

RULE CHANGE 2023(11)

**RULES GOVERNING LAWYER DISCIPLINE AND DISABILITY PROCEEDINGS,
PROTECTIVE APPOINTMENT OF COUNSEL, CONTINUING LEGAL AND JUDICIAL
EDUCATION, ATTORNEYS' FUND FOR CLIENT PROTECTION, AND LAWYER
ASSISTANCE PROGRAMS**

**Rules 252.1, 252.2, 252.3, 252.4, 252.5, 252.6, 252.7, 252.8, 252.9, 252.10, 252.11, 252.12, 252.13,
252.14, 252.15, 252.16, and 252.17**

Rule 252.1. Purpose, ~~and~~ Scope, Terminology

(a) The purpose of the Colorado Attorneys' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by mitigating losses caused by the dishonest conduct of licensed attorneys authorized to practice in this state occurring in the course of attorney-client or court-appointed fiduciary relationship between the attorney and the claimant.

(b) The following terminology and definitions apply to this Rule:

(1) "Dishonest Conduct" means one or more wrongful acts committed by an attorney in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, permanently depriving the client of its use, including but not limited to:

(a) Refusal to refund unearned fees received in advance as required by Rule 1.16 of the Colorado Rules of Professional Conduct; and

(b) The borrowing of money from a client without intention to repay it, or with disregard of the attorney's inability or reasonably anticipated inability to repay it.

(2) "Fund" means the Colorado Attorneys' Fund for Client Protection.

(3) "Board" means the Colorado Attorneys' Fund for Client Protection Board of Trustees.

(4) "Trustee" means one of the five member Trustees appointed to the Board of Trustees by the Colorado Supreme Court.

(5) "Chair" means the individual appointed to serve as Chair of the Board of Trustees by the Colorado Supreme Court and has all the powers of a Trustee.

(6) "Vice-Chair" means the individual appointed to serve as Vice-Chair of the Board of Trustees by the Colorado Supreme Court and has all the powers of a Trustee.

(7) "Request for Claim" means the initial written request submitted by a Claimant to the Board seeking reimbursement for losses caused by dishonest conduct of a licensed attorney authorized to practice law in Colorado.

(8) "Claim" means a Claimant's Request for Claim that has been determined to meet all eligibility criteria and which will be considered by the Board for substantive review.

(9) "Claimant" means an individual who submits a Request for Claim to the Board in order to seek reimbursement for losses caused by the dishonest conduct of a licensed attorney authorized to practice law in Colorado.

(10) "Respondent Attorney" means the attorney who is the subject of a Request for Claim.

(c) Applicability of C.R.C.P. 252.1 through C.R.C.P. 252.16 to Licensed Legal Paraprofessionals ("LLPs").

(1) The terminology rule at C.R.C.P. 252.1 and the rules governing the Colorado Attorneys' Fund for Client Protection (C.R.C.P. 252.1 et seq.), apply to LLPs. LLPs have all the obligations and rights of Respondent Attorneys under these rules. Claimants likewise have all the obligations and rights provided by these rules when filing a Request for Claim based on the conduct of a Respondent Licensed Legal

| [Paraprofessional.](#)

Rule 252.2. Establishment

(a) There is established the Colorado Attorneys' Fund for Client Protection to mitigate ~~claimants for losses~~ Claimants' losses caused by dishonest conduct committed by licensed attorneys ~~admitted to practice in this state~~ authorized to practice in Colorado or as set forth in C.R.C.P. 252.10.

(b) There is established, under the supervision of the Supreme Court of Colorado, the Colorado Attorneys' Fund for Client Protection Board of Trustees, which ~~shall~~ is authorized to receive, hold, manage and disburse ~~from the~~ such funds ~~such funds~~ as may from time to time be allocated to the ~~f~~Fund.

~~(c) These Rules shall be effective for claims filed with the board on or after July 1, 1999, and the Board shall not pay claims for losses incurred as a result of dishonest conduct committed prior thereto.~~

Rule 252.3. Funding

(a) The Supreme Court ~~shall~~will provide for funding the Fund by the attorneys of the state through the attorney registration fee established in C.R.C.P. 227(A)(1)(a) and (c) and by the licensed legal paraprofessionals of the state through a registration fee established in C.R.C.P. 207.14(A)(1)(a) and (c).

(b) ~~An attorney~~A Respondent Attorney whose dishonest conduct has resulted in any payment ~~by the fund~~out of the Fund to a eClaimant ~~shall make restitution to the fund~~must reimburse the Fund, including any applicable interest and ~~the~~any expenses incurred by the ~~f~~Fund in processing the eClaim and pursuing reimbursement. ~~An attorney's~~A Respondent Attorney's failure to fully ~~restitution~~reimburse the Fund may be cause for additional discipline ~~or denial if the failure violates the Rule of Professional Conduct and may be considered a basis for denial of an application~~ for reinstatement or readmission pursuant to C.R.C.P. 242.39.

(c) Payment out of the Fund to a Claimant may be a pecuniary loss or injury proximately caused by a Respondent Attorney's dishonest conduct such that reimbursement may be referred for collection through C.R.S. Title 18, Art. 1.3, Pt. 6.

Rule 252.4. Funds

All money or other assets of the ~~f~~Fund ~~shall~~ constitute a trust and ~~shall be~~ are held in the name of the ~~f~~Fund, subject to the direction of the Board.

Rule 252.5. Composition and Officers of the Board

(a) The Board ~~shall~~will consist of seven members: five member Trustees, a Chair and a Vice-Chair.

(1) The Board will be composed of five attorneys and two public members appointed by the Supreme Court. Diversity will be a consideration in making the appointment.

(2) Trustees may serve one term of seven years but may be dismissed from the Board at any time by order of the Supreme Court.

