

Client Protection Program Rules

Supreme Court of Illinois

RULE 780 Client Protection Program

(a) There is established under the auspices of the Attorney Registration and Disciplinary Commission a Client Protection Program to reimburse claimants from the Client Protection Program Trust Fund for losses:

- 1) caused by dishonest conduct committed by lawyers admitted to practice law in the State of Illinois; or
- 2) involving unearned, unrefunded fees paid to lawyers admitted to practice law in the State of Illinois who later died or were transferred to disability inactive status.

(b) The purpose of the Client Protection Program is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses, as defined in Rule 780(a), occurring in the course of a lawyer-client or fiduciary relationship between the lawyer and the claimant.

(c) Reimbursements of losses by the Program shall be within the sole discretion of the Commission, and not a matter of right. No person shall have a right in the Program as a third party beneficiary or otherwise, either before or after the allowance of a claim. The determination of the Commission shall be final and shall not be subject to judicial review.

(d) The Client Protection Program shall be funded by an annual assessment as provided in Rule 756. The Commission shall establish by rule the maximum amount which any one claimant may recover from the Program and may establish the aggregate maximum which may be recovered because of the conduct of any one lawyer.

(e) A lawyer who is the subject of a claim that results in reimbursement to a claimant shall be liable to the Program for restitution. Disciplinary orders imposing suspension or probation shall include a provision requiring the lawyer to reimburse the Client Protection Program for any payments arising from his or her conduct prior to the termination of the period of suspension or probation. Prior to filing a petition for reinstatement or restoration to active practice, a petitioner shall reimburse the Client Protection Program for all payments arising from petitioner's conduct. The Petition must be accompanied by a statement from the Administrator indicating that all such payments have been made.

(f) The Commission may make rules related to the investigation and consideration of a Client Protection Program claim.

(Adopted, effective March 28, 1994; amended September 14, 2006; amended February 9, 2015.)

Rules of the Attorney Registration And Disciplinary Commission

Article VII Client Protection Program

RULE 501 Eligible Claims. The Commission may consider a claim if the claimant complies with procedures established by the Commission and if the following conditions exist:

(a) The claimant experienced a loss of money or property, excluding loss of profit, consequential damages, interest, and costs of recovery;

(b) The loss arose out of or during the course of a lawyer-client relationship between the lawyer and the claimant related to a matter in this state, or a fiduciary relationship between the lawyer and the claimant that is related to the practice of law in this state;

(c) The loss was caused by the dishonest conduct of the lawyer, or involved unearned, unrefunded fees paid to a lawyer who later died or was transferred to disability inactive status, and the claim was not based on negligence or malpractice;

(d) There is no reasonably available collateral source for reimbursement to the claimant, such as insurance, surety, bond, or some other fund;

(e) Reasonable efforts have been made by the claimant to exhaust administrative and civil remedies;

(f) The lawyer was licensed to practice law in this state at the time of the events which resulted in the loss or was licensed within three years prior to those events;

(g) The claim was filed within three years after the date the claimant knew or should have known of the loss, or within one year after the date the lawyer was disciplined, died, or was transferred to disability inactive status, whichever is later;

(h) The loss occurred on or after January 1, 1984;

(i) The lawyer has been disciplined by the Supreme Court of Illinois, or has died, or has been transferred to disability inactive status; and

(j) The claimant has cooperated fully with disciplinary and law enforcement officials.

For purposes of the Client Protection Program, "dishonest conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or wrongful taking or conversion of money or property or other things of value including, but not limited to, failure to refund an unearned fee received in advance as required by Rule 1.16(e) of the Illinois Rules of Professional Conduct, and borrowing money from a client without intending to repay it, or with disregard of the lawyer's reasonably anticipated inability to repay it, or in breach of the lawyer's fiduciary duty to the client.

(Adopted, effective March 28, 1994; amended March 31, 1997; amended May 31, 2000; amended February 9, 2015; amended March 12, 2019.)

Rule 502 Excluded Claims. Notwithstanding the provisions of Commission Rule 501, a claim is not eligible for payment to the extent that it involves any one of the following factors:

(a) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of the lawyer(s) causing the losses;

(b) 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;

(c) Losses incurred by any financial institution which are recoverable under a bond or an insurance or surety contract;

(d) Losses incurred by any business entity controlled by the lawyer or any person or entity described in Commission Rule 502(a), (b), or (c);

(e) Losses incurred by any governmental entity or agency.

(Adopted, effective March 28, 1994.)

Rule 503 Claims Payments Discretionary.

(a) In cases of extreme hardship or special and unusual circumstances, the Commission may, in its discretion, recognize a claim which would otherwise be excluded under these rules.

(b) In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Commission may, in its discretion, deny the claim.

(Adopted, effective March 28, 1994.)

RULE 504 Form of Claim. The Administrator shall investigate a claim if it is submitted on a form provided by the Commission. The Administrator may, as a matter of discretion, investigate claims which are not filed on the claim form provided by the Commission.

(Adopted, effective March 28, 1994; amended February 9, 2015.)

