TITLE 3. PROGRAMS AND SERVICES

~~Adopted July 2007~~

DIVISION 4. CONSUMERS

Chapter 1. Client Security Fund

Article 1. ~~In general~~ General Provisions

Rule 3.410 Scope and definitions

(A) As required and permitted by statute, the Board of Trustees has adopted these rules to administer the Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of Licensees of the State Bar, foreign legal consultants registered with the State Bar, and Attorneys registered with the State Bar under the Multijurisdictional Practice Program, arising from or connected with the practice of law.[1]

(B) All terms used in these rules have their ordinary meanings unless specifically defined otherwise. Some definitions may be limited to the rules in which they appear. Unless otherwise indicated, the following definitions apply to these rules.

(1) "Attorney" means a Licensee or a former Licensee as defined in Rule 1.22(C), a Registered Foreign Legal Consultant as defined in California Rules of Court, rule 9.44; or an attorney registered with the State Bar under its Multijurisdictional Practice Program as defined in California Rules of Court, rules 9.41.1, 9.45, 9.46, 9.47, and 9.48.

(2) "Applicant" means the Party seeking reimbursement for their asserted loss.

(3) "Client" means the person who directly or through an authorized representative obtains an Attorney's legal services.

(4) "Commission" means the Client Security Fund Commission.

(5) "CSF" means the Client Security Fund.

(6) "CSF Counsel" means the State Bar employee(s) managing the staff serving the CSF and any other staff who serve as counsel to the CSF. The CSF Counsel must be an active Licensees and represent the interests of the Commission and those of the CSF.

[1] See Bus. & Prof. Code, § 6140.5, subd. (a).

(7) “Declaration” means a document that is based on personal knowledge, signed under penalty of perjury, and otherwise complies with the requirements of Code of Civil Procedure section 2015.5.

(8) “Discipline” for purposes of this Chapter means the disposition in a final order of the California Supreme Court, or in an order of the State Bar Court when the imposed Discipline is a reproval. This definition does not include a disposition of admonition.

(9) “Electronic Service” means Service of a document, on the Applicant, Attorney, or any lawyer representing either Party, by electronic transmission to the email address at or through which the Party or other person is deemed to have authorized Electronic Service. Electronic Service may be performed directly by the CSF staff, a Party or other person, by an agent of a Party or other person, including the Party or other person’s Attorney, or through an electronic filing Service provider. Prior consent of the Party or other person to be served electronically is not required to serve documents as provided in these rules. Electronic Service of a document is deemed complete at the time of the electronic transmission of the document. If a Party does not have an Electronic Service address or communicates to the CSF staff in writing a request not to be served electronically, the CSF staff shall serve that Party by mail at the Party’s address of record or other address provided by that Party. A document that is served electronically shall have the same legal effect as an original paper document.

(10) “Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means. Electronic Signature includes a copy of an original signature placed into the document by electronic means and includes a typographic signature that includes “/s/” followed by the signer’s name, e.g., “/s/ John Doe.” For purposes of these rules, a “digital signature” as defined in Government Code section 16.5, subdivision (d), is a type of Electronic Signature. A typewritten name created in a word processing program, regardless of the use of a cursive font, that is not preceded by “/s/” is not an Electronic Signature unless it otherwise complies with Government Code section 16.5. When a document to be filed or served electronically provides for a signature under penalty of perjury[2] of any person, the document is deemed to have been signed by the person whose Electronic Signature is attached or logically associated with the document if the document was served by the

[2] See, e.g., Rule 3.440(A)(12) [application under penalty of perjury], Rule 3.441(C) [Declarations], Rule 3.442(D) [objection to Notice of Intention to Pay], and Rule 3.443(C) [objection to Tentative Decision].

person or an agent of the person and either of the following conditions is satisfied:

(a) The declarant has signed the document using an Electronic Signature and declares under penalty of perjury under the laws of the State of California that the information submitted is true and correct. If the person serving the document is not declarant or declarant's counsel, the Electronic Signature must be unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data in such a manner that if the data are changed, the Electronic Signature is invalidated; or

(b) The declarant, before serving the document, has physically signed a printed form of the document. The person serving the document represents, by the act of serving electronically, that the declarant has complied with this subsection. The person serving the document electronically on a Party, a Party's lawyer, or the CSF must maintain the printed form of the document bearing the original signature until final disposition of the case and make it available for review and copying upon the request of the CSF, the Commission, or any Party to the proceeding in which it is filed.

(11) "Fictitious Person" for purposes of this Chapter means a natural person or business entity that adopts, assumes, or uses a name other than the person's or entity's legal name for the purpose of deceiving, defrauding, or engaging in conduct that is unlawful or otherwise improper.

(12) "Party/Parties" means the Applicant, the Attorney, or any person authorized by law to act on behalf of the Applicant or the Attorney or any combination thereof.

(13) "Service" for purposes of this Chapter means the delivery of any document, notice, decision, or communication to a Party or other person as required under these rules. Unless otherwise provided, Service must comply with the requirements of Code of Civil Procedure section 1013, subdivision (a).

Rule 3.410 adopted effective January 1, 2027.

Rule 3.420 Overview of the Client Security Fund

~~(A) Pursuant to statute the Board of Trustees of the State Bar of California has established a Client Security Fund ("Fund") that may reimburse individuals who have suffered a loss of money or property because of the dishonest conduct of an attorney.[1] For the purposes of these rules, an attorney is a current or former licensee of the State Bar of California, a Foreign Legal Consultant registered with the State Bar, or an attorney registered with the State Bar under the Multijurisdictional Practice Program.~~

~~(B)~~(A) Applications for reimbursement from the CSF must meet the requirements of these rules, and payments from the ~~Fund~~ CSF are solely within the discretion of the State Bar.

~~(C)~~(B) No person or entity has a right to reimbursement, and no person or entity, including a creditor or third-party beneficiary, has any right in the ~~Fund~~CSF.

Rule 3.420 adopted effective January 1, 2010; amended effective January 1, 2012; amended effective March 2, 2012; amended effective January 25, 2019~~.~~; amended effective January 1, 2027.