(3) The terms of the Trustees ~~shall~~will be staggered to provide, so far as possible, for expiration each year of the term of one Trustee. Trustees may resign at any time. In the event of a vacancy on the Board, the Supreme Court ~~shall~~will appoint a successor ~~to serve the remainder of the unexpired term~~.

(4) The Chair and Vice-Chair ~~shall~~will be ~~members of the Bar of Colorado~~ attorneys licensed to practice law by the State of Colorado. The Supreme Court ~~shall~~will appoint the Chair and Vice-Chair. By order of the Supreme Court, the Chair or Vice-Chair may be dismissed at any time. The Chair and Vice-Chair may be appointed to a second ~~seven-year~~ term as designated by the Supreme Court's Order of Appointment, but not to exceed a total of fourteen (14) years of service.

(b) The Trustees, Chair, and Vice-Chair ~~shall~~will serve without compensation, but ~~shall~~will be reimbursed for actual and necessary expenses incurred in the discharge of their duties for the Board.

Rule 252.6. Board Meetings

- (a) The Board ~~shall~~will meet as frequently as necessary to conduct the business of the ~~f~~Fund and to process ~~e~~Claims in a timely manner.
- (b) The ~~chairperson~~Chair ~~shall~~will call a meeting at any reasonable time or upon the request of at least two ~~trustees~~members of the Board.
- (c) A quorum for any meeting of the Board ~~shall be four trustees~~is four members of the Board.
- (d) Minutes of meetings ~~shall~~will be taken ~~and permanently maintained by the secretary~~. Minutes and related Claim documents will be maintained for at least five years.

Rule 252.7. Duties and Responsibilities of the Board

(a) The Board ~~shall have~~has the following duties and responsibilities:

- (1) To receive, and in its sole discretion, evaluate, investigate, determine and pay ~~e~~Claims from the Fund unless otherwise provided for in these rules;
- (2) To promulgate ~~rules of procedure~~policy not inconsistent with these rules;
- (3) In its discretion, ~~if warranted and prudent,~~ to fix a maximum amount of payment per ~~e~~Claim payable from the ~~f~~Fund and/or of the aggregate amount which may be paid because of the dishonest conduct of any one Respondent ~~a~~Attorney;
- (4) To solicit and receive funds from donations and other sources in addition to annual attorney registration fees;
- (5) To invest ~~prudently~~such portions of the ~~f~~Funds as may not be needed currently to pay ~~losses~~Claims;
- (6) To provide a full report annually to the Supreme Court and to make other reports as necessary;
- (7) To publicize its activities to the public and the ~~Bar~~legal community;
- (8) To retain and compensate consultants, actuaries, agents, legal counsel and other persons as necessary to discharge the duties of the Board;
- (9) To pursue ~~claims~~requests for restitution to which the Fund is entitled;
- (10) To engage in studies and programs for client protection and prevention of dishonest conduct by attorneys; and
- (11) To perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the ~~f~~Fund.

(b) The Office of the Attorney Regulation Counsel of the Colorado Supreme Court ~~shall~~will assist the Board in the effective and efficient performance of its functions, ~~including but not limited to investigation of claims~~ and duties as follows:

- (1) Investigating and reporting on all Requests for Claim and Claims;
- (2) Recommending payment, denial or partial payment and partial denial of those Requests for Claims or Claims received based on the claim criteria outlined in C.R.C.P. 252;
- (3) Recommending denial of those Requests for Claim or Claims when the underlying grievance matter has been dismissed by the Office of Attorney Regulation Counsel due to lack of clear and convincing evidence or the Claimant has withdrawn the Request or Claim;
- (4) Preparing the Board agenda and recording the minutes of the Board meetings;
- (5) Presenting Requests for Claim or Claims to the Board;
- (6) Notifying Claimants of ultimate disposition;

(7) Coordinating payments to Claimants;

(8) Monitoring subrogation rights on previously paid Claims;

(9) Preparing annual Fund reports;

(10) Acting as custodian of all Board records including minutes and all Fund bank records;

(11) Paying Claims authorized by delegation or approved by a majority of the quorum of the Board; and

(12) Any other functions deemed necessary by the Board to effectively perform its duties.

Rule 252.8. Conflict of Interest

~~(a)~~ A Trustee, Chair, or Vice-Chair who has or has had an attorney-client relationship or a financial relationship with a claimant or attorney who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or attorney must refrain from taking part in a Client Protection Fund investigation or proceeding where a similarly situated judge would be required to recuse.

~~(b)~~ A Trustee with a past or present relationship, other than as provided in section (a), with a claimant or the attorney who is the subject of the claim, shall either voluntarily abstain from participating or disclose such relationship to the Board and, if the Board deems appropriate, that Trustee shall not participate in any proceeding relating to such claim.

Rule 252.9. Immunity

~~The Trustees, employees and agents of the Board shall be absolutely immune from civil liability for all acts performed in the course of their official duties. Absolute immunity shall also extend to claimants and attorneys who assist claimants for all communications to the fund.~~

(a) An attorney may not institute a civil lawsuit against any person based on a Request for Claim or Claim under this rule, or other written or oral communications made in a proceeding under this rule to the Trustees, Chair, and Vice-Chair, employees and agents of the Board.

(b) All entities within the Client Protection Fund system and all individuals working or volunteering on behalf of those entities are immune from civil suit for conduct in the course of fulfilling their official duties under this rule.

Rule 252.10. Eligible Claims

~~(a) The loss must be caused by the dishonest conduct of the attorney and shall have arisen out of and by reason of an attorney-client relationship or a court-appointed fiduciary relationship between the attorney and the claimant.~~ A Request for Claim will be eligible for review on the merits by the Board only after it meets the following eligibility criteria:

(1) the Request for Claim must allege a pecuniary loss arising out of and by reason of an attorney-client relationship or a court-appointed fiduciary relationship between the Respondent Attorney and the Claimant;

(2) the pecuniary loss alleged in the Request for Claim must be caused by:

(a) the dishonest conduct of the Respondent Attorney; or

(b) due to the death or disability of the Respondent Attorney; or

(c) due to the Respondent Attorney's inability to respond, and there is insufficient evidence to substantiate the work done by the Respondent Attorney;

(3) the Request for Claim must be filed no later than three years after the Claimant knew or should have known of the conduct of the Respondent Attorney;

(4) the Request for Claim cannot be the result of circumstances that are excluded for review under subsection (b) of these rules.

