Idaho Bar Commission Rules

Governing Admission to Practice and Membership in the Idaho State Bar

As promulgated by the Board of Commissioners of the Idaho State Bar and adopted by Order of the Supreme Court of the State of Idaho.

SECTION VI
Client Assistance Fund

RULE 600. Establishment of Fund.

(a) **Purpose**. There is established, as provided in Idaho Code Section 3-409, the Client Assistance Fund of the Idaho State Bar for the purpose of promoting public confidence in the administration of justice and maintaining the integrity of the legal profession by reimbursing claimants for losses caused by the dishonest conduct of lawyers.

(b) **Effective Date**. These Rules shall be effective for claims filed with the Board after July 1, 2014. Any claims pending on the effective date of these Rules shall be processed pursuant to the Rules existing immediately prior to the effective date of these Rules.

RULE 601. Definitions.

As used in these Rules, the following capitalized terms have the meanings set forth below:

(a) **Bar.** The Idaho State Bar.

(b) **Board.** Board of Commissioners, the duly elected governing body of the Bar.

(c) **Claim.** A written application seeking reimbursement from the Client Assistance Fund of a Loss resulting from a Lawyer's Dishonest Conduct.

(d) **Claimant**. An entity or individual or, in the event of an individual's death or incapacity, the duly appointed personal representative or spouse of the individual, that has sustained a Loss as a result of a Lawyer's Dishonest Conduct and has filed a Claim.

(e) **Committee.** The Client Assistance Fund Committee.

(f) **Dishonest Conduct.** Wrongful acts committed by a Lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:

(1) Refusal to refund an advance payment of fees or expenses that have not been earned or incurred, as required by Rule 1.16 of the Idaho Rules of Professional Conduct; or

(2) The borrowing of funds from a client without an intention to repay those funds, or with disregard of the Lawyer's inability or reasonably anticipated inability to repay the funds.

(g) **Executive Director.** The chief administrative officer of the Bar.

(h) **Fund.** The Client Assistance Fund.

(i) **Lawyer.** A person who meets the qualifications for and is duly admitted to the practice of law in the State of Idaho.

(j) **Loss**. The loss of money or property occasioned by the Dishonest Conduct of a Lawyer occurring during the course of a Lawyer-client or fiduciary relationship between the Lawyer and the Claimant.

(k) **Rules**. Section VI of the Idaho Bar Commission Rules, governing the Client Assistance Fund.

(l) **Supreme Court**. The Supreme Court of the State of Idaho.

RULE 602. Appropriation to and Maintenance of Fund.

The Board shall provide funding necessary for the proper payment of Claims and the costs of administration of the Fund from an assessment on the members of the Bar; from donations made to the Fund; through accrual of interest on monies held in the Fund; and, if deemed feasible by the Board, through the purchase of insurance.

(a) **Assessment**. Each fiscal year following establishment of the Fund, the Board shall assess an amount not to exceed $20 per member, with the exception of judicial members, to reimburse the Fund for any claims paid during the prior fiscal year, or until the Fund reaches a total amount of $1,000,000. In the event such assessment does not fully reimburse the Fund, the Board shall continue to assess each year an amount not to exceed $20 per member until the Fund reaches a total amount of $1,000,000.

(b) **Investment**. All monies or other assets collected for the Fund shall be held in a separate account in the name of the Fund, subject to the written direction of the Board, provided that the Board may prudently invest such portions of Fund monies that are not currently needed to pay Losses.

(1) **Accrued Interest**. Interest accrued or accruing on the monies held in the Fund may be maintained in the Fund even if the total amount of the Fund exceeds $1,000,000.

(c) **Insurance.** Insurance to cover extraordinary Losses in excess of Fund assets may be purchased by the Board, if such insurance is deemed prudent and feasible by the Board.

RULE 603. Client Assistance Fund Committee.

(a) **Establishment and Membership**. The Board shall appoint a five (5) member committee to be known as the "Client Assistance Fund Committee," which shall consist of three (3) members of the Bar in good standing and two (2) non-lawyer members.

(1) **Membership**. Members of the Committee shall serve for three (3) year terms, which are staggered and which may be renewed.

(2) **Officers**. The Board shall designate one (1) member of the Committee as Chair and one (1) member as Vice-Chair. The Chair shall be responsible for calling and presiding over Committee meetings.

(3) **Powers and Duties**. The Committee shall have the following powers and duties:

(A) Receive and evaluate Claims;

(B) Conduct hearings on Claims;

(C) Submit findings of fact, conclusions of law and recommendations to the Board;
(D) Adopt additional rules of procedure not inconsistent with these Rules, subject to approval by the Board; and
(E) Prosecute Claims for restitution to which the Fund is entitled.

(4) **Meetings**. The Committee shall meet as it deems necessary based on the number and extent of Claims received.

