

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Amendment)
)
 of)
)
 the Rules and Regulations)
 Concerning the Lawyers' Fund)
 for Client Protection of the)
 Bar of Hawai'i)

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ORDER AMENDING THE RULES AND REGULATIONS
CONCERNING THE LAWYERS' FUND FOR CLIENT PROTECTION
OF THE BAR OF HAWAI'I

IT IS HEREBY ORDERED, pursuant Rule 10.1(d) of the Rules of the Supreme Court of the State of Hawai'i, that the Rules and Regulations Concerning the Lawyers' Fund for Client Protection of the Bar of Hawai'i are amended, effective immediately, as follows (deleted material is bracketed, new material is underlined):

RULES AND REGULATIONS CONCERNING
THE [CLIENTS' SECURITY FUND]
LAWYERS' FUND FOR CLIENT PROTECTION
OF THE BAR OF HAWAI'I

Rule 1. General Statement.

These Rules and Regulations have been adopted pursuant to Rule [34.1(d)] 10.1(d) of the Rules of the Supreme Court of the State of Hawai'i but do not supersede the provisions of Rule [34] 10. They provide for the administration of the [Clients' Security Fund] Lawyers' Fund for Client Protection of the Bar of Hawai'i ("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 _____."

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 chair[man]person shall specify. If there is a vacancy in the office of chair[man]person, the vice chair[man]person shall specify the time and place of the organization meeting. At the organization meeting, the trustees shall elect a chair[man]person, a vice chair[man]person, a treasurer, and a secretary to serve until the next organization meeting.

2.2 Duties of Officers.

(a) Chair[man]person. The chair[man]person shall preside at all meetings of the trustees and shall generally coordinate and supervise the administration of the Fund. The chair[man]person shall provide the Supreme Court annually with a written report concerning the activities of the trustees.

(b) Vice Chair[man]person. The vice chair[man]person shall assist the chair[man]person and perform all duties and functions [in the absence] of the chair[man]person 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 audit 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 [an] such amount [specified by] as the trustees may, in their discretion, require;

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

(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 [assessed] collected by the [Court] Hawai'i State Bar Association ("HSBA") in an interest-bearing account in banks or savings and loan institutions located in the State of Hawai'i and insured by the

Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(d) Secretary. The secretary shall be responsible for prepar[ation]ing and circulati[on]ng 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 [for reimbursement] filed with the Fund. [The secretary shall be responsible for: (1) assembling and keeping current a list, file or other record of the name, address and date of admission of each member of the Bar of the State of Hawai'i; (2) noting in the records the names of those members of the Bar who do not intend to engage in the practice of law in any calendar year; and (3) assembling a list of those attorneys who failed to pay any assessment determined by the Supreme Court of the State of Hawai'i pursuant to Rule 34.2(a) of the Rules of the Supreme Court of the State of Hawai'i.]

2.3 Meetings.

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

(b) Quorum. Three (3) trustees shall constitute a quorum and may transact all business [except as otherwise provided in these rules] with respect to approval [for] of investment of portions of the Fund and approval [for] of payment of claims.

(c) Withdrawals from the Fund shall require the signature of two (2) trustees.

Rule 3. Investment Powers.

[The Funds] Fund monies shall be invested in accordance with Rule [34.4(7), subparts (iii) and (iv)] 10.4(g)(3) of the Rules of the Supreme Court.

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 [of losses caused by the dishonest conduct of members of the Bar of this state] shall be signed by the claimant and submitted in writing to the secretary.

[The claimant shall submit an original application and five (5) copies.] The original application shall become part of the official records of the Fund [, and a copy of the claim shall be sent to each trustee].

(b) The application must comply with the requirements of Rules [34.3 and 34.5(a)] 10.3 and 10.5(a) of the Rules of the Supreme Court [of the State of Hawaii].

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 [the Disciplinary Board of the Hawaii Supreme Court] 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 [shall have all of the powers set forth in] may seek subpoenas in the manner provided by Rule [34.6] 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, [to] on the alleged defalcating attorney [as provided in Rule 4.2(a)]. 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 [they] 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 [that] the claimant or alleged defalcating attorney [or his personal representative] 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, [may] 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 [request] ask a claimant or alleged defalcating attorney to submit supplemental information and may hold such conferences or hearings as [they] the trustees deem appropriate or necessary.

(1) If the alleged defalcating attorney is a judgment debtor of the claimant, the trustees may, in their discretion, [either] (i) accept the final judgment [on the] of record [of] in the court proceedings [in the court] concerning the attorney in lieu of an investigation, [or the trustees may] (ii) conduct or cause to be conducted an investigation limited to such matters as are set forth in Rule [34.3] 10.3 of the Rules of the Supreme Court, or [as otherwise determined by the trustees] (iii) take such other action as the trustees deem appropriate.

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 two (2) years after the qualifying event specified in Rule [34.3] 10.3 of the Rules of the Supreme Court [of the State of Hawaii]. 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.

6.2 Limitations of the Amount of Reimbursement. In authorizing reimbursement from the Fund, the trustees shall not award more than [\$100,000] \$50,000 to any one claimant and shall not award more than \$150,000 in the aggregate on account of claims arising out of the dishonest conduct of any one attorney.

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 [34.3(d)] 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.

Rule 7. Attorney's Fees.

[7.1 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 [, in their discretion,] 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.

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 [four (4)] three (3) of the trustees and approval of the amendment by the Supreme Court of the State of Hawai'i.

DATED: Honolulu, Hawai'i, June 22, 1994.

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