest conduct of a lawyer when:

(a) acting as a lawyer; or

(b) acting in a fiduciary capacity customary to the practice of law, such as personal representative, administrator, executor, trustee of an express trust, guardian or conservator; (amended 2/7/84) or

(c) acting as an escrow holder or other fiduciary, having been designated as such by a client in the matter in which the loss arose or having been so appointed or selected as a result of a client-attorney relationship.

2. The loss was that of money, property or other things of value which came into the possession (actual or constructive) of the lawyer by reason of his or her having acted in the capacity described in paragraph I.H.1 of this Rule.

3. The dishonest conduct occurred on or after April 1, 1972.

4. The loss, or reimbursable portion thereof, was not covered by any insurance or by any fidelity or similar bond or fund, whether of the lawyer of the claimant or otherwise.

5. The maximum amount which any one claimant may recover from the Fund arising from an instance or course of dishonest conduct is $100,000.00. This limit applies to claims filed with the Fund on or subsequent to July 1, 2016. The limit for all claims filed with the Fund between April 10, 1990 and June 30, 2016 is $75,000.00. Claims filed or pending with the Fund prior to April 10, 1990 are subject to a limit of $50,000.00. (amended 2/7/84 and 4/10/90). For purposes of this provision, a claim may not be split. The Trustees may consider two or more individuals or entities as one claimant as to recovery allowed if the alleged dishonest conduct arose from the same transaction or course of dishonest conduct.

I. The following shall be ineligible to apply to the Fund for reimbursement of losses:

1. The spouse or other close relative, partner, associate or employee of the lawyer causing the loss, or

2. An insurer, surety or bonding agency or company, or

3. Any business entity controlled by

(a) the lawyer,

(b) any person described in paragraph I.I.1 hereof, or

(c) any entity described in paragraph I.I.2 hereof or in turn controlled by the lawyer or a person or entity described in paragraphs I.I.1 or I.I.2 hereof, or

4. A governmental entity or agency.

J. The following losses shall be ineligible for reimbursement:

1. Claims for consequential damages or claims for losses based upon negligence, incompetence or malpractice by a lawyer;

2. Money lost by a claimant that was given to a lawyer for any other purpose that did not arise from the client-attorney relationship or fiduciary obligation customary to the practice of law, including but not limited to:

(a) Investments purposes; or

(b) Escrow agreement not arising from a client-attorney relationship.

3. Money claimed by a third-party not in a client-attorney relationship with the lawyer, including but not limited to:

(a) Claims filed by a third party for medical services provided

in the context of a personal injury claim; or

(b) Claims for losses incurred by individual beneficiaries or heirs of an estate.

II. Application for Reimbursement.

A. The Trustees shall prepare a form of application for reimbursement.

B. The form should include at least the following information provided by the claimant under penalty of perjury:

1. The name, address, telephone number, and email address of the claimant and of the person who paid for the legal services, if different from the claimant. The claimant's contact information shall remain confidential if requested by the claimant;

2. The name and address of the lawyer alleged to have dishonestly taken the claimant's money or property;

3. The legal or other fiduciary services the lawyer was to perform for the claimant;

4. The amount paid to the lawyer;

5. A copy of any written agreement for legal services provided to the claimant by the lawyer;

6. Copies of any negotiated checks, money orders, receipts or other proof of payment;

7. The amount of the loss sought in reimbursement by the claimant;

8. The date or period of time during which the alleged loss was incurred;

9. The date upon which the alleged loss was discovered;

10. A general statement of facts relative to the alleged loss;

11. A description of the lawyer's dishonest conduct;

12. A description of any steps taken to recover the loss directly from the lawyer;

13. A statement that the claimant has no other remedy available against the attorney or any other person responsible for the loss and that the loss was not covered by any insurance, indemnity, or bond; or, if another remedy was, is, or may be available the extent to which it was pursued and the result. In the case of an insurer, state the name and address of the insurer, insurance or bonding company, if known, and the extent of such coverage and the amount of payment, if any, made; (Amended 2/7/84)