Rule 3.421 Client Security Fund Commission

(A) To administer the ~~Client Security Fund~~ CSF, the Board of Trustees ~~of the State Bar of California~~ has established ~~a Client Security Fund~~ the Commission ~~("Commission")~~ to which it appoints five members who serve at ~~its~~ the Board of Trustees' pleasure or until the expiration of a term set by the Board of Trustees. No more than ~~T~~three members ~~at most may be present or former~~ may be ~~l~~Licensees. ~~of the State Bar or admitted to practice before any court in the United States. The Commission has sole and final authority to determine whether to grant an application for reimbursement from the Client Security Fund and the extent and manner of any payment.~~

~~(B) The vote of a majority of the commissioners present and voting at a Commission meeting constitutes the action of the Commission, unless the Commission or its chair has authorized a vote by poll, in which case a majority vote of commissioners then in office constitutes its action.~~

(B) The Commission has final authority to determine whether to grant an application for reimbursement from the CSF and the extent and manner of any payment. The CSF Counsel is authorized to propose and determine reimbursement decisions as set forth in these rules.

~~[1] Business & Professions Code § 6140.5.~~

~~(C) The Manager of the Office of the Client Security Fund and any other staff who serve as counsel (collectively "Fund Counsel") must be active licensees of the State Bar and represent the interests of the Commission and those of the Fund. In these rules, Manager may also mean the Manager's designee.~~

~~(D)~~(C) The reasonable expenses of the Commission and ~~its staff~~ the CSF Counsel may be charged to the ~~Fund~~CSF. These expenses include staff salaries and ~~Fund~~ CSF-related costs of administration and litigation.

Rule 3.421 adopted effective January 1, 2010; amended effective January 1, 2012; amended effective January 25, 2019; amended effective May 17, 2019~~.~~; amended effective January 1, 2027.

Article 2. Requirements for ~~r~~Reimbursement; ~~l~~Limitations and ~~e~~Exclusions

Rule 3.430 General requirements for reimbursement

(A) To qualify for reimbursement, ~~an~~ the ~~a~~Applicant must establish ~~a loss of money or property that was received by an active attorney who was acting as an attorney or in a fiduciary capacity customary to the practice of law, for instance as an administrator, executor, trustee of an express trust, guardian, or conservator~~ by preponderance of the evidence all of the following:

(1) a loss of money or property;

(2) that the money or property was received by an Attorney who was providing legal services or acting in a fiduciary capacity customary to the practice of law, such as an administrator, executor, trustee of an express trust, guardian, or conservator; and

(3) that the loss was caused by dishonest conduct as defined in Rule 3.431.

~~(B) The loss must have been caused by dishonest conduct as defined in these rules.~~[2]

~~(C)~~(B) The ~~a~~Attorney must have a status that meets the requirements of ~~these rules.~~[3] Rule 3.432(A) unless waived as provided for under Rule 3.432(C).

~~(D) Even if an application meets these requirements, the Commission and/or Fund Counsel have the discretion to deny or limit reimbursement. No person or entity has a right to reimbursement.~~ [4]

Rule 3.430 adopted effective January 1, 2010; amended effective May 17, 2019~~.~~; amended effective January 1, 2027.

Rule 3.431 Dishonest ~~c~~Conduct

"Dishonest ~~c~~Conduct" refers to any of the following:

(A) ~~T~~theft or embezzlement of money, the wrongful taking or conversion of money or property, or a comparable act~~.~~;

(B) ~~Failure~~failing to refund unearned fees received in advance for services when the ~~a~~Attorney performed an insignificant portion of the services or none at all. Such a failure constitutes a wrongful taking or conversion. All other instances of an ~~a~~Attorney's failure to return an unearned fee or the disputed portion of a fee are outside the scope of this provision and not reimbursable under these rules~~.~~;

(C) ~~B~~borrowing or taking money without consent from a ~~c~~Client without the intention or reasonable ability, present or prospective, ~~to~~ of repaying it~~.~~;

(D) ~~O~~obtaining money or property from a ~~c~~Client for an investment that was not in fact made. Failure of an investment to perform as represented to or anticipated by a ~~c~~Client is not ~~d~~Dishonest ~~c~~Conduct under these rules~~.~~; and/or

~~(E) An act of intentional dishonesty or deceit that proximately leads to the loss of money or property.~~

(E) Any other improper or unauthorized act or omission relating to funds or property not otherwise covered in sections (A) through (D) as determined by the CSF Counsel.

Rule 3.431 adopted effective January 1, 2010~~.~~; amended effective January 1, 2027.

~~[2] See Rule 3.431.~~
~~[3] See Rule 3.432.~~
~~[4] Rule 3.420(C).~~

Rule 3.432 Required status of ~~a~~Attorney

(A) To qualify for reimbursement, ~~an~~ the ~~application~~ Applicant must establish that the ~~a~~Attorney whose dishonest conduct is alleged has

(1) been ~~disbarred, d~~Disciplined, ~~or~~ voluntarily resigned ~~from the State Bar;~~, or resigned with charges pending[3] from the State Bar~~;~~. Unless the Attorney has been disbarred, the underlying basis for the Discipline imposed against the Attorney must have been in connection with the loss asserted in the Applicant's application for reimbursement;

(2) died or been adjudicated mentally incompetent; ~~or~~

(3) ~~because~~ become, as a result of the ~~d~~Dishonest ~~c~~Conduct, ~~become~~ a judgment debtor ~~of the applicant in~~ following a contested proceeding ~~or been convicted of~~

[3] Cal. Rules of Court, rule 9.21.

~~a crime.~~ of the person or entity that directly incurred the asserted loss; or

(4) been convicted of a crime as a result of the Dishonest Conduct.