~~(b) The claim shall have been filed no later than three years after the claimant knew or should have known of the dishonest conduct of the attorney.~~ Except as provided by section (c) of this rule, the following Requests for Claim will not be eligible:

(1) A Request for Claim where the Claimant is the spouse, child, parent, grandparent, sibling, law or business partner, or employee of the Respondent Attorney causing the pecuniary loss;

(2) A Request for Claim where the pecuniary loss to the Claimant is covered by any bond, surety agreement, or qualifying insurance policy, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(3) A Request for Claim where the pecuniary loss is incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract, whether or not subrogated;

(4) A Request for Claim where the pecuniary loss is incurred by any business entity controlled by the Respondent Attorney, whether or not subrogated;

(5) A Request for Claim where the pecuniary loss is incurred by any governmental entity or agency, whether or not subrogated;

(6) A Request for Claim where the pecuniary loss is arising from the activities of an attorney not practicing in Colorado or whose dishonest conduct does not have substantial contacts with Colorado; or

(7) A Request for Claim where the pecuniary loss is the interest on the loss, deprivation of use of funds

or property, opportunity costs, or any other type of consequential damages or punitive damages or costs.

(c) In cases of extreme hardship or special and unusual circumstances, the Board may, in its sole discretion, recognize a Claim that would otherwise be excluded under these rules.

~~(e) As used in these rules, “dishonest conduct” means one or more wrongful acts committed by an attorney 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 unearned fees received in advance as required by Rule 1.16 of the Colorado Rules of Professional Conduct; and~~

~~(2) The borrowing of money from a client without intention to repay it, or with disregard of the attorney’s inability or reasonably anticipated inability to repay it.~~

(d) In cases in which it appears that there will be unjust enrichment or multiple recovery or the Claimant contributed or participated in the loss or dishonest conduct, the Board may, in its sole discretion, deny the Claim.

~~(d) Except as provided by section (e) of this rule, the following losses shall not be eligible:~~

~~(1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of attorney(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;~~

~~(3) Losses incurred by any financial institution which are recoverable under a “banker’s blanket bond” or similar commonly available insurance or surety contract;~~

~~(4) Losses incurred by any business entity controlled by the attorney;~~

~~(5) Losses incurred by any governmental entity or agency;~~

~~(6) Losses arising from the activities of an attorney not having an office or residence in Colorado where those activities do not have substantial contacts with Colorado; and,~~

~~(7) Interest on the loss or any type of consequential damages or punitive damages or costs.~~

~~(e) In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, recognize a claim which would otherwise be excluded under these rules. The Board may also pay a claim when client funds are no longer in the attorney’s trust account and, due to the attorney’s death or court-ordered transfer to disability inactive status, the Board is unable to determine whether the attorney earned the funds or engaged in dishonesty.~~

~~(f) In cases in which it appears that there will be unjust enrichment or multiple recovery or the claimant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the claim.~~

Rule 252.11. Procedures for Filing Claims

- (a) The Board ~~shall~~will prepare and approve a form for ~~claiming reimbursement~~a Claimant to submit a Request for Claim and ~~shall~~will designate the place and manner for filing ~~a~~the Request for Claim.
- (b) The eClaimant must agree to cooperate with the Board ~~in reference to the claim and in reference to civil actions which may be brought in the name of the Board~~ pursuant to a subrogation and assignment clause which ~~shall also~~will be contained within the Request for Claim.
- (c) The eClaimant ~~shall have the responsibility~~is responsible for to completeing the Request for eClaim form and providing satisfactory evidence to support the Request for eClaim. Incomplete Request for Claim forms will not be processed.

Rule 252.12. Procedures for Processing ClaimsInvestigation of Claims

~~(a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, the claimant shall be advised of the reasons why the claim may not be eligible for reimbursement, and that, unless additional facts to support eligibility are submitted to the Fund, the claim file shall be closed.~~

~~(b) A certified copy of an order disciplining an attorney for the same dishonest act or conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall be conclusive evidence that the attorney committed such dishonest act or conduct.~~

~~(c) Regulation Counsel shall be promptly notified of the claim and requested to furnish a report of its investigation, if any, on the matter to the Board. The Regulation Counsel shall allow the Fund's representatives access to its records during an investigation of a claim. The Board shall evaluate whether the investigation is complete and determine whether the Board should conduct additional investigation or await the conclusion of any disciplinary investigation or proceeding involving the same act or conduct that is alleged in the claim.~~

~~(d) The Board may conduct its own investigation when it deems it appropriate and may seek and obtain the assistance of the Regulation Counsel, the Attorney Regulation Committee, the Board of Law Examiners, the Board of Continuing Legal Education, and the Attorney Registration Office, irrespective of any confidentiality requirements of those offices, subject to rule 252.15.~~

~~(e) The Board or an individual trustee or counsel designated to act on behalf of the trustees, upon determining that any person has knowledge or is in possession or custody of books, papers, documents or other objects relevant to the disposition of a claim, may issue a subpoena requiring such person to appear and testify or to produce such books, papers, documents or other objects before the Board or counsel designated to act on behalf of the trustees, at the time and place specified therein. Subpoenas shall be subject to the provisions of C.R.C.P. 45.~~