14. The claim has not been presented to the Clients' Security Fund of any other jurisdiction, or if it has, the status of the claim. A statement that if another claim is thereafter filed, the District of Columbia Clients' Security Fund will be notified and advised of all actions taken; (Amended 2/7/84)

15. Verification by the claimant that they agree to repay the Fund if they are subsequently reimbursed by any other source;

16. The notarized signature of the claimant.

C. The application shall contain the following statement in bold type: "NOTICE TO CLAIMANT: THE DISTRICT OF COLUMBIA BAR HAS NO LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS. THE CLIENTS' SECURITY FUND IS ORDINARILY A FUND OF LAST RESORT. PAYMENTS FROM THE CLIENTS' SECURITY FUND SHALL BE MADE IN THE SOLE DISCRETION OF THE TRUSTEES ADMINISTERING THE FUND AND NOT AS A MATTER OF RIGHT. NO CLIENT OR MEMBER OF THE PUBLIC SHALL HAVE ANY RIGHT IN THE CLIENTS' SECURITY FUND AS A THIRD PARTY BENEFICIARY OR OTHERWISE." (Amended 2/7/84)

D. A claimant must substantially complete the application for reimbursement and provide satisfactory evidence of a reimbursable loss in order for the claim to be deemed “filed” with the Fund.

E. Copies of the application form shall be obtainable from the Office of the District of Columbia Bar and from each Trustee.

III. Processing of Applications.

A. Applications for reimbursement shall be addressed to the Office of the District of Columbia Bar, and shall be transmitted forthwith by such office to the chair of the Trustees.

B. The Chair shall promptly cause each application for reimbursement to be sent to a Trustee for investigation and report. Such Trustee shall be reimbursed for reasonable out-of-pocket expenses incurred by him or her in making such

investigation.

C. A copy of the application shall be sent by certified mail to the lawyer who is alleged to have committed the dishonest conduct to the most recent address that the lawyer reported to the District of Columbia Bar, as required by Rule II. Section 2(1) & (4) and Rule XI Section 14(g)(3) of the Rules Governing the Bar.

D. The Trustee to whom an application has been referred shall conduct such investigation as he or she shall deem necessary and desirable to determine whether the claim is for a reimbursable loss and to guide the Trustees in deciding the extent, if any, of reimbursement from the Fund. The Office of Disciplinary Counsel of the District of Columbia Bar may allow the Trustees to have access, during consideration of an application, to the disciplinary files and records, if any, pertaining to the dishonest conduct alleged. Information or documents obtained by the Trustees from said files or records shall be used solely for the purpose of determining the validity of the application, but otherwise shall constitute confidential information.

E. Staff and/or the Trustees may request additional information from the claimant to corroborate the loss alleged. The claimant shall have the duty to supply relevant evidence to support the claim by a preponderance of the evidence.

F. Reports with respect to applications shall be submitted by the Trustee conducting the investigation to the Chair within a reasonable time. The Chair shall promptly send a copy of each report to the Trustees.

G. The Trustees shall consider each report submitted. If any Trustee requests that the claimant and/or the lawyer alleged to have caused the loss present testimony, the Trustees shall afford them the opportunity to be heard. At the written request of the lawyer accused of dishonest conduct or his or her personal representative, the Trustees shall afford the lawyer a reasonable opportunity to address the Trustees in

an informal presentation. Such a request must be filed with the Fund within thirty (30) calendar days from the date of the letter notifying the lawyer that the claim has been assigned to a Trustee for investigation. The Trustees may place reasonable restrictions and/or limitations on the length, subject matter and/or scheduling of any such informal presentation. Absent such request, a claim shall be processed on the basis of the information contained in the application for reimbursement and in the report of the Trustee who investigated the claim.

H. The Trustees may in their discretion authorize payment or any reimbursable losses forthwith, or defer payment of any such loss until the Trustees shall have ascertained the amount remaining in the Fund at the end of the fiscal year, the necessary expenses of administration, and the aggregate reimbursable losses during such year, or until such other time as the Trustees may deem appropriate.