(B) The Commission or ~~Fund~~ the CSF Counsel may exercise its discretion to waive ~~provision~~ section (A) of this rule ~~Pursuant to guidelines set by the Commission~~ when~~.~~

(1) the Attorney is subject to a proceeding under Business and Professions Code section 6007; or

(2) the Office of Chief Trial Counsel has filed a stipulation as to facts, conclusions of law, and disposition with the State Bar Court, or the State Bar Court has submitted its recommended disciplinary action against the Attorney to the Supreme Court in connection with the loss asserted in the Applicant's application for reimbursement; or

(3) the Office of Chief Trial Counsel has filed a stipulation to disbarment with the State Bar Court, or the State Bar Court has submitted a recommendation to the Supreme Court that the Attorney be disbarred.

Rule 3.432 adopted effective January 1, 2010; amended effective May 17, 2019~~.~~; amended effective January 1, 2027.

Rule 3.433 Excluded ~~a~~Applicants

An ~~a~~Applicant is ~~excluded from receiving~~ not eligible for reimbursement ~~from the Fund who~~ if the Applicant

(A) ~~I~~is or was related to the ~~a~~Attorney as a spouse or registered domestic partner;

(B) ~~H~~has a family relationship, including children (including by adoption), ~~with the attorney, including one by adoption, as child,~~ parents, ~~grandchild~~ grandchildren, grandparents, or siblings, with the Attorney;

(C) ~~L~~lives or lived with the ~~a~~Attorney;

(D) ~~H~~has or had a business or other relationship with the ~~a~~Attorney as an associate, partner, employee, or employer;

(E) ~~I~~is or was an insurer, surety, or bonding entity seeking reimbursement for a payment made under a contract or bond covering the ~~d~~Dishonest ~~c~~Conduct;

~~(F) Is or was a business entity controlled~~

~~(1) by the attorney~~

~~(2) by someone with whom the attorney has a personal or business relationship as defined by this rule;~~

(F) is or was a business entity controlled by the Attorney or by someone with whom the Attorney has a personal or business relationship as defined by this rule;

(G) is or was an assignee, lienholder, or creditor of the ~~attorney or the~~ person or entity ~~who~~ that incurred the asserted loss; ~~or~~

~~(H) Is a government entity or agency.~~

(H) Is or was an assignee, lienholder, or creditor of the Attorney, except as provided in Rule 3.432(A)(3); or

(I) Is a government entity or agency.

Rule 3.433 adopted effective January 1, 2010~~.~~; amended effective January 1, 2027.

Rule 3.434 Reimbursement limitations and exclusions

(A) For losses occurring on or after January 1, 2009, the maximum allowable reimbursement per individual Applicant is $100,000.00~~,~~. ~~and c~~Cumulative reimbursements to ~~an~~ the ~~a~~Applicant may not exceed $100,000.00 with respect to ~~any~~ an individual ~~a~~Attorney. For losses occurring before January 1, 2009, the maximum allowable reimbursement per individual Applicant is $50,000.00~~,~~. ~~and c~~Cumulative reimbursements to ~~an~~ the ~~a~~Applicant for such losses occurring before January 1, 2009, may not exceed $50,000.00 with respect to ~~any~~ an individual ~~a~~Attorney.

(B) The ~~Fund~~ CSF may not reimburse for the following:

(1) interest or a consequential loss;

(2) a loss covered by any indemnity, such as insurance, fidelity guarantee, or bond, unless the indemnifier has a cause of action against the ~~a~~Applicant for recovery of a payment made for the loss;

(3) ~~a~~Attorney fees and other costs paid to recover a reimbursable loss, unless the ~~a~~Applicant submits clear and convincing proof that the payments were reasonable and ~~they~~ reduced the amount otherwise reimbursable; or

(4) a loss from a loan or investment~~,~~ unless ~~it~~ the loan or investment meets the requirements of Rule 3.43~~6~~5.

~~(5) any criminal penalties or civil judgments, unless all of the following circumstances are met:~~

~~(a) the criminal penalty or civil judgment arises out of a transaction connected with the discipline of the attorney;~~[5]

~~(b) the Supreme Court order imposing suspension or disbarment, or~~

~~accepting a resignation with a disciplinary matter pending, orders the attorney to pay a monetary sanction;~~

~~(c) the Client Security Fund actually receives funds consisting of all or a portion of the ordered monetary sanction;[6] and~~

~~(d) the criminal penalty or civil judgment is otherwise uncollectible.~~

~~The total amount reimbursed under this subsection with respect to any attorney cannot exceed the total sanction amount actually received by the Client Security Fund with respect to that attorney. The limits contained in Rule 3.434(A) do not apply to this subsection. Nothing in this subsection is intended to alter the discretion of the Client Security Fund.[7]~~

(C) A reimbursable loss of non-monetary property is its fair market value at the time of loss.

(D) To fulfill the purposes of the CSF, the Commission or the CSF Counsel has discretion to limit or deny reimbursement for reasons that may include the following:

(1) the Attorney and/or the Applicant knowingly and intentionally participated in or intended to participate in illegal or tortious conduct in connection with the loss asserted in the Applicant's application for reimbursement;

(2) the Applicant failed to act reasonably to protect against their asserted loss, considering the circumstances of the transaction, the Applicant's past dealings with the Attorney, as well as their relative formal education and business sophistication;

(3) the nature of the Applicant's asserted loss, its amount, or the financial or administrative circumstances of the CSF;

(4) the Applicant is a Fictitious Person;

(5) the availability of the Applicant's alternative remedies and sources of recovery; or

(6) any other principles of fairness and equity.

Rule 3.434 adopted effective January 1, 2010; amended effective November 19, 2020~~.~~; amended effective January 1, 2027.

~~**Rule 3.435 Factors that may limit reimbursement**~~

~~To fulfill the purposes of the Fund, the Commission and/or Fund Counsel may deny reimbursement in whole or in part for any reason, including, but not limited to, the following reasons:~~

~~(A) The attorney and applicant participated or intended to participate in illegal or tortious conduct related to the subject matter of the application;~~

~~(B) The applicant failed to act reasonably to protect against the loss, considering the circumstances of the transaction, the past dealings with the attorney, and differences in their education and business sophistication;~~

~~(C) The nature of the applicant's loss, its amount, or the financial or administrative circumstances of the Fund require that reimbursement be limited or denied; or~~

~~(D) The applicant is a fictitious person.~~

~~*Rule 3.434 adopted effective January 1, 2010; amended effective November 19, 2020.*~~

~~[5] See Business & Professions Code § 6086.13; Rules of Procedure of the State Bar, Rule 5.137.~~

[6] Id.