~~(f) If any person, without adequate excuse, shall fail to obey a subpoena, the Board or an individual trustee or counsel designated to act on their behalf, may file with the Supreme Court a verified statement setting forth the facts establishing such disobedience, and the Court may then, in its discretion, institute contempt proceedings. If such person is found guilty of contempt, the Court may compel payment of the costs of the contempt proceedings to be taxed by the Court.~~

~~(g) If, by the completion of the investigation, the attorney or the attorney's representative has not been notified of the claim and given an opportunity to respond to the claim, a copy of the claim shall be served upon the attorney, or the attorney's representative. The attorney or representative shall have 21 days in which to respond.~~

~~(h) The Board may request that testimony be presented to complete the record. Upon request, the claimant or attorney, or their representatives, will be given an opportunity to be heard.~~

~~(i) The Board may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for purposes of professional discipline or other purposes.~~

~~(j) When the record is complete, the claim shall be determined on the basis of all available evidence, and notice shall be given to the claimant and the attorney of the Board's determination and the reasons~~

~~therefor. The approval or denial of a claim shall require the affirmative votes of at least four trustees. Payment of a claim may be made in a lump sum or in installments in the discretion of the Board.~~

~~(k) Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings.~~

~~(l) The Board shall determine the order and manner of payment and pay all approved claims, but unless the Board directs otherwise, no claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct that is alleged in the claim if the attorney disputes the pertinent allegations.~~

~~(m) Both the claimant and the attorney shall be advised of the status of the Board's consideration of the claim and shall be informed of the final determination.~~

~~(n) The claimant may request in writing reconsideration within 35 days of the denial or determination of the amount of a claim. If the claimant fails to make a request or the request is denied, the decision of the Board is final.~~

(a) Investigation of Claims: When a Claimant submits a Request for Claim, Regulation Counsel will be promptly notified and review a Claimant's Request for Claim for eligibility under Rule 252.10 and on the merits. Regulation Counsel must investigate the Request for Claim and furnish a report of investigation on the eligibility and merits of the Claim.

(b) Investigation Authority:

(1) The Board or an individual Trustee or counsel designated to act on behalf of the Board, upon determining that any person has knowledge or is in possession or custody of books, papers, documents or other objects relevant to the disposition of a Claim, may issue a subpoena requiring such person to appear and testify or to produce such books, papers, documents or other objects before the Board or counsel designated to act on behalf of the Trustees, at the time and place specified therein. Subpoenas are subject to the provisions of C.R.C.P. 45.

(2) If any person, without adequate excuse, fails to obey a subpoena, the Board or an individual Trustee or counsel designated to act on their behalf, may file with the Presiding Disciplinary Judge or the Supreme Court a verified statement setting forth the facts establishing such disobedience, and the Judge or Court may then, in its discretion, institute contempt proceedings. If such person is found guilty of contempt, the Judge or Court may compel payment of the costs of the contempt proceedings to be taxed by the Judge or Court.

(3) Regulation Counsel will allow the Board access to its records during and after an investigation of a Claim.

(4) The Board may request that testimony be presented to complete the record. Upon the Board's request, a Claimant or Respondent Attorney, or their representatives, may be given an opportunity to be heard before the Board.

(5) The Board may further conduct its own investigation when it deems it appropriate and may seek and obtain the assistance of the Regulation Counsel, the Legal Regulation Committee, the Board of Law

Examiners, the Committee of Continuing Legal and Judicial Education, and the Attorney Registration Office, irrespective of any confidentiality requirements of those offices, subject to rule 252.15.

(6) When a Claimant submits a Request for Claim, Regulation Counsel will promptly notify Respondent Attorney of the Request for Claim and provide Respondent Attorney with an opportunity to respond within 21 days.

(7) At the conclusion of an investigation of a Request for Claim, the Respondent Attorney or the Respondent's representative will be provided the report of investigation and will have 21 days from the date of the report in which to respond to the Request for Claim. A Respondent Attorney's failure to participate in the investigation or respond to a Request for Claim may result in a favorable decision for Claimant.

Rule 252.13. ~~Reimbursement from Fund is a Matter of Grace~~Determination of Claims

~~No person shall have the legal right to payment from the fund whether as claimant, third party beneficiary, or otherwise. The decisions and actions of the Board of Trustees are not reviewable on any ground in any court or other tribunal.~~

(a) Eligibility Determination of Request for Claim: Upon receiving a report of investigation from Regulation Counsel, the Board will evaluate the Request for Claim as to the eligibility factors listed in Rule 252.10. The Board may deny a claim on the basis of eligibility without evaluating the amount of the Request for Claim.

(b) Board Review and Final Determination of Claims: Based on reports of investigation from Regulation Counsel, the Board will evaluate each eligible Claim and determine on the basis of all available evidence whether to reimburse a claim at all, in whole, or in part. The approval, partial approval, or denial of a claim requires a majority vote of the board members present at a meeting. The following provisions apply to the Board's consideration and determination:

(1) A final decision as defined in C.R.C.P. 241 disciplining a Respondent attorney for the same dishonest conduct alleged in a Claim, or a final judgment imposing civil or criminal liability for the same dishonest conduct alleged in a Claim, is conclusive evidence that the Respondent Attorney committed the dishonest conduct alleged in the Claim.

(2) Any proceeding upon a Claim need not be conducted according to rules relating to evidence, procedure and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings.

(3) The Board's determination is not a finding of dishonest conduct for purposes of professional discipline or other legal proceedings.

(c) Notice of Board Determination of a Claim: Both the Claimant and the Respondent Attorney will be advised of the status of the Board's consideration of the Request for Claim and Claim and must be informed of the final determination.

(d) Payment of Claims: With the assistance of Regulation Counsel, the Board will determine the order and manner of payment and pay all approved Claims, but unless the Board directs otherwise, no Claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct that is alleged in the Claim if the Respondent Attorney disputes the pertinent allegations. Payment of a Claim may be made in a lump sum or in installments in the discretion of the Board.

