RULES AND REGULATIONS CONCERNING THE LAWYERS' FUND FOR CLIENT PROTECTION OF THE SUPREME COURT OF HAWAIʻI

(SCRU-15-0000511)

Promulgated Pursuant to Rule 10.1(d) of the Rules of the Supreme Court of the State of Hawaiʻi

Effective June 22, 1994

The Judiciary
State of Hawaiʻi

LAWYERS' FUND RULES AND REGULATIONS

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Appendix A.

RULES & REGULATIONS CONCERNING THE LAWYERS' FUND FOR CLIENT PROTECTION OF THE SUPREME COURT OF HAWAIʻI.

The following rules and regulations were promulgated pursuant to Rule 10.1(d) of the Rules of the Supreme Court of the State of Hawaiʻi and provide for the administration of the Lawyers' Fund for Client Protection of the Supreme Court of Hawaiʻi, effective June 22, 1994.

Rule 1. GENERAL STATEMENT.

These Rules and Regulations have been adopted pursuant to Rule 10.1(d) of the Rules of the Supreme Court of the State of Hawaiʻi but do not supersede the provisions of Rule 10. They provide for the administration of the Lawyers' Fund for Client Protection of the Supreme Court of Hawaiʻi ("the Fund"), the procedures for the presentation, consideration, and payment of claims, and the exercise of the trustees' investment powers. These Rules and Regulations shall be known as the "Lawyers' Fund Rules and Regulations." Particular rules may be cited as "LF."

(Amended September 15, 1994, effective September 15, 1994; further amended January 24, 2008, effective July 1, 2008.)

Rule 2. ORGANIZATION OF TRUSTEES.

2.1. Organization Meeting.

The trustees shall hold an organization meeting in January of each year at such time and place as the incumbent chairperson shall specify. If there is a vacancy in the office of chairperson, the vice chairperson shall specify the time and place of the organization meeting. At the organization meeting, the trustees shall elect a chairperson, a vice chairperson, a treasurer, and a secretary to serve until the next organization meeting.

2.2. Duties of officers.

(a) Chairperson. The chairperson shall preside at all meetings of the trustees and shall generally coordinate and supervise the administration of the Fund. The chairperson shall provide the Supreme Court annually with a written report concerning the activities of the trustees.

(b) Vice Chairperson. The vice chairperson shall assist the chairperson and perform all duties and functions of the chairperson in the latter's absence.

(c) Treasurer. The treasurer shall be responsible for the custody of the monies and other assets of the Fund, receipt of all payments to the Fund, disbursements from the Fund as authorized by the trustees, investment of the monies of the Fund as authorized by the trustees, causing an annual CPA-reviewed statement to be made of the Fund, maintaining appropriate financial records, and filing such tax or information returns as may be required of the Fund. The treasurer shall be responsible for:

(1) Obtaining and filing with the secretary a bond in such amount as the trustees may, in their discretion, require;

(2) Providing the trustees not less than quarterly with financial reports concerning monies and assets of the Fund;

(3) Providing the Supreme Court with a financial report not less than annually; and

(4) Depositing all monies received by the Fund by way of fees collected by the Hawaiʻi State Bar Association ("HSBA") in an interest-bearing account in banks or savings and loan institutions located in the State of Hawaiʻi and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(d) Secretary. The secretary shall be responsible for preparing and circulating to the trustees the minutes of each meeting of the trustees and for the preservation of the original records (other than financial records) of the trustees, including a separate file for each claim filed with the Fund.

(Amended May 12, 2020, effective July 1, 2020.)

2.3. Meetings.

(a) Meetings shall be at the call of the chairperson, but the trustees shall meet not less than once each quarter. In the absence of the chairperson, the vice chairperson shall call the meeting.

(b) Quorum. Three trustees shall constitute a quorum and may transact all business with respect to approval of investment of portions of the Fund and approval of payment of claims.

(c) Withdrawals from the Fund shall require the signature of 2 trustees or 1 trustee and the Fund Administrator.

(Amended September 15, 1994, effective September 15, 1994; further amended September 21, 2017 effective January 1, 2018.)

Rule 3. INVESTMENT POWERS.

Fund monies shall be invested in accordance with Rule 10.4(g) (3) of the Rules of the Supreme Court.

(Amended September 15, 1994, effective September 15, 1994.)

Rule 4. ADMINISTRATION OF THE FUND.

The trustees may, in their discretion, retain the services of consultants, experts, or other persons, entities, or institutions to assist in the administration of the Fund.

Rule 5. PROCEEDING FOR PRESENTATION OF CLAIMS.

5.1. Filing of Claims.

(a) Applications for reimbursement from the Fund shall be signed by the claimant and submitted in writing to the secretary. The original application shall become part of the official records of the Fund.

(b) The application must comply with the requirements of Rules 10.3 and 10.5(a) of the Rules of the Supreme Court.