~~[7] See Client Security Fund rules, Rules 3.420(B) and (C), 3.421(A), 3.430(D), and 3.435.~~

Rule 3.43~~6~~5 Attorney-~~c~~Client relationship required to reimburse loan or investment loss

(A) A loss resulting from a transaction proposed by an ~~a~~Attorney as a loan or investment with or through the ~~a~~Attorney is not reimbursable unless the transaction arose out of and in the course of the Attorney-Client relationship and the transaction could not have occurred but for the relationship.

~~(1) it arose out of and in the course of the attorney-client relationship; and~~

~~(2) it could not have occurred but for the relationship.~~

(B) To determine whether a loan or investment meets the requirements of this rule, the Commission and/or ~~Fund~~ the CSF Counsel may consider the following factors:

(1) whether authority to practice law in California was required for a principal part of the transaction;

(2) whether the ~~a~~Attorney initiated the transaction;

(3) the professional and business reputation of the ~~a~~Attorney;

(4) the amount charged for legal services or as a finder's fee;

(5) the number of prior transactions between the ~~a~~Applicant, the ~~a~~Attorney, or other ~~a~~Attorneys or entities;

(6) the relative bargaining power, education, and business sophistication of the

~~a~~Attorney and ~~a~~Applicant;

(7) whether normal prudence of the ~~a~~Applicant was unduly affected by the ~~a~~Attorney-~~c~~Client relationship;

(8) whether the ~~a~~Attorney-~~c~~Client relationship allowed the ~~a~~Attorney to learn about the ~~a~~Applicant's financial affairs or prospects; and

(9) whether the ~~a~~Attorney failed to fully make the disclosures required by the Rules of Professional Conduct, ~~including those regarding his or her~~ the Attorney's financial condition, and the Attorney's intended use of the ~~a~~Applicant's money or property.

Rule 3.43~~6~~5 adopted effective January 1, 2010; amended effective May 17, 2019~~.~~; amended effective January 1, 2027.

Article 3. Applications ~~and action on applications~~

Rule 3.440 ~~Application for reimbursement~~ Applicant responsibilities

~~(A) An applicant seeking reimbursement from the Fund must submit a Client Security Fund Application for Reimbursement. The application contains the following statement: "**IMPORTANT NOTICE**. The State Bar of California has no legal responsibility for the acts of individual attorneys. Payments from the Client Security Fund are solely within the discretion of the State Bar. By applying to the Client Security Fund, the applicant acknowledges that he or she may be giving up the right to pursue a civil action for the same recovery against a third party."~~

(A) An Applicant seeking reimbursement from the CSF is required to

(1) submit an Attorney Misconduct Complaint[4] to the State Bar's Office of Chief Trial Counsel, unless the Attorney has been disbarred, voluntarily resigned, resigned with charges pending, or is deceased. The Commission or the CSF Counsel may waive this requirement on a case-by-case basis after considering the totality of the circumstances;

(2) file an application that identifies each of the following:

(a) the Applicant and the Attorney alleged to be responsible for the asserted loss;

(b) a general statement of facts describing the loss, including the amount of the loss, the date the loss was incurred, and the date the loss was discovered; and

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[4] See Rules of State Bar, rule 5.4(14).

(c) if applicable, any insurance, fidelity guarantee, bond, or similar indemnity that has covered or may cover the loss.

(3) provide documentary evidence demonstrating that the money or property that is the subject of the asserted loss was owned by the Applicant and received by the Attorney. Such documentary evidence includes, but is not limited to, copies of both the front and back of canceled checks or written acknowledgements from the Attorney confirming receipt of the money or property. Oral testimony, such as a Declaration from a disinterested third party, may be considered when accompanied by other reasonably reliable circumstantial evidence to establish the amount of the loss;

(4) read these rules and agree to be bound by them;

(5) provide current mailing and email addresses and promptly notify the CSF of any changes;

(6) agree to be bound by a subrogation and assignment agreement;

(7) waive the Attorney-Client privilege and any other applicable privilege to the extent necessary for any investigation the CSF may undertake;

(8) cooperate with the CSF in its review of the application and in any related proceeding or civil action the State Bar may pursue pursuant to the subrogation and assignment agreement;

(9) inform the CSF of any pending civil or criminal action concerning the loss asserted in the application;

(10) inform the CSF if the Applicant has filed a creditor's claim in any bankruptcy proceeding in which the Attorney or the Attorney's law firm is the debtor;

(11) submit all information, including any supporting Declarations, in accordance with the application's instructions; and

(12) sign the application under penalty of perjury.

~~(B) The application must identify the applicant and the attorney allegedly responsible for the reimbursable loss and set forth a general statement of facts regarding the loss, including its amount, when it was incurred, when it was discovered, and the extent to which it is or has been covered by insurance, fidelity guarantee, bond, or similar indemnity.~~

(B) The Applicant bears the burden of establishing the existence, amount, and eligibility of the loss for which reimbursement is sought. Although the CSF may, in its discretion, investigate the facts and circumstances surrounding the asserted loss as set forth in Rule 3.441(A), the CSF has no obligation to do so, and responsibility for proving the loss remains solely with the Applicant.

~~(C) The application requires the applicant to acknowledge that he or she has read these rules and agrees to be bound by them; to provide current mailing and email addresses and to promptly notify the State Bar of any change in those addresses; to sign a subrogation and assignment agreement; and to cooperate with the State Bar in its review of the application or in any related disciplinary proceeding or civil action the State Bar brings pursuant to the subrogation and assignment agreement.~~

(C) The Applicant must file an application for reimbursement no more than four years after the loss was discovered or through reasonable diligence should have been discovered. The Commission or the CSF Counsel may waive this requirement on a case-by-case basis after considering the totality of the circumstances, including the length of time between when the asserted loss was or, through reasonable diligence, should have been discovered and when the application was filed, the extent to which reimbursement would further the purposes of the CSF, and any other principles of fairness and equity.