(5) **Quorum**. Three (3) members of the Committee shall constitute a quorum. All decisions of the Committee must be by majority vote of those present.

(6) **Compensation and Expenses**. Committee members shall receive no compensation for their services but shall be reimbursed for their travel and other reasonable expenses incidental to the performance of their duties under these Rules.

(7) **Vacancies**. Vacancies during a term shall be filled by the Board for the remainder of the unexpired term. The Board may also appoint temporary members to serve during the absence or recusal of permanent members of the Committee.

(8) **Conflict of Interest**. A member of the Committee who has or who previously had a lawyer-client relationship or fiduciary relationship with a Claimant or Lawyer who is the subject of a Claim shall not participate in the investigation or adjudication of a Claim involving that Claimant or Lawyer.

RULE 604. Recognition of Claims.

(a) **Claim**. A Claimant shall file or cause to be filed a Claim for reimbursement on a form provided by the Bar that contains the following information:
(1) The name and address of the Lawyer causing the alleged Loss;
(2) The amount of the Loss claimed;
(3) The date of the Loss or period of time during which the alleged Loss occurred;
(4) The Claimant's name and address; and
(5) A general statement of facts relative to the Claim.

(b) **Verification**. The Claim shall be verified by the Claimant.

(c) **Time of Filing**. The Claim shall be filed no later than three (3) years after the Claimant knew or should have known of the Dishonest Conduct of the Lawyer.

(d) **Place of Filing**. The Claim shall be filed with the Executive Director.

(e) **Losses not Reimbursable**. The following losses shall not be reimbursable under these Rules:
(1) Losses of spouses, children, parents, grandparents, siblings, partners, associates and employees of Lawyer(s) causing the losses;
(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest; and
(3) Losses of any financial institution that are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract.

(f) **Special Circumstances**. In cases of extreme hardship or special and unusual circumstances, the Committee may, in its discretion, recognize a Claim that would otherwise be excluded under these Rules.

RULE 605. Processing Claims.

(a) **Evaluation of Claim**. All Claims shall be evaluated by or under the authority and direction of the Committee, which may:
(1) Dismiss the matter based on the Claimant's failure to properly file a Claim or assert a reimbursable Loss under these Rules; or
(2) Initiate an investigation of the Claim.

(b) **Investigation - Lawyer Response**. If the Committee initiates an investigation of a Claim, it shall notify the Lawyer against whom the Claim is made by effecting service as provided in Rule 614. The Lawyer shall have twenty-one (21) days from the date of service to file a written, verified response to the Claim. If the Lawyer fails to file a timely response, or acknowledges in his or her response that the Claim is reimbursable under these Rules, the Committee has discretion to recognize the Claim as valid without a hearing.

(c) **Hearing**. Hearings shall be scheduled and conducted as the Committee, in its discretion, deems appropriate.
(1) **Place of Hearing.** Hearings shall be held at the Bar, provided that a hearing may be conducted by telephonic or electronic means at the Chair's discretion.
(2) **Notice**. The Chair shall give, or cause to be given, notice to the Claimant and Lawyer stating the date, time and place of the hearing. The notice shall advise the Claimant and Lawyer of their right to be represented by counsel, to present documents and witnesses, and to cross-examine witnesses presented by the opposing party.
(3) **Scheduling Order.** The Chair may issue a scheduling order setting forth deadlines for the disclosure of witnesses and the filing of any additional documentation for the Committee's consideration at hearing. The Committee, in its discretion, may decline to review any information not timely submitted pursuant to the scheduling order.

(d) **Decision.**
(1) **Notice of Dismissal.** If during its preliminary investigation the Committee determines that a Claim is not in proper form or fails to state an essential element for reimbursement under these Rules, it shall notify the Claimant of its decision and state the reasons for the action taken.
(A) **Request for Reconsideration of Dismissal**. A Claimant may request a reconsideration of the Committee's determination by filing a written request stating the reasons for the request.
(B) **Time of Filing.** The request for reconsideration shall be filed within fourteen (14) days following the Claimant's receipt of notice under this Rule.
(C) **Service of Request**. The written request shall be served upon the Chair and the affected Lawyer as provided in Rule 614.
(D) **Failure to Timely Request**. If the Claimant fails to file a timely request for reconsideration, or the request for reconsideration is denied, the decision of the Committee is final.
(2) **Recommendation of Committee**. Following an investigation and a hearing, if conducted, the Committee shall issue and file with the Board its findings of fact, conclusions of law and recommendation. The Committee's recommendation may include dismissal of the Claim or the allowance, in whole or in part, of the Claim. In cases where it appears that there will be unjust enrichment, or the Claimant unreasonably or knowingly contributed to the Loss, the Board may, in its discretion, deny the Claim.