(e) Requests for Reconsideration: Either the Claimant or the Respondent Attorney may request in writing reconsideration of a Board determination within 35 days of the denial or determination of the amount of a Claim. If the Claimant or the Respondent Attorney fails to make a request or the request is denied, the decision of the Board is final.

Rule 252.14. ~~Restitution and Subrogation~~ Reimbursement from Fund is a Matter of Grace

~~(a) An attorney whose dishonest conduct results in payment to a claimant shall be liable to the Fund for restitution; and the Board may bring such action as it deems advisable to enforce such obligation, including costs of such action.~~

~~(b) As a condition of payment, a claimant shall be required to provide the fund with a transfer of the claimant's rights up to the amount paid by the Fund against the attorney, the attorney's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the claimant's loss.~~

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

~~(d) In the event that the claimant commences an action to recover unpaid losses against the attorney or another entity who may be liable for the claimant's loss, the claimant shall be required to notify the Board of such action.~~

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

No person or entity has the legal right to payment from the Fund whether as a Claimant, third-party beneficiary, or otherwise. The determinations of the Board are not reviewable or appealable in any court, agency process, or other tribunal.

Rule 252.15. Confidentiality Reimbursement and Fund Subrogation

~~(a) The Board and its agents shall keep claims, proceedings and reports involving claims for reimbursement confidential until the Board authorizes reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Board shall publicize the nature of the claim, the amount of reimbursement, and the name of the attorney. The name and the address of the claimant shall not be publicized by the Board unless specific permission has been granted by the claimant.~~

~~(b) This rule shall not be construed to deny access to relevant information by the Regulation Counsel or other professional discipline agencies or other law enforcement authorities as the Board shall authorize, or the release of statistical information which does not disclose the identity of the attorney or the claimant.~~

(a) A Respondent Attorney whose dishonest conduct results in payment of a Claim is liable and obligated to the Fund for reimbursement and the Board may bring any action to enforce such obligation, including payment of costs. Reimbursement may be considered for purposes for readmission or reinstatement as stated in C.R.C.P. 252.3.

(b) As a condition of payment, a Claimant must provide the Fund with an assignment of the Claimant's rights up to the amount paid by the Fund against the Respondent Attorney, the attorney's legal representative, estate or assigns; and of the Claimant's rights against any third party or entity who may be liable for the Claimant's loss, and must execute a written agreement of the same. Such an agreement does not constitute legal advice or an attorney/client relationship, and a Claimant must be given opportunity to consult with their own counsel prior to entering the agreement.

(c) Upon commencement of an action by the Board as subrogee or assignee of a Claim, it must notify the Claimant, who may then join in such action to recover the Claimant's unpaid losses.

(d) In the event that the Claimant commences an action to recover unpaid losses against the Respondent Attorney or another entity who may be liable for the Claimant's loss, the Claimant must notify the Board of such action.

(e) The Claimant must cooperate in all efforts that the Board undertakes to achieve reimbursement for the Fund.

Rule 252.16. ~~Compensation for Representing Claimants~~Confidentiality

~~No attorney shall accept any payment for prosecuting a claim to the Fund on behalf of a claimant, unless such payment has been approved by the Board.~~

(a) The Board and its agents will keep names of Claimants, Requests for Claim, Claims, proceedings and reports involving Claims confidential until the Board authorizes reimbursement to the Claimant, except as provided below. After payment of a Claim, the Board may disclose the nature of the Claim, name of the Claimant, the amount of reimbursement, and the name of the Respondent Attorney.

(b) This section does not prohibit the Board and its agents from providing relevant and necessary information about the Request for Claim and Claimant to the Respondent Attorney for purposes of responding to the Request for Claim and investigation.

(c) Nothing in this Rule creates a legal right for the Claimant to obtain information from the Board, or for the Board to disclose information to the Claimant.

(d) With regard to all matters of disclosure under this Rule, upon a showing of cause, a court of competent jurisdiction may at any time order that a specified disclosure be restricted or deferred, or make such other protective orders as appropriate. The Presiding Disciplinary Judge is a court of competent jurisdiction, as provided in C.R.C.P 242.6(c)(3).

(e) Consistent with C.R.C.P. 242.41, this rule is not to be construed to prohibit the release of relevant information by the Regulation Counsel or the Board, at their discretion, to other professional discipline agencies, other law enforcement authorities, or other entities or individuals.

Rule 252.17. Compensation for Representing Claimants

No attorney may accept any payment for asserting a Request for Claim to the Fund on behalf of a Claimant, unless such payment has been approved by the Board in writing and the payment otherwise complies with the Colorado Rules of Professional Conduct.

Rule 252.1. Purpose, Scope, Terminology

(a) The purpose of the Colorado Attorneys' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by mitigating losses caused by the dishonest conduct of licensed attorneys authorized to practice in this state occurring in the course of attorney-client or court-appointed fiduciary relationship between the attorney and the claimant.

(b) The following terminology and definitions apply to this Rule:

(1) "Dishonest Conduct" means one or more wrongful acts committed by an attorney in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, permanently depriving the client of its use, including but not limited to:

(a) Refusal to refund unearned fees received in advance as required by Rule 1.16 of the Colorado Rules of Professional Conduct; and

(b) The borrowing of money from a client without intention to repay it, or with disregard of the attorney's inability or reasonably anticipated inability to repay it.

(2) "Fund" means the Colorado Attorneys' Fund for Client Protection.

(3) "Board" means the Colorado Attorneys' Fund for Client Protection Board of Trustees.

(4) "Trustee" means one of the five member Trustees appointed to the Board of Trustees by the Colorado Supreme Court.

(5) "Chair" means the individual appointed to serve as Chair of the Board of Trustees by the Colorado Supreme Court and has all the powers of a Trustee.

(6) "Vice-Chair" means the individual appointed to serve as Vice-Chair of the Board of Trustees by the Colorado Supreme Court and has all the powers of a Trustee.

