

Rule 3. Rules Governing the Claim Process**3.01 Claims Payment Discretionary**

Reimbursements of losses by the Board are discretionary, and not a matter of right.

(Amended effective July 1, 2024.)

3.02 Eligible Claims

The Board shall consider a claim filed on forms provided by the Board. A claim is eligible for consideration, based upon the definitions provided in Rule 3.20, if:

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

b. The loss arose out of and during the course of a lawyer-client relationship of a matter in this state, or a fiduciary relationship between the lawyer and the client which arose out of a lawyer-client relationship in this state; and

c. The loss was caused by the dishonest conduct of the lawyer and the claim was not based on negligence; and

d. The lawyer was licensed to practice law in this state at the time of the misconduct or was licensed within three years prior to the misconduct; and

e. Less than five years have elapsed between the filing of the claim and the date the claimant knew or should have known of the dishonest conduct.

(Amended effective July 1, 1995; amended effective July 1, 2024.)

3.03 Privileged Complaints

A claim filed pursuant to these Rules is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the claimant or client.

(Amended effective July 1, 2024.)

3.04 Screening Claims

The Chair shall designate a Board member or the Director to screen a claim and to advise the lawyer named in the claim that the lawyer has 20 days to respond to the Board in writing. The lawyer shall receive a copy of the claim, by first class mail sent to the lawyer's last known address. Duplicative claims may be screened out by the Director, who shall report such screening at the next meeting of the Board.

(Amended effective July 1, 1995; amended effective July 1, 2024.)

3.05 Claim Investigation

If a claim is eligible, the Director shall promptly request the Office of Lawyers Professional Responsibility to furnish a report on any investigation of the matter.

(Amended effective July 1, 2024.)

3.06 Rights of Lawyer Subject to Claim

A lawyer subject to a claim shall be entitled to receive a copy of the claim, to respond to the claim in writing to the Board, and to request an evidentiary hearing as provided by Rule 3.12.

(Amended effective July 1, 1995.)

3.07 Lawyer Cooperation

It shall be the duty of a lawyer subject to a claim to cooperate and comply with the reasonable requests of the Board and the Board's investigator by furnishing papers, documents or objects, providing a full written explanation, and appearing at conferences and hearings. The lawyer's failure to respond or cooperate may be reported to the Office of Lawyers Professional Responsibility for possible discipline under this rule.

(Amended effective July 1, 1995.)

3.08 Subpoena

With the approval of the Board Chair, the Director may subpoena and take testimony of any person believed to possess information concerning a claim.

(Amended effective July 1, 1995.)

3.09 Jurisdiction

The district court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the investigation of a claim.

(Amended effective July 1, 1995.)

3.10 Action after Investigation

No later than 120 days from the conclusion of any disciplinary actions, if applicable, the Chair shall determine whether additional investigation should be conducted, a hearing should be held, or a determination may be immediately rendered.

(Amended effective July 1, 1995; amended effective July 1, 2024.)

3.11 Panels

The Chair may divide the Board into panels, each consisting of not less than three Board members and at least one of whom is a nonlawyer, and shall designate a Chair for each panel. A panel may be assigned to consider a matter and make a recommendation to the entire Board, or may conduct a hearing under Rule 3.12 in lieu of a hearing before the entire Board.

(Amended effective July 1, 1995.)

3.12 Request for Hearing

If the claimant or the lawyer subject to the claim requests an evidentiary hearing, the Chair may order such a hearing, defer the matter for further investigation or until any proceedings of the Lawyers Professional Responsibility Board have been completed, or deny the request.

(Amended effective July 1, 1995.)

3.13 Hearing

If an evidentiary hearing under Rule 3.12 is ordered, both the claimant and the lawyer and their representatives may appear. The hearing shall be recorded and preserved for five years.

(Amended effective July 1, 1995.)