I. The Trustees may, in their sole discretion, allow further payment of a reimbursable loss which was partially allowed in a prior year.

J. A Trustee may disqualify himself or herself from participating in the processing of a claim for any reason the Trustee deems appropriate.

IV. Reimbursement at the Discretion of Trustees.

All reimbursements from the Fund shall be a matter of grace and not of right, and shall be in the sole discretion of the Trustees. No client or member of the public shall have any right in the Fund as a third party beneficiary or otherwise.

V. Assignment of Claimant's Right and Subrogation.

Payments on approved applications shall be made from the Fund only upon condition that the claimant shall execute the assignment of rights and subrogation agreement required by

Section 13 of Rule XII of the District of Columbia Court of Appeals. Upon commencement of an action by the District of Columbia Bar, pursuant to its subrogation rights, it shall give written notice thereof to claimant at his or her last known address. The claimant may join in such action to press a claim for his loss in excess of the amount of the payment from the Fund, but any recovery shall first be applied to off-set such payment.

In their discretion, the Trustees may require that before receiving a payment from the Fund, the person who is to receive such payment or his or her legal representative, shall execute and deliver to the Trustees a written agreement stating that in the event the reimbursed client or his or her estate should ever receive any restitution from the lawyer or the estate of the lawyer involved, the reimbursed client shall agree to repay to the Fund (up to the amount of the original reimbursement from the Fund) that amount by which the original reimbursement from the Fund plus the present restitution from the lawyer or his or her estate exceeds the reimbursed client's actual loss, as that actual loss is or was determined by the Trustees.

VI. Reconsideration.

A. If a claim has been denied by the Trustees, a claimant may request reconsideration of the Trustees' decision by submitting a written request to the Fund manager accompanied with new information relevant to the alleged dishonest conduct of the lawyer or additional information to support the loss alleged in the application.

B. Any submission from a claimant containing new information found to be sufficient to warrant reconsideration will be mailed to the lawyer, who will have thirty (30) days from the date of mailing to provide the Trustees with a written response to the new information.

C. If a request for reconsideration is denied, the decision of the Trustees shall be final.

VII. Meetings of the Committee.

A. Regular meetings of the Trustees shall be held from time to time upon call of the Chair upon not less than five (5) days written notice.

B. Special meetings of the Trustees shall be called on at least five (5) days written notice by the Chair at the request of at least two (2) Trustees. Notice of any meeting may be waived by a Trustee, either before or after the meeting.

C. A majority of the Trustees shall constitute a quorum at any meeting. The concurrence of a majority of the Trustees in attendance shall be requisite to the action of the Trustees. (Amended 2/7/84)

VIII. Transitional Rule.

A. Except as provided in Rule I.H.5, these rules shall apply to any application for reimbursement filed with the Fund on or after March 11, 2016.

B. A request for reconsideration may be filed and reviewed by the trustees under these rules by any claimant whose claim was denied in whole or in part prior to March 11, 2016 because the lawyer was not:

1. Deceased or adjudicated a bankrupt or mentally incompetent;

2. Disbarred or suspended from the practice of law or voluntarily resigned from the practice of law in the District of Columbia;

3. A judgment debtor of the claimant or adjudicated guilty of a crime, which was predicated upon the dishonest conduct complained of in the claim.

C. Any claimant whose claim was denied in whole or in part prior to March 11, 2016 because the lawyer against whom the claim was filed had been disbarred at the

time of the alleged dishonest conduct complained of may seek reconsideration, provided that:

1. The lawyer had been disbarred for no more than two years before the commencement of the client-attorney relationship, and;

2. The client reasonably believed that the lawyer was licensed to practice law in the District of Columbia when the client retained the lawyer.

IX. Amendments.

These rules may be amended at any duly held meeting of the Trustees, subject to the approval of the Board of Governors.

(Amended by the Board of Governors February 7, 1984, April 10, 1990, December 14, 1993, January 17, 2017, June 10, 2024. Amended by the Trustees of the Fund on July 24, 1993).