(A) **Service.** Service of the Committee's findings of fact, conclusions of law and recommendation shall be made upon the Claimant and Lawyer as provided in Rule 614.

(B) **Finding of Dishonest Conduct - Effect**. The Committee, for good cause, may make a finding of Dishonest Conduct for the purpose of adjudicating a claim. Such a determination is not a finding of Dishonest Conduct by the Lawyer for purposes of discipline under Section V, Rules for Review of Professional Conduct.

(C) **Manner and Order of Payment.** A recommendation that a Claim be allowed may include a determination of the manner and order of payment.

(D) **Time for Filing**. The Committee's findings of fact, conclusions of law and recommendation shall be filed with the Board within thirty (30) days following conclusion of a hearing or, if no hearing is held, within thirty (30) days of the Committee's decision based upon the record.

(e) **Review by Board**

(1) **Request for Review.** The Claimant or Lawyer may file with the Executive Director a written request for the Board's review of the Committee's findings of fact, conclusions of law and recommendation.

(A) **Time for Filing.** A request for review, if any, shall be filed within fourteen (14) days following service of the Committee's findings of fact, conclusions of law and recommendation.

(2) **Board Review.** The Board's review of the matter shall be on the record unless the Board, in its discretion, determines that the appearance of the parties, briefing, or oral argument before the Board is required. If the Board determines that additional proceedings before the Board are required, the Executive Director shall serve a notice of the date, time and place for appearing or filing on the Claimant and Lawyer.

(3) **Board Decision.** Following its review, the Board shall issue final findings of fact, conclusions of law and an order that:

(A) Affirms the Committee's recommendation;

(B) Rejects the Committee's recommendation;

(C) Modifies the Committee's recommendation; or

(D) Remands the matter to the Committee for further investigation or hearing.

(4) **Notice of Board's Decision.**

(A) **Filing and Service**. The Board shall file with the Executive Director and serve upon the Claimant and Lawyer its findings of fact, conclusions of law and order.

(B) **Time for Filing**. The Board's findings of fact, conclusions of law and order shall be filed within thirty (30) days following the conclusion of its review.

(f) **Review by Supreme Court.** The Claimant or Lawyer may file a request for review of the Board's findings of fact, conclusions of law and order with the Supreme Court.

(1) **Time for Filing**. The request for review shall be filed within fourteen (14) days following service of the Board's findings of fact, conclusions of law and order.

(2) **Place for Filing.** The request for review shall be filed with the Clerk of the Supreme Court.

(3) **Briefs – Oral Argument.** The party seeking review shall file an opening brief with the Clerk of the Supreme Court within twenty-eight (28) days following the date the request for review was filed. A responding brief shall be filed within twenty-one (21) days after the service of the opening brief. Any reply brief shall be filed within fourteen (14) days after service of the responding brief. The Supreme Court, in its discretion, may schedule oral argument at a designated time and place. Following the conclusion of oral argument, if any, the Supreme Court shall promptly enter an appropriate order.

(4) **Effect of Award.** In the event the Supreme Court enters an order approving an award under these Rules, such order shall constitute a judgment against the subject Lawyer that is enforceable as provided by law, unless the Supreme Court's order states otherwise.

RULE 606. Limitations on Reimbursement Amount.

The maximum amount that may be recovered from the Fund arising from an instance or course of Dishonest Conduct by a Lawyer is $25,000.

RULE 607. Method of Payment.

(a) **Assignment by Claimant**. If a Claim is allowed, in whole or in part, and prior to payment of the Claim, the Claimant shall execute a written assignment to the Fund of all rights of the Claimant against the Lawyer or the Lawyer's estate to the extent of the reimbursement authorized by the Board. The assignment shall specifically state that the Fund shall have no right to receive anything from the Lawyer or the Lawyer's estate until the Claimant has been reimbursed the full amount of the Claim allowed by the Board based upon the Lawyer's Dishonest Conduct.

(b) **Prompt Payment**. Upon receipt of the executed written assignment from the Claimant, the Board shall promptly pay to the Claimant the amount determined reimbursable under these Rules.

RULE 608. Subrogation.

(a) **Subrogation Rights**. If the Board authorizes payment in whole or in part of a Claim, the Fund shall be subrogated to the amount of any such payment and may recover the same either by a civil action against the Lawyer or, in the event of the Lawyer's death, insolvency or disability, against the Lawyer's personal representative or other persons administering the Lawyer's estate.

(1) **Action by Fund**. The Bar, on behalf of the Committee, may bring such action as is deemed advisable against the Lawyer or the Lawyer's estate, and shall advise the Claimant of its action. The Claimant may then join in such action to recover any losses in excess of the reimbursement amount from the Fund.

(2) **Action by Claimant**. A Claimant who brings an action directly against the Lawyer or the Lawyer's estate for recovery of losses not reimbursed by the Fund shall promptly notify the Committee of the filing of such action.