(7) "Request for Claim" means the initial written request submitted by a Claimant to the Board seeking reimbursement for losses caused by dishonest conduct of a licensed attorney authorized to practice law in Colorado.

(8) "Claim" means a Claimant's Request for Claim that has been determined to meet all eligibility criteria and which will be considered by the Board for substantive review.

(9) "Claimant" means an individual who submits a Request for Claim to the Board in order to seek reimbursement for losses caused by the dishonest conduct of a licensed attorney authorized to practice law in Colorado.

(10) "Respondent Attorney" means the attorney who is the subject of a Request for Claim.

(c) Applicability of C.R.C.P. 252.1 through C.R.C.P. 252.16 to Licensed Legal Paraprofessionals ("LLPs").

(1) The terminology rule at C.R.C.P. 252.1 and the rules governing the Colorado Attorneys' Fund for Client Protection (C.R.C.P. 252.1 et seq.), apply to LLPs. LLPs have all the obligations and rights of Respondent Attorneys under these rules. Claimants likewise have all the obligations and rights provided by these rules when filing a Request for Claim based on the conduct of a Respondent Licensed Legal

Paraprofessional.

Rule 252.2. Establishment

- (a)** There is established the Colorado Attorneys' Fund for Client Protection to mitigate Claimants' losses caused by dishonest conduct committed by licensed attorneys authorized to practice in Colorado or as set forth in C.R.C.P. 252.10.
- (b)** There is established, under the supervision of the Supreme Court of Colorado, the Colorado Attorneys' Fund for Client Protection Board of Trustees, which is authorized to receive, hold, manage and disburse such funds as may from time to time be allocated to the Fund.

Rule 252.3. Funding

(a) The Supreme Court will provide for funding the Fund by the attorneys of the state through the attorney registration fee established in C.R.C.P. 227(A)(1)(a) and (c) and by the licensed legal paraprofessionals of the state through a registration fee established in C.R.C.P. 207.14(A)(1)(a) and (c).

(b) A Respondent Attorney whose dishonest conduct has resulted in any payment out of the Fund to a Claimant must reimburse the Fund, including any applicable interest and any expenses incurred by the Fund in processing the Claim and pursuing reimbursement. A Respondent Attorney's failure to fully reimburse the Fund may be cause for additional discipline if the failure violates the Rule of Professional Conduct and may be considered a basis for denial of an application for reinstatement or readmission pursuant to C.R.C.P. 242.39.

(c) Payment out of the Fund to a Claimant may be a pecuniary loss or injury proximately caused by a Respondent Attorney's dishonest conduct such that reimbursement may be referred for collection through C.R.S. Title 18, Art. 1.3, Pt. 6.

Rule 252.4. Funds

All money or other assets of the Fund constitute a trust and are held in the name of the Fund, subject to the direction of the Board.

Rule 252.5. Composition and Officers of the Board

(a) The Board will consist of seven members: five member Trustees, a Chair and a Vice-Chair.

(1) The Board will be composed of five attorneys and two public members appointed by the Supreme Court. Diversity will be a consideration in making the appointment.

(2) Trustees may serve one term of seven years but may be dismissed from the Board at any time by order of the Supreme Court.

(3) The terms of the Trustees will be staggered to provide, so far as possible, for expiration each year of the term of one Trustee. Trustees may resign at any time. In the event of a vacancy on the Board, the Supreme Court will appoint a successor.

(4) The Chair and Vice-Chair will be attorneys licensed to practice law by the State of Colorado. The Supreme Court will appoint the Chair and Vice-Chair. By order of the Supreme Court, the Chair or Vice-Chair may be dismissed at any time. The Chair and Vice-Chair may be appointed to a second term as designated by the Supreme Court's Order of Appointment, but not to exceed a total of fourteen (14) years of service.

(b) The Trustees, Chair, and Vice-Chair will serve without compensation but will be reimbursed for actual and necessary expenses incurred in the discharge of their duties for the Board.

Rule 252.6. Board Meetings

- (a)** The Board will meet as frequently as necessary to conduct the business of the Fund and to process Claims in a timely manner.
- (b)** The Chair will call a meeting at any reasonable time or upon the request of at least two members of the Board.
- (c)** A quorum for any meeting of the Board is four members of the Board.
- (d)** Minutes of meetings will be taken. Minutes and related Claim documents will be maintained for at least five years.

Rule 252.7. Duties and Responsibilities of the Board

(a) The Board has the following duties and responsibilities:

- (1) To receive, and in its sole discretion, evaluate, investigate, determine and pay Claims from the Fund unless otherwise provided for in these rules;
- (2) To promulgate policy not inconsistent with these rules;
- (3) In its discretion, to fix a maximum amount of payment per Claim payable from the Fund and/or of the aggregate amount which may be paid because of the dishonest conduct of any one Respondent Attorney;
- (4) To solicit and receive funds from donations and other sources in addition to annual attorney registration fees;
- (5) To invest such portions of the Fund as may not be needed currently to pay Claims;
- (6) To provide a full report annually to the Supreme Court and to make other reports as necessary;
- (7) To publicize its activities to the public and the legal community;
- (8) To retain and compensate consultants, actuaries, agents, legal counsel and other persons as necessary to discharge the duties of the Board;
- (9) To pursue requests for restitution to which the Fund is entitled;
- (10) To engage in studies and programs for client protection and prevention of dishonest conduct by attorneys; and
- (11) To perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the Fund.