~~(D) The application must be completed in accordance with instructions and executed under penalty of perjury.~~

(D) An Applicant may apply to the CSF without exhausting other remedies.

~~(E) An application for reimbursement must be filed no more than four years after the loss was discovered or through reasonable diligence should have been discovered.~~

(E) An Applicant need not be represented by a lawyer. If the Applicant is represented by a lawyer, the lawyer is encouraged to provide their services pro bono publico to maximize the benefits available to the Applicant.

~~(F) An Applicant may apply to the Fund without exhausting other remedies.~~

~~(G) An applicant need not be represented by a lawyer. If an applicant is represented by a lawyer, the lawyer is encouraged to provide his or her services pro bono publico to maximize the benefits available to the applicant. A lawyer may, however, represent an applicant for a reasonable attorney fee.~~

Rule 3.440 adopted effective January 1, 2010; amended effective January 21, 2022~~.~~; *amended effective January 1, 2027.*

Rule 3.441 Review and investigation of applications

(A) The ~~Fund~~ Commission, the CSF Counsel, or the CSF staff may, in its discretion, investigate ~~an application as it deems appropriate~~ the facts and circumstances surrounding the asserted loss. However, the responsibility for establishing a reimbursable loss remains solely with the Applicant.

(B) Upon due consideration of an application, in accordance with these rules, ~~Fund~~ the CSF Counsel may close ~~it~~ the application without prejudice, issue a Notice of Intention to Pay,[8] or issue a Tentative Decision. ~~on behalf of the Commission. If Fund Counsel intends to issue a Tentative Decision, counsel may postpone doing so until the conclusion of any related disciplinary proceeding either pending or contemplated.~~

(C) In considering an application~~s for reimbursement~~, the Commission may require that the CSF Counsel or the CSF staff conduct further investigation; require submission of ~~d~~Declarations ~~under penalty of perjury~~;[9] conduct hearings at which it receives evidence; administer oaths and affirmations; ~~and~~ or compel by subpoena the attendance of witnesses and the production of books, papers, and documents. A ~~p~~Party who refuses to obey a subpoena is subject to the contempt procedures of Rule 5.70 of the Rules of Procedure of the State Bar.

(D) The ~~Fund~~ CSF Counsel or the CSF staff may consolidate applications related to one or more ~~respondents~~ Attorneys when no substantial rights are prejudiced.

(E) When an application involves more than one ~~respondent~~ Attorney, the ~~Fund~~ CSF Counsel may consider each ~~respondent~~ Attorney as the subject of a separate application if no substantial rights are prejudiced.

~~(F) In the interest of justice and for good cause, Fund Counsel, under guidelines set by the Commission, may waive a requirement of these rules that bars reimbursement of an application otherwise qualified for reimbursement.~~

(F) Applications filed by spouses or registered domestic partners are deemed to be two separate applications unless the loss occurred before January 1, 2009. For losses occurring before 2009, applications from spouses or registered domestic partners are deemed to be a single application.

~~(G) An application filed by a husband and wife is deemed to be two separate applications, unless the loss occurred before January 1, 2009. For such a loss, the application is deemed to be a single application.~~

(G) During the investigation process, the Applicant and the Attorney may be asked to supply relevant evidence under oath to support allegations or objections based on fact. Proceedings on such evidence need not be conducted according to technical rules or state law applicable to evidence and witnesses. Any relevant evidence is admissible if it is the sort that responsible persons customarily rely on in the conduct of serious affairs, even if such evidence might be inadmissible in a civil action.

~~(H) The applicant and respondent must supply relevant evidence under oath to support allegations or objections based on fact. Proceedings on such evidence need not be conducted according to technical rules applicable to evidence and witnesses. Any relevant evidence is admissible if of the sort that responsible persons customarily rely on in the conduct of serious affairs, even if such evidence might be inadmissible in a civil action.~~

~~(I) A decision to reimburse a loss must be based on a preponderance of the evidence.~~

~~(J) Testimony presented to the Commission or a fact-finding panel it appoints may be recorded and transcribed in whole or in part as directed by the Commission.~~

Rule 3.441 adopted effective January 1, 2010; amended effective January 25, 2019; amended effective May 17, 2019~~.~~; amended effective January 1, 2027.

~~[8] See Rule 3.442.~~
~~[9] Code of Civil Procedure § 2015.5.~~

Rule 3.442 Notice of Intention to Pay

(A) ~~A Notice of Intention to Pay advises an attorney of the allegations made by an applicant and an intention to reimburse the applicant in a stated amount. In compliance with standards set by the Commission, the Manager may issue the notice~~ The CSF Counsel may issue a Notice of Intention to Pay when the CSF Counsel determines that all the requirements in these rules for reimbursement are met and there are no substantive issues to be decided, provided ~~an~~ the ~~a~~Applicant has

(1) submitted a complete application in accordance with ~~instructions~~ Rule 3.440;

(2) submitted documentation sufficient to confirm the amount of the loss; and

(3) provided sufficient evidence of eligibility for reimbursement as required by these rules; and

~~(4) filed a complaint against the attorney with the State Bar's Office of the Chief Trial Counsel, unless the Manager waives this requirement.~~

~~(B) For applications requesting $5,000.00 or less, prima facie evidence is sufficient to establish eligibility for reimbursement under this rule.~~

(B) The Parties must be served with a Notice of Intention to Pay in accordance with Rule 3.445.