(3) **Cooperation**. The Claimant shall cooperate in any effort the Committee undertakes to obtain reimbursement for the Fund.

RULE 609. No Legal Right to Payment.

No person shall have any right to payment from the Fund as a Claimant, third-party beneficiary or otherwise.

RULE 610. Immunity.

Members of the Board, members of the Committee, the Executive Director, and their respective staffs, shall be immune from civil suit and damages for

any conduct or occurrence in the course of, or arising out of, performance of any official duties in connection with these Rules.

RULE 611. Confidentiality.

(a) **Claims and Proceedings**. All Claims and proceedings and any findings of fact, conclusions of law and recommendation involving Claims for reimbursement from the Fund shall be confidential unless or until the Committee authorizes reimbursement to the Claimant.

(b) **Sealing of Record.** The Committee, in its discretion, may seal all or part of the record of a Claim to protect the privacy of the parties.

(c) **Authorized Disclosure**. These Rules shall not be construed to:
   (1) Deny access to relevant information by professional discipline agencies or law enforcement authorities as the Committee shall authorize; or
   (2) Prohibit the release of statistical information that does not disclose the identity of the Claimant or Lawyer.

(d) **Notice to Parties**. The Claimant and Lawyer shall be advised of the status of the Committee's consideration of the Claim and shall be informed of the final determination.

RULE 612. Compensation for Representing Claimants.

Except as may be approved by the Committee, no lawyer shall charge or accept compensation for prosecuting a claim on behalf of a Claimant under these Rules.

RULE 613. Additional Rules of Procedure.

(a) **Record Availability**. The hearing record shall be made available to the parties, at their expense, upon written request to the Executive Director. The record shall not be made available to the public except as otherwise provided by Rule 611.

(b) **Time Requirements**. Except as otherwise provided in these Rules, the time in which any action must be performed is not jurisdictional.

(c) **Rules of Civil Procedure.** Except as specifically adopted or referred to in these Rules, the Idaho Rules of Civil Procedure shall not apply in proceedings relating to the Fund.

(d) **Rules of Evidence**. Except as specifically adopted or referred to in these Rules, the Idaho Rules of Evidence shall not apply in proceedings relating to the Fund.

(e) **Evidence of Misconduct**. A certified copy of a discipline order or criminal conviction relating to a Lawyer shall be conclusive evidence that the Lawyer committed the underlying conduct.

(f) **Standard of Proof**. Any issue of fact shall be proved by a preponderance of the evidence.

RULE 614. Service.

(a) **Claims.** Service of Claims under these Rules shall be made by certified mail, return receipt requested, to the Lawyer's address as filed with the Bar. If service upon the Lawyer cannot be made as provided above, service shall be made by email to the Lawyer's eService address and email address on record with the Bar or, if no eService address or email address is on record with the Bar, service shall be made by publication on the Bar's website and shall be deemed complete 14 days after such publication.

(b) **Responses and Other Documents**. Responses and other documents filed under these Rules shall be served upon the Bar and parties by personal delivery, certified mail or electronic means.

RULE 615. Subpoenas – Witnesses –Pre-trial Procedures.

(a) **Subpoena.**
   (1) **Power to Issue.** The Board and Committee may, in accordance with Idaho Rule of Civil Procedure 45, compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents at a hearing under these Rules. All subpoenas shall be issued in the name of the Board.
   (2) **Issuance on Behalf of the Parties**. Either party may have subpoenas issued on their behalf, upon reasonable and timely request filed with the Board.
   (3) **Failure to Comply with Subpoena**. The district court of the judicial district in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.
   (4) **Quashing Subpoena**. Any attack on the validity of a subpoena issued under these Rules shall be heard and determined by the Chair of the Committee or by the court wherein enforcement of the subpoena is being sought. Any resulting order is not appealable before entry of a final order in the proceeding.
   (5) **Witnesses and Fees**. The subpoena process, witness fees and mileage fees shall be the same as those provided for proceedings in the district courts of Idaho.

(b) **Oaths and Affirmations**. Any member of the Board or Committee may administer oaths and affirmations in pending matters relating to the Fund.

(c) **Discovery**. Discovery shall be permitted at the discretion of the Committee.

(d) **Pre-Hearing Conference**. The Committee may order such pre-hearing conferences as it deems necessary for the orderly conduct of any proceeding under these Rules.

(e) **Confidentiality**. All subpoena and discovery procedures shall be subject to the confidentiality requirements of Rule 611.

RULE 616. Costs of Fund Administration.

In addition to the payment of any Claims authorized by the Board pursuant to these Rules, the Board is authorized to pay from the Fund:

(a) The necessary expenses incurred for investigations and hearings conducted pursuant to these Rules; and

(b) Such costs as are necessary for the administration of the Fund.