3.14 Determination

a. Payment of a claim from the Fund shall be made only on affirmative vote of four members.

b. In determining whether to pay a claim and the amount of any payment, the Board may consider:

- (1) Monies available and likely to become available to the Fund for payment of claims;
- (2) 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 dishonest conduct of any one lawyer;
- (6) The culpability or negligence of the claimant contributing to the loss;
- (7) The extent to which there is a collateral source for reimbursement to the claimant, such as insurance, surety, bond, or some other state's fund;
- (8) The effort made by the claimant to exhaust administrative and civil remedies and the reasonableness of those efforts; and
- (9) Other factors as appear to be just and proper.

c. In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion and consistent with the purpose of the Fund, recognize a claim that would otherwise be excluded under these Rules.

d. The maximum amount that may be paid to any claimant for a single claim is \$150,000.

e. The Board may, in its discretion, award interest on any award at the rate of interest payable under Minnesota Statutes, section 549.049, from the date of filing the claim. In determining the amount of interest, if any, the Board may consider:

- (1) The length of time between filing the claim and its disposition;
- (2) The existence of third-party litigation; and
- (3) Other factors outside the control of the Board.

(Amended effective December 3, 1993, the amendments to Rule 3.14 are retroactively effective for all claims filed on or after February 1, 1993; amended effective July 1, 1995; amended effective September 14, 2001; amended effective July 1, 2024.)

3.15 Denial

The Board may, in its discretion, upon consideration of the factors in Rule 3.14(b), deny any claim. The Board may authorize payment of that portion of a claim proved, although the entire amount of a claim is undetermined. The Board may defer payment of a claim in order to await

completion of investigations of related claims, or for payment in subsequent fiscal years. The claimant and the lawyer shall be notified in writing of the Board's determination.

(Amended effective July 1, 1995; amended effective July 1, 2024.)

3.16 Reconsideration

If a claim has been reduced or denied by the Board, a claimant may request reconsideration of the determination within 30 days by submitting a written request to the Board. A claimant may not seek reconsideration if the full claim is allowed but a lesser amount has been authorized for payment under Rule 3.14(b) or (d), or on the basis that the Board did not award interest under Rule 3.14(e). Decisions of the Board upon reconsideration are final. There shall be no appeal from a final decision of the Board.

(Amended effective July 1, 1995; amended effective July 1, 2024.)

3.17 Subrogation

A claim paid pursuant to these Rules shall be repaid to the Fund by the lawyer. The Board shall obtain a subrogation agreement from the claimant. The Board may bring an action against the lawyer, the lawyer's assets, the lawyer's estate, the lawyer's law firm or partner(s) or any other person(s) or entities against which subrogation rights may be enforced, or may file liens against the property of the lawyer in the name of the Fund, in an amount equal to the sum paid the claimant plus the Board's attorney fees and costs. The claimant shall be notified of any action and may join in the action to press a claim for the loss in excess of the amount paid by the Fund, but the Fund shall have first priority to any recovery in the suit.

(Amended effective July 1, 1995.)

3.18 Notification of Claim Paid

a. The Board shall advise the Office of Lawyers Professional Responsibility of any claim paid, the amount paid, and the name of the lawyer.

b. Upon request of the lawyer, the Board may advise a lawyer admission or discipline authority of another jurisdiction the status of any file on the lawyer.

(Amended effective July 1, 1995.)

3.19 Definitions

a. "Claimant" means a client of the lawyer or a third-party who provided money or property to the lawyer on behalf of the client. Claimant excludes a spouse (present or former), child, parent or grandparent, sibling, partner, associate or employee of the lawyer causing the loss. Claimant also excludes an insurer, surety, or bonding institution, financial institution, government entity, or business entity owned or controlled by the lawyer causing the loss.

b. "Dishonest conduct" means 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 or failure to refund an advance fee when the lawyer performed no work whatsoever, or an insignificant portion of the services that the lawyer agreed to perform. All other instances of a lawyer failing to return an unearned fee or the disputed portion of a fee are outside the scope of the Fund.

(2) Obtaining money or property from a claimant representing that it was to be used for investment purposes when no such investment was made. The failure of an investment to perform as represented to, or anticipated by, the applicant is outside the scope of the Fund.

(Added effective July 1, 2024.)