~~(C) The attorney must be served with a Notice of Intention to Pay in accordance with Rule 3.445.~~

~~(D)~~(C) The ~~a~~Attorney has ~~thirty~~30 days from the date of ~~s~~Service of the Notice of Intention to Pay, or the applicable extended period as provided under Code of Civil Procedure section 1013, subdivision (a), to submit a written objection to a Notice of Intention to Pay. If the attorney objects to the Notice of Intention to Pay, the ~~Fund~~ CSF staff ~~will~~ may conduct further ~~review~~ investigation, and the CSF Counsel will issue a Tentative Decision in accordance with these rules. If the ~~a~~Attorney does not object, the ~~Fund~~ CSF may pay the ~~a~~Applicant the reimbursement amount stated in the ~~n~~Notice of Intention to Pay.

~~(E)~~(D) An ~~a~~Applicant ~~reimbursed pursuant to~~ who receives a Notice of Intention to Pay may object to the amount of the proposed payment by submitting a written objection under penalty of perjury within ~~thirty~~ 30 days of the date on which reimbursement would issue~~s~~. Acceptance of the reimbursement does not waive the right to object. ~~An objection requires further review in~~ If the Applicant objects to the amount of payment, the CSF staff may conduct further investigation, and the CSF Counsel will issue a Tentative Decision accordance with these rules.

Rule 3.442 adopted effective January 1, 2010; amended effective May 17, 2019~~.~~; amended effective January 1, 2027.

Rule 3.443 Tentative Decisions

~~(A) Tentative Decisions will be issued by Fund Counsel. A Tentative Decision must be in writing, include a statement of the findings or reasons on which the decision is based, and be served in accordance with Rule 3.445.~~

(A) The Tentative Decision is a written decision issued by the CSF Counsel containing a statement of the findings or reasons for the decision on the application.

~~(B) The parties have thirty days from the date of service to provide the Fund and the other party a written objection to the Tentative Decision. The objection must state the precise legal and/or factual grounds for the objection and be executed under penalty of perjury. The objection may include supporting documentation; a request for an oral hearing; or, in lieu of a request for an oral hearing additional declarations executed under penalty of perjury.[10]~~

(B) The Attorney and the Applicant must be served with the Tentative Decision in accordance with Rule 3.445.

~~(C) In lieu of granting an oral hearing, the Commission may require that any facts alleged in an objection to a Tentative Decision be supported by one or more declarations under penalty of perjury.[11]~~

(C) The Parties have 30 days from the date of Service, or the applicable extended period as provided under Code of Civil Procedure section 1013, subdivision (a), to submit to the CSF and the other Party a written objection to the Tentative Decision. The objection must state the precise legal and/or factual grounds for the objection and be executed under penalty of perjury. The objection may include supporting documentation, a request for an oral hearing, or, in lieu of a request for an oral hearing, additional Declaration(s).

~~(D) Notwithstanding the provisions of Rule 3.421 (A), supra, if the Fund receives no timely written objections, a Tentative Decision issued by Fund Counsel may be deemed a Final Decision.~~

(D) Objections are considered by the Commission. Upon receipt of a timely written objection to a Tentative Decision, the Commission will provide the Parties with a reasonable opportunity to respond to the objections. In evaluating any objection, the CSF Counsel or the Commission may request or require additional information or evidence, including supporting Declarations, and the Commission may direct the CSF staff or the CSF Counsel to conduct further investigation. The Commission may, in its discretion, set the matter for an oral hearing after considering the entire record relevant to the application, including any supplemental submissions.

Rule 3.443 adopted effective January 1, 2010; amended effective May 17, 2019~~.~~; amended effective January 1, 2027.

Rule 3.444 Final Decisions

~~(A) In a matter where a timely written objection to a Tentative Decision is received, the Commission will issue a Final Decision after providing the parties an opportunity to submit objections, requests, or declarations in response to a Tentative Decision; requiring any additional investigation or conducting an oral hearing it deems necessary; and considering the record relevant to the application.~~

(A) The Final Decision is issued in writing by the Commission and/or the CSF Counsel under the authority of the Commission. Final Decisions may direct or deny reimbursement with or without prejudice and may establish conditions for reimbursement or the Attorney's repayment to the CSF as deemed appropriate.

~~(B) A Final Decision issued by the Commission~~

~~(1) must be in writing;~~

~~(2) may direct or deny reimbursement with or without prejudice;~~

~~(3) may establish any conditions for reimbursement deemed appropriate; and~~

~~(4) must be served in accordance with Rule 3.445.~~

(B) The Attorney and the Applicant must be served with the Final Decision in accordance with Rule 3.445.

~~(C) A Final Decision of the Commission constitutes the final action of the State Bar.~~

(C) If no objections or requests for continuances are made within 30 days of the date of mailing the Tentative Decision, the CSF shall issue a notice to all Parties that the Tentative Decision is deemed the Final Decision of the Commission.

(D) The Commission will issue a Final Decision after considering objections as set forth in Rule 3.443(D). A Final Decision, including any amendment to the Final Decision, constitutes the final action of the State Bar.

Rule 3.444 adopted effective January 1, 2010; amended effective May 17, 2019~~.~~ amended effective January 1, 2027.

~~[10] Code of Civil Procedure § 2015.5.~~
~~[11] Code of Civil Procedure § 2015.5.~~

Rule 3.445 Service of ~~decisions and~~ Notices of Intention to Pay~~;~~, Tentative Decisions, Final Decisions, ~~Submission of~~ and objections

(A) Service of a Notice of Intention to Pay, Tentative Decision, and Final Decision, must be made to the Parties by first-class mail or by ~~e~~Electronic ~~s~~Service as set forth ~~below in subsections (F) through (J) to the attorney and any lawyer representing the attorney~~ in ~~connection with the application~~ this rule.

~~(B) Service of a Tentative Decision or a Final Decision must be made by first-class mail or by electronic service as set forth below in subsections (F) through (J) to the applicant,[12] the attorney, and any lawyer representing either party in connection with the application.~~

(B) Service of documents to an Attorney shall be deemed sufficient when mailed to the Attorney's address of record on file with the State Bar, provided that the address of record is reasonably calculated, under all circumstances, to inform the Attorney of the pending CSF matter and afford a meaningful opportunity for the Attorney to respond to determinations issued by the CSF or the Commission. If the CSF has reason to believe that the Attorney's address of record is no longer valid or in active use, the CSF shall make reasonable efforts to provide notice through alternative means reasonably likely to apprise the Attorney of the matter and satisfy applicable due process requirements.