(b) The Office of the Attorney Regulation Counsel of the Colorado Supreme Court will assist the Board in the effective and efficient performance of its functions and duties as follows:

- (1) Investigating and reporting on all Requests for Claim and Claims;
- (2) Recommending payment, denial or partial payment and partial denial of those Requests for Claims or Claims received based on the claim criteria outlined in C.R.C.P. 252;
- (3) Recommending denial of those Requests for Claim or Claims when the underlying grievance matter has been dismissed by the Office of Attorney Regulation Counsel due to lack of clear and convincing evidence or the Claimant has withdrawn the Request or Claim;
- (4) Preparing the Board agenda and recording the minutes of the Board meetings;
- (5) Presenting Requests for Claim or Claims to the Board;
- (6) Notifying Claimants of ultimate disposition;

- (7) Coordinating payments to Claimants;
- (8) Monitoring subrogation rights on previously paid Claims;
- (9) Preparing annual Fund reports;
- (10) Acting as custodian of all Board records including minutes and all Fund bank records;
- (11) Paying Claims authorized by delegation or approved by a majority of the quorum of the Board; and
- (12) Any other functions deemed necessary by the Board to effectively perform its duties.

Rule 252.8. Conflict of Interest

A Trustee, Chair, or Vice-Chair must refrain from taking part in a Client Protection Fund investigation or proceeding where a similarly situated judge would be required to recuse.

Rule 252.9. Immunity

- (a)** An attorney may not institute a civil lawsuit against any person based on a Request for Claim or Claim under this rule, or other written or oral communications made in a proceeding under this rule to the Trustees, Chair, and Vice-Chair, employees and agents of the Board.
- (b)** All entities within the Client Protection Fund system and all individuals working or volunteering on behalf of those entities are immune from civil suit for conduct in the course of fulfilling their official duties under this rule.

Rule 252.10. Eligible Claims

(a) A Request for Claim will be eligible for review on the merits by the Board only after it meets the following eligibility criteria:

(1) the Request for Claim must allege a pecuniary loss arising out of and by reason of an attorney-client relationship or a court-appointed fiduciary relationship between the Respondent Attorney and the Claimant;

(2) the pecuniary loss alleged in the Request for Claim must be caused by:

(a) the dishonest conduct of the Respondent Attorney; or

(b) due to the death or disability of the Respondent Attorney; or

(c) due to the Respondent Attorney's inability to respond, and there is insufficient evidence to substantiate the work done by the Respondent Attorney;

(3) the Request for Claim must be filed no later than three years after the Claimant knew or should have known of the conduct of the Respondent Attorney;

(4) the Request for Claim cannot be the result of circumstances that are excluded for review under subsection (b) of these rules.

(b) Except as provided by section (c) of this rule, the following Requests for Claim will not be eligible:

(1) A Request for Claim where the Claimant is the spouse, child, parent, grandparent, sibling, law or business partner, or employee of the Respondent Attorney causing the pecuniary loss;

(2) A Request for Claim where the pecuniary loss to the Claimant is covered by any bond, surety agreement, or qualifying insurance policy, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(3) A Request for Claim where the pecuniary loss is incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract, whether or not subrogated;

(4) A Request for Claim where the pecuniary loss is incurred by any business entity controlled by the Respondent Attorney, whether or not subrogated;

(5) A Request for Claim where the pecuniary loss is incurred by any governmental entity or agency, whether or not subrogated;

(6) A Request for Claim where the pecuniary loss is arising from the activities of an attorney not practicing in Colorado or whose dishonest conduct does not have substantial contacts with Colorado; or

(7) A Request for Claim where the pecuniary loss is the interest on the loss, deprivation of use of funds or property, opportunity costs, or any other type of consequential damages or punitive damages or costs.

(c) In cases of extreme hardship or special and unusual circumstances, the Board may, in its sole

discretion, recognize a Claim that would otherwise be excluded under these rules.

(d) In cases in which it appears that there will be unjust enrichment or multiple recovery or the Claimant contributed or participated in the loss or dishonest conduct, the Board may, in its sole discretion, deny the Claim.

Rule 252.11. Procedures for Filing Claims

- (a)** The Board will prepare and approve a form for a Claimant to submit a Request for Claim and will designate the place and manner for filing the Request for Claim.
- (b)** The Claimant must agree to cooperate with the Board pursuant to a subrogation and assignment clause which will be contained within the Request for Claim.
- (c)** The Claimant is responsible for completing the Request for Claim form and providing satisfactory evidence to support the Request for Claim. Incomplete Request for Claim forms will not be processed.

Rule 252.12. Investigation of Claims

(a) Investigation of Claims: When a Claimant submits a Request for Claim, Regulation Counsel will be promptly notified and review a Claimant's Request for Claim for eligibility under Rule 252.10 and on the merits. Regulation Counsel must investigate the Request for Claim and furnish a report of investigation on the eligibility and merits of the Claim.

(b) Investigation Authority:

(1) The Board or an individual Trustee or counsel designated to act on behalf of the Board, upon determining that any person has knowledge or is in possession or custody of books, papers, documents or other objects relevant to the disposition of a Claim, may issue a subpoena requiring such person to appear and testify or to produce such books, papers, documents or other objects before the Board or counsel designated to act on behalf of the Trustees, at the time and place specified therein. Subpoenas are subject to the provisions of C.R.C.P. 45.

(2) If any person, without adequate excuse, fails to obey a subpoena, the Board or an individual Trustee or counsel designated to act on their behalf, may file with the Presiding Disciplinary Judge or the Supreme Court a verified statement setting forth the facts establishing such disobedience, and the Judge or Court may then, in its discretion, institute contempt proceedings. If such person is found guilty of contempt, the Judge or Court may compel payment of the costs of the contempt proceedings to be taxed by the Judge or Court.

(3) Regulation Counsel will allow the Board access to its records during and after an investigation of a Claim.

(4) The Board may request that testimony be presented to complete the record. Upon the Board's request, a Claimant or Respondent Attorney, or their representatives, may be given an opportunity to be heard before the Board.