5.2. Investigation of Claims.

(a) The secretary shall cause a copy of the application to be personally served upon the alleged defalcating attorney or sent by certified mail to the attorney's last-known address as shown on the attorney's registration statement on file with HSBA.

(b) The trustees, or any one trustee, shall conduct or cause to be conducted an investigation of the claim, and a written report of the investigation shall be submitted to all of the trustees and shall become a part of the official records of the Fund.

(c) The trustees may, in their discretion, delegate the conduct of the investigation to persons who are non-trustees and may retain the services of consultants, experts, or other persons or entities to assist in the conduct of the investigation.

(d) The person conducting an investigation of a claim may seek subpoenas in the manner provided by Rule 10.6 of the Rules of the Supreme Court.

(e) The written report of the investigation shall contain a recommendation concerning the disposition of the claim. A copy of the report shall be served, by mail or otherwise, on the alleged defalcating attorney. The alleged defalcating attorney will be provided an opportunity to be heard by the trustees.

(f) The secretary shall note approval, disapproval, or comments of the trustees concerning the recommendation contained in the written report of the investigation without the necessity of a formal meeting of the trustees.

(g) No reimbursement of a claim from the Fund shall be made unless at least three (3) trustees approve.

(h) The trustees may approve, reject, or modify the recommendation contained in the written report of the investigation or may order such further investigation as the trustees deem appropriate or necessary.

(i) Any trustee may request that testimony or documentary information be presented to the trustees.

(j) In the event the claimant or alleged defalcating attorney requests an opportunity to be heard before a quorum of the trustees, the trustees shall set a date, time, and place for the hearing. The trustees may, in their discretion, limit the scope of any such hearing, and the trustees shall not order any reimbursement from the Fund until after the requested hearing has been concluded.

(k) The trustees may ask a claimant or alleged defalcating attorney to submit supplemental information and may hold such conferences or hearings as the trustees deem appropriate or necessary.

(l) If the alleged defalcating attorney is a judgment debtor of the claimant, the trustees may, in their discretion, (i) accept the final judgment of record in the court proceedings concerning the attorney in lieu of an investigation, (ii) conduct or cause to be conducted an investigation limited to such matters as are set forth in Rule 10.3 of the Rules of the Supreme Court, or (iii) take such other action as the trustees deem appropriate.

(Amended September 15, 1994, effective September 15, 1994.)

Rule 6. CONSIDERATION OF AND PAYMENT OF CLAIMS.

6.1. When Claims Must be Filed.

Claims for reimbursement from the Fund shall not be brought later than 5 years after the claimant knew or should have known of the dishonest conduct of the lawyer, or within 2 years of the occurrence of a qualifying event specified in Rule 10.3(a)(3) of the Rules of the Supreme Court, whichever is later. Nothing herein shall preclude the trustees in the exercise of their discretion from considering a claim filed later than as provided in these Rules upon good cause shown.

(Amended July 9, 2015, effective January 1, 2016.)

6.2. Limitations of the Amount of Reimbursement.

In authorizing reimbursement from the Fund, the trustees shall not award more than $100,000 to any one claimant and shall not award more than $300,000 in the aggregate on account of claims arising out of the dishonest conduct of any one attorney. Trustees, in their discretion, may exclude reimbursements of 1% of the per attorney cap when determining whether the $300,000 maximum aggregate reimbursement amount applicable to any one attorney has been reached.

6.3. Consideration of Factors.

In making determinations on claims for reimbursement from the Fund, the trustees shall consider the factors set forth in Rule 10.3(d) of the Rules of the Supreme Court and such other factors as the trustees may deem relevant in any claim.

6.4. Other Action.

No claim for reimbursement from the Fund which is allowed by the trustees shall be paid until the claimant has executed such instruments, taken such actions, or entered into such agreements as the trustees shall require.

(Amended September 15, 1994, effective September 15, 1994; further amended January 24, 2008, effective July 1, 2008; further amended March 6, 2009, effective July 1, 2009.)

Rule 7. ATTORNEY'S FEES.

No attorney representing a claimant for reimbursement from the Fund shall receive a fee for attorney's services rendered, except as the trustees shall, in their discretion, determine and direct. The trustees may require a sworn statement from the claimant and his or her attorney disclosing any fee arrangement for services rendered in connection with any claim before the Fund.

(Amended September 15, 1994, effective September 15, 1994.)

Rule 8. EFFECTIVE DATE, IMPLEMENTATION, AND AMENDMENTS.

8.1. Effective Date.

These Rules and Regulations shall become effective upon approval by the Supreme Court of the State of Hawai‘i.

8.2. Amendment.

These Rules and Regulations may be amended by a vote of at least three (3) of the trustees and approval of the amendment by the Supreme Court of the State of Hawai‘i.

(Amended September 15, 1994, effective September 15, 1994.)