(C) A deceased ~~a~~Attorney need not be served with a Tentative Decision or Final Decision. If a Tentative Decision is not served because the ~~a~~Attorney is deceased, the ~~time~~ 30-day period for objecting to the ~~decision~~ Tentative Decision may be waived in writing by the ~~a~~Applicant. Upon receipt of the waiver, the Tentative Decision ~~may be~~ is deemed the Final Decision.

~~(D) An attorney and a lawyer representing either an attorney or an applicant must be served at the address of record or by electronic service as set forth below in subsections (F) through (J).~~

(D) An objection to a Notice of Intention to Pay or to a Tentative Decision must be served by first-class mail or Electronic Service to the CSF as set forth in this rule.

~~(E) An objection to a Notice of Intention to Pay or to a Tentative Decision may bemadeby first-class mail or by electronic service or electronic transmission to the Client Security Fundas set forth in subsections (F) through (M).~~

(E) Parties must notify the CSF staff of a change in their email address. The following email addresses are deemed to be authorized for Electronic Service:

(1) for Licensees, the email address provided to the State Bar to facilitate communications by the State Bar with Licensees pursuant to California Rules of Court, rule 9.9(a)(2);

(2) for Applicants, the email address provided to the CSF for communication, including Service of documents; and

(3) for Attorneys who are no longer Licensees, Service may be made at the email address last provided to the State Bar pursuant to California Rules of Court, rule 9.9(a)(2), unless the CSF has reason to believe that the email address is invalid or no longer functional. If the CSF has such reason to believe the email address is invalid or no longer functional, Service must be made by another method authorized by these rules.

~~(F) "Electronic service," or "serve electronically," means service of a document, on an applicant, attorney, or any lawyer representing either party, by electronic transmission. Electronic service may be performed directly by the Client Security Fund, a party or other person, by an agent of a party or other person, including the party or other person's attorney, or through an electronic filing service provider. Prior consent of the party or other person to be served electronically is not required to serve documents as provided in these rules. Electronic service of a document is deemed complete at the time of the electronic transmission of the document.~~

(F) If a Party does not have an Electronic Service address or communicates to the CSF in writing a request not to be served electronically, then following receipt of such communication, the CSF shall serve that Party by mail at the Party's address of record or other address provided by that Party. Service by mail at a Party's request shall apply prospectively and shall not modify, extend, toll, or otherwise affect any time limitations that have already commenced.

~~(G) "Electronic transmission" means the transmission of a document by electronic means to an electronic service address. A document that is served electronically shall have the same legal effect as an original paper document.~~

~~(H) "Electronic service address" means an email address at or through which the party or~~

~~other person is deemed to have authorized electronic service. The electronic service address, as set forth below, is deemed valid to a party or other person if the party or other person has not filed notice of a change of electronic service address with the Client Security Fund:~~

~~(1) For attorneys, the email address provided to the State Bar to facilitate communications by the State Bar with attorneys pursuant to rule 9.9(a)(2) of the California Rules of Court, and~~

~~(2) For applicants, the email address provided to the Client Security Fund for communication, including service of documents.~~

~~(I) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means. Electronic signature includes a copy of an original signature placed into the document by electronic means and includes a typographic signature that includes "/s/" followed by the signer's name, e.g., "/s/ John Doe." For purposes of these rules, a "digital signature" as defined in subdivision (d) of Section 16.5 of the Government Code is a type of electronic signature. A typewritten name created in a word processing program, regardless of the use of a cursive font, that is not preceded by "/s/" is not an electronic signature unless it otherwise complies with Government Code section 16.5.~~

~~(J) If a party does not have an electronic service address or communicates to the Client Security Fund in writing a request not to be served electronically, the Client Security Fund shall serve that party by mail at the party's address of record or other address provided by that party.~~

~~(K) Notwithstanding any provision of law to the contrary, an electronic signature is deemed to be an original signature if either subdivision (L) or subdivision (M) applies.~~

~~(L) When a document to be filed or served requires the signature of any person, not under penalty of perjury, the document is deemed to have been signed by the person whose electronic signature is attached or logically associated with the document provided the document was served by the signer or a person acting at the signer's direction.~~

~~(M) When a document to be filed or served electronically provides for a signature under penalty of perjury[13] of any person, the document is deemed to have been signed by the person whose electronic signature is attached or logically associated with the document if the document was served by the person or an agent of the person and either of the following conditions is satisfied:~~

~~(1) The declarant has signed the document using an electronic signature and declares under penalty of perjury under the laws of the state of California that the information submitted is true and correct. If the person serving the document is not declarant or declarant's counsel, the electronic signature must be unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated; or~~

~~(2) The declarant, before serving the document, has physically signed a printed form of the document. The person serving the document represents, by the act of serving electronically, that the declarant has complied with this subdivision. The person serving the document electronically on a party, a party's lawyer, or the Client Security Fund must maintain the printed form of the document bearing the original signature until final disposition of the case and make it available for review and copying upon the request of the Client Security Fund, Commission, or any party to the proceeding in which it is filed.~~

Rule 3.445 adopted effective January 1, 2010; amended effective May 17, 2019; amended effective January 21, 2022; amended effective January 21, 2022; amended effective January 1, 2027.

~~[12] Rule 3.440(C) requires an applicant to agree to promptly notify the State Bar of a change in address.~~

~~[13] See Rule 3.440(D) [application under penalty of perjury]; Rule 3.441(C) [declaration under penalty of perjury]; Rule 3.442(E) [objection to Notice of Intention to Pay]; and Rule 3.443(B) [objection to Tentative Decision].~~

Article 4. Superior ~~c~~Court ~~r~~Review; ~~r~~Repayment~~; collection~~

Rule 3.450 Superior court review

~~The Final~~ A ~~D~~decision ~~of the Commission~~ to ~~grant~~ approve or deny, in whole or in part, an application for reimbursement ~~to an applicant~~ may be reviewed in superior court ~~pursuant to a request for review filed by the applicant or attorney~~ by filing a petition for a writ of administrative mandamus in accordance with Code of Civil Procedure section 1094.5. The ~~request~~ petition must be filed no more than ~~ninety~~ 90 days after the date the Final ~~d~~Decision was served.[5]

Rule 3.450 adopted effective January 1, 2010~~.~~; amended effective January 1, 2027.