RULE 505 Content of Claim Form

(a) The claim form shall require that the claimant provide the following information:

(1) The name, address and telephone number of the claimant;

(2) The name, address and telephone number of the lawyer or lawyers whose conduct caused the loss;

(3) A statement of when the claimant hired the lawyer, the date on which the loss occurred, the date upon which any lawyer-client relationship with the lawyer ended, and the date upon which the claimant discovered the loss;

(4) A detailed description of the events that lead to the loss and the amount of the loss, together with a copy of all documentation which supports the claim;

(5) A description of what the claimant has done to recover the loss, including whether the claimant has sued the lawyer or otherwise made a claim against the lawyer or the lawyer's assets;

(6) A statement of whether the claimant has contacted appropriate criminal authorities regarding prosecution. If so, the statement should include copies of any related materials. If the answer is no, the statement should include an explanation of why such action has not been taken;

(7) A statement of the extent to which the loss has caused the claimant any special hardship;

(8) A statement of the extent to which the claimant has cooperated with disciplinary authorities;

(9) A statement of any relationship between the claimant and the lawyer; and

(10) An agreement to execute any subrogation or like agreements, to the extent that the Client Protection Program makes any payment to the claimant.

(b) The claimant shall sign the claim form.

(Adopted, effective March 28, 1994, amended February 9, 2015.)

RULE 506 Claims Procedure. If the lawyer whose conduct is the subject of the claim has already been disciplined or transferred to disability inactive status by the Supreme Court of Illinois, or has died, the Administrator shall commence an investigation of the claim. The investigation shall be concluded as soon as is practicable. If the lawyer has not been disciplined or transferred to disability inactive status and has not died, the Administrator shall hold the claim in abeyance, pending conclusion of any proceedings. During the abeyance, the Administrator may gather facts underlying the claim. As part of the investigation, the Administrator shall send a copy of the claim to the lawyer whose conduct is alleged to have caused the loss at his or her last registered or known address and shall request from the lawyer a full statement of the facts related to the claim. The lawyer has a duty to respond to the request and to cooperate with any further requests. The Administrator shall conduct a complete investigation and shall prepare and submit to the Commission a report addressing the factors identified in Commission Rules 501, 502 and 503.

(Adopted, effective March 28, 1994, amended December 1, 1994, amended February 9, 2015.)

Rule 507 Determination.

(a) Payment of a claim shall be made only on affirmative vote of four members of the Commission.

The decision to pay a claim shall be reflected in an order of the Commission.

- (b) In determining the amount of any payment, the Commission may consider:
 - (1) Monies available and likely to become available for payment of claims;
 - (2) The size and number of claims presented and likely to be presented in the future;
 - (3) The amount of a claimant's loss compared with losses sustained by others;
 - (4) The comparative hardship suffered by a claimant because of a loss;
 - (5) The total amount of losses caused by the conduct of any one lawyer;
 - (6) The culpability or negligence of the claimant contributing to the loss;
 - (7) The extent which there is a collateral source for reimbursement to the claimant;
 - (8) The effort made by the claimant to exhaust administrative and civil remedies;
 - (9) Other factors as appear to be just and proper.
- (c) The Commission order shall be filed with the Clerk.

(Adopted, effective March 28, 1994; amended December 1, 1994; amended February 9, 2015.)

Rule 508 Request for Reconsideration; Assignment to Panel. The Clerk shall provide a copy of the Commission's order to the claimant and the lawyer who is the subject of the claim. Within 21 days of the mailing of the order, the claimant or the lawyer may request reconsideration of the order by sending such a written request to the Clerk. The request shall state the basis of the request for reconsideration and whether a hearing is requested. If no request is received within the stated time, the order shall become final. If a request is received, the Clerk shall forward the request to the Commission. The Commission may assign the request to a panel designated by the Commission to review the request. The panel shall be composed of two lawyers and one non-lawyer, and may be a panel of the Inquiry or Hearing Panel.

(Adopted, effective March 28, 1994; amended December 1, 1994.)

Rule 509 Review by Panel. At the Commission's request, the panel shall review the report submitted by the Administrator and the request for reconsideration. The Administrator shall assist the panel. The panel may consider any and all information obtained by the Administrator during the investigation and may request the Administrator to conduct additional investigation. The panel may convene a hearing at which both the claimant and the lawyer may appear. Hearings shall be informal. The Chair of the panel shall preside at the hearing. The panel shall prepare a report and recommendation to the Commission. The report of the panel shall address those factors identified in the Commission Rules 501, 502 and 503.

(Adopted, effective March 28, 1994; amended December 1, 1994.)

Rule 510 Payment of Claims. The Administrator shall pay claims out of the Disciplinary Fund in accordance with an order of the Commission. The maximum payment to any one claimant arising from a claim shall be \$100,000. The Commission shall require as a condition of payment that the claimant execute such instruments, take such action or enter into such agreements as the Commission requires, including assignments, subrogation agreements, and trust agreements. Aggregate payments arising from the conduct of any one attorney shall not exceed \$1,000,000.

(Adopted, effective March 28, 1994; amended April 1, 2003; amended January 31, 2007; amended March 31, 2009; amended March 20, 2014.)

Rule 511 Restitution and Subrogation.

(a) The Commission may bring such action as it deems advisable to enforce restitution obligations against the lawyer whose conduct gave rise to the payment of a claim.

(b) As a condition of reimbursement, a claimant shall be required to provide the Commission with a transfer of the claimant's rights, to the extent of a claim payment, against the lawyer, the lawyer's legal representative, estate or assigns or any third party or entity who may be liable for the claimant's loss.

(c) Upon commencement of an action by the Commission as subrogee or assignee of a claim, the Administrator shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

(d) In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another entity who may be liable for the claimant's loss, the claimant shall be required to notify the

Commission of such action.

(e) The claimant shall be required to agree to cooperate in all efforts that the Commission undertakes to achieve restitution for the Disciplinary Fund.

(Adopted, effective March 28, 1994.)

Rule 512 Compensation for Representing Claimants. No lawyer shall accept any payment for representing a claimant in a claim before the Client Protection Program.

(Adopted, effective March 28, 1994; amended February 9, 2015.)