(5) The Board may further conduct its own investigation when it deems it appropriate and may seek and obtain the assistance of the Regulation Counsel, the Legal Regulation Committee, the Board of Law Examiners, the Committee of Continuing Legal and Judicial Education, and the Attorney Registration Office, irrespective of any confidentiality requirements of those offices, subject to rule 252.15.

(6) When a Claimant submits a Request for Claim, Regulation Counsel will promptly notify Respondent Attorney of the Request for Claim and provide Respondent Attorney with an opportunity to respond within 21 days.

(7) At the conclusion of an investigation of a Request for Claim, the Respondent Attorney or the Respondent's representative will be provided the report of investigation and will have 21 days from the date of the report in which to respond to the Request for Claim. A Respondent Attorney's failure to participate in the investigation or respond to a Request for Claim may result in a favorable decision for Claimant.

Rule 252.13. Determination of Claims

(a) Eligibility Determination of Request for Claim: Upon receiving a report of investigation from Regulation Counsel, the Board will evaluate the Request for Claim as to the eligibility factors listed in Rule 252.10. The Board may deny a claim on the basis of eligibility without evaluating the amount of the Request for Claim.

(b) Board Review and Final Determination of Claims: Based on reports of investigation from Regulation Counsel, the Board will evaluate each eligible Claim and determine on the basis of all available evidence whether to reimburse a claim at all, in whole, or in part. The approval, partial approval, or denial of a claim requires a majority vote of the board members present at a meeting. The following provisions apply to the Board's consideration and determination:

(1) A final decision as defined in C.R.C.P. 241 disciplining a Respondent attorney for the same dishonest conduct alleged in a Claim, or a final judgment imposing civil or criminal liability for the same dishonest conduct alleged in a Claim, is conclusive evidence that the Respondent Attorney committed the dishonest conduct alleged in the Claim.

(2) Any proceeding upon a Claim need not be conducted according to rules relating to evidence, procedure and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings.

(3) The Board's determination is not a finding of dishonest conduct for purposes of professional discipline or other legal proceedings.

(c) Notice of Board Determination of a Claim: Both the Claimant and the Respondent Attorney will be advised of the status of the Board's consideration of the Request for Claim and Claim and must be informed of the final determination.

(d) Payment of Claims: With the assistance of Regulation Counsel, the Board will determine the order and manner of payment and pay all approved Claims, but unless the Board directs otherwise, no Claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct that is alleged in the Claim if the Respondent Attorney disputes the pertinent allegations. Payment of a Claim may be made in a lump sum or in installments in the discretion of the Board.

(e) Requests for Reconsideration: Either the Claimant or the Respondent Attorney may request in writing reconsideration of a Board determination within 35 days of the denial or determination of the amount of a Claim. If the Claimant or the Respondent Attorney fails to make a request or the request is denied, the decision of the Board is final.

Rule 252.14. Reimbursement from Fund is a Matter of Grace

No person or entity has the legal right to payment from the Fund whether as a Claimant, third-party beneficiary, or otherwise. The determinations of the Board are not reviewable or appealable in any court, agency process, or other tribunal.

Rule 252.15. Reimbursement and Fund Subrogation

(a) A Respondent Attorney whose dishonest conduct results in payment of a Claim is liable and obligated to the Fund for reimbursement and the Board may bring any action to enforce such obligation, including payment of costs. Reimbursement may be considered for purposes for readmission or reinstatement as stated in C.R.C.P. 252.3.

(b) As a condition of payment, a Claimant must provide the Fund with an assignment of the Claimant's rights up to the amount paid by the Fund against the Respondent Attorney, the attorney's legal representative, estate or assigns; and of the Claimant's rights against any third party or entity who may be liable for the Claimant's loss, and must execute a written agreement of the same. Such an agreement does not constitute legal advice or an attorney/client relationship, and a Claimant must be given opportunity to consult with their own counsel prior to entering the agreement.

(c) Upon commencement of an action by the Board as subrogee or assignee of a Claim, it must notify the Claimant, who may then join in such action to recover the Claimant's unpaid losses.

(d) In the event that the Claimant commences an action to recover unpaid losses against the Respondent Attorney or another entity who may be liable for the Claimant's loss, the Claimant must notify the Board of such action.

(e) The Claimant must cooperate in all efforts that the Board undertakes to achieve reimbursement for the Fund.

Rule 252.16. Confidentiality

- (a)** The Board and its agents will keep names of Claimants, Requests for Claim, Claims, proceedings and reports involving Claims confidential until the Board authorizes reimbursement to the Claimant, except as provided below. After payment of a Claim, the Board may disclose the nature of the Claim, name of the Claimant, the amount of reimbursement, and the name of the Respondent Attorney.
- (b)** This section does not prohibit the Board and its agents from providing relevant and necessary information about the Request for Claim and Claimant to the Respondent Attorney for purposes of responding to the Request for Claim and investigation.
- (c)** Nothing in this Rule creates a legal right for the Claimant to obtain information from the Board, or for the Board to disclose information to the Claimant.
- (d)** With regard to all matters of disclosure under this Rule, upon a showing of cause, a court of competent jurisdiction may at any time order that a specified disclosure be restricted or deferred, or make such other protective orders as appropriate. The Presiding Disciplinary Judge is a court of competent jurisdiction, as provided in C.R.C.P 242.6(c)(3).
- (e)** Consistent with C.R.C.P. 242.41, this rule is not to be construed to prohibit the release of relevant information by the Regulation Counsel or the Board, at their discretion, to other professional discipline agencies, other law enforcement authorities, or other entities or individuals.

Rule 252.17. Compensation for Representing Claimants

No attorney may accept any payment for asserting a Request for Claim to the Fund on behalf of a Claimant, unless such payment has been approved by the Board in writing and the payment otherwise complies with the Colorado Rules of Professional Conduct.

Amended and Adopted by the Court, En Banc, June 15, 2023, effective September 1, 2023.

By the Court:

**Monica M. Márquez
Justice, Colorado Supreme Court**