Rule 3.451 Repayment of reimbursement by ~~a~~Attorney

An attorney must repay the ~~Fund~~ CSF for any reimbursement, with simple interest and an assessment of processing costs. The rate of interest, set forth in the Schedule of Charges and Deadlines,[6] is adopted by the Board of Trustees upon the recommendation of the Commission and may not exceed the maximum legal rate. Processing costs are the estimated average

[5] Bus. & Prof. Code, § 6140.5, subd. (i).

[6] Rules of State Bar, rule 1.22(E).

processing costs for similar applications in the most recent calendar year for which data is available.~~[14]~~[7]

Rule 3.451 adopted effective January 1, 2010; amended effective January 1, 2012~~.~~; amended January 1, 2027.

~~Rule 3.452 Enforcement of State Bar rights~~

~~The Office of General Counsel of the State Bar is authorized to collect assignments made by applicants reimbursed by the Client Security Fund and to enforce the State Bar's rights as permitted by law. To effect collection of an assignment, General Counsel has discretion to disclose information about the application that would otherwise be confidential.~~

~~Rule 3.452 adopted effective January 1, 2010.~~

~~Rule 3.453 Payment Plans for Non-Disbarred and Non-Resigned Licensees Owing Reimbursements~~~~[15]~~

~~(A) A non-disbarred and non-resigned licensee whose actions have resulted in a reimbursement to an applicant from the Fund may submit a written request to the State Bar for a payment plan for any outstanding interest on such reimbursement if the following criteria are met:~~

~~(1) the reimbursement occurred on or before December 18, 2020;~~

~~(2) the payment plan request occurred prior to the licensee's date of suspension for non- payment of reimbursement from the Fund;~~

~~(3) as of the date of the payment plan request, the licensee has paid to the State Bar the full amount of the reimbursement (Principal) and the related processing costs; and~~

~~(4) the outstanding interest owed to the State Bar is more than $1,000.~~

~~(B) The State Bar may enter into a payment plan prior to the Sunset Date (defined below) with any licensee who meets the criteria set forth in subdivision (A) of this rule.~~

~~(C) The payment plan will, at minimum, contain all the following terms and conditions, which the licensee requesting a payment plan must agree to~~:

~~(1) a maximum two (2) year term;~~

~~(2) equal yearly payments during the term of the payment plan;~~

~~[14]~~[7] See Bus. & Prof. Code §6140.5, subd. (c).

~~[15] Business and Professions Code § 6140.5 (a), (c), (d) and (e).~~

~~(3) a waiver of all objections to and a release of claims regarding licensee's obligation to pay the Fund for the reimbursement plus processing costs and interest;~~

~~(4) payment will be a condition of the licensee's continued practice of law; and~~

~~(5) in the event of default, the entire balance of the payment plan plus any fees will be immediately due and payable, and the State Bar may, without notice to the licensee, exercise all available rights and remedies including recommending to the California Supreme Court that such licensee should be suspended for non-payment and undertaking collection efforts with respect to such balance amount.~~

~~(D) This rule shall remain in effect until October 31, 2023 (Sunset Date), and as of the Sunset Date is repealed, unless the Board of Trustees deletes or extends the Sunset Date. The Sunset Date does not affect the validity, enforceability, or the term of the payment plan.~~

~~*Rule 3.453 adopted effective March 19, 2021.*~~

Article 5. Records

Rule 3.460 ~~Records shared~~ Cooperation with Office of Chief Trial Counsel

(A) To assist with its investigation and consideration of an application, the Commission, the CSF Counsel, and ~~its~~ the CSF staff may access confidential records of the Office of Chief Trial Counsel regarding an ~~a~~Attorney who is the subject of an application. The records remain confidential despite any such use.

(B) The ~~State Bar~~ Office of Chief Trial Counsel may have access to any ~~Commission~~ CSF records related to an investigation or prosecution. The records remain confidential despite any such use.

Rule 3.460 adopted effective January 1, 2010~~.~~; amended effective January 1, 2027.

Rule 3.461 ~~Public access to~~ Confidentiality of records, documents, and proceedings

~~(A) The following are confidential: applications for reimbursement from the Client Security Fund; hearings on applications; deliberations of the Commission; and any records created by staff with regard to an application or related investigation~~.

~~(B) If disciplinary charges related to the application have been filed against the attorney, the public may have access to the application; oral hearings the Commission grants to an applicant and attorney; Tentative and Final Decisions; and briefs or pleadings filed by any party to a Commission proceeding; but not to records created by staff with regard to an application or related investigation.~~

~~(C) In the interest of public protection, the following information regarding a reimbursement is public record: the names of the applicant and respondent; the amount and date of the reimbursement; and whether disciplinary charges related to the application have been filed.~~

~~(D) Copies of public records are available for the fee set forth in the Schedule of Charges and Deadlines.~~

<u>The following are confidential: applications for reimbursement from the CSF; hearings on applications for reimbursement; deliberations of the Commission; and any records created by the CSF, the CSF Counsel, or the Commission in the course of the investigation.</u>

<u>To the extent the administrative record required to be lodged or filed in connection with any writ of administrative mandamus filed pursuant to Code of Civil Procedure section 1094.5 contains confidential, sensitive, or private records, including confidential records of the Office of Chief Trial Counsel, providing such records to the petitioner shall not be considered a public disclosure or waiver of confidentiality, and the Party lodging or filing such records must endeavor to do so under seal following the applicable procedures set forth in the California Rules of Court.</u>

Rule 3.461 adopted effective January 1, 2010~~.~~<u>; amended effective January 1, 2027.</u>