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**In the Matter of the Petition to  
Amend Supreme Court Rule (SCR)  
12.07 (2)(a), Relating to the Annual Assessment of Attorneys  
for the Wisconsin Lawyers' Fund for Client Protection**

**MEMORANDUM  
IN SUPPORT**

19- 25

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The Wisconsin Lawyers' Fund for Client Protection, by its chair, Benjamin T. Kurten, hereby petitions the Supreme Court of Wisconsin for an order amending Supreme Court Rule 12.07 (2)(a) relating to the annual assessment of attorneys. The purpose of this amendment is to increase the annual assessment with the objective of providing a more sufficient amount of income for payment of eligible claims and to build up a reserve account.

#### **Annual Assessment of Attorneys**

The Wisconsin Lawyers' Fund for Client Protection was established by the Wisconsin Supreme Court in 1981. The core mission of the Fund is to reimburse clients who have suffered a financial loss due to the misconduct of their lawyer but also rebuild the public's good will and confidence in the profession. An encounter with an attorney engaged in misconduct can be a long and dejecting ordeal to endure for a claimant, but gratitude due to reimbursement from the Fund is often a major first step to making claimants whole and restoring the public's trust in the legal profession. See Thank You Email from Reimbursed Claimant.

The Fund is financed by an annual assessment of Wisconsin-licensed lawyers. Any funds in excess of those required for payment of approved claims is maintained in the Fund's reserve account. The Fund is administered by a committee consisting of five (5) attorneys and two (2) non-attorneys appointed by the President of the State Bar of Wisconsin. The committee considers claims submitted to the Fund, adopts rules of procedure, and determines payment of approved claims in annual assessment based on existing Supreme Court rules.

SCR 12.07 (2)(a) directs the committee regarding the annual assessment of every attorney licensed to practice in the State of Wisconsin.

**SCR 12.07 (2)(a) Annual assessments.** Commencing with the state bar's 2013 fiscal year, every attorney shall pay to the fund an annual assessment of \$20. An attorney whose annual state bar membership dues are waived for hardship shall be excused from the payment of the annual assessment for that year. An attorney shall be excused from the payment of the annual assessment for the fiscal year during which he or she is admitted to practice in Wisconsin.

The annual assessment of \$20 was set in fiscal year (FY) 2013 and has not been changed. Since FY 2013 the Fund has seen an increase in larger claims at or near the maximum value that can be paid on a claim of \$150,000. Although the number of reviewed and approved claims have varied, the increase of larger value claims has forced the Fund to defer payment of approved claims to the future year's assessment in five of the past seven fiscal years since FY 2013. See Chart 1 Total Claims Paid FY 13 – FY 19.

The average annual claims paid for FY 13 – FY 19 was \$423,775. The outlier is FY 19. Although FY 19 paid \$263,795 in total claims, two claims totaling \$294,186 against a single attorney met the requirements of an approved claim but were deferred due to the committee's need for additional information. Had these claims been approved in FY 19, the Fund would have once again deferred payment of approved claims to the future year's assessment. The committee anticipates that the claimants of the deferred claims will provide the requested additional information and the two large claims will be approved in FY 20.

The deferred payment of approved claims to the following fiscal year has hampered the Fund's ability to build a reserve account. SCR 12.07 (2)(b) includes the initiative to create a reserve account.

**SCR 12.07 (2)(b) Reserve.** As of May 1 of each year, any funds in excess of those required for payment of approved claims shall be maintained in a reserve account for the Wisconsin Lawyers' Fund for Client Protection.

Inability to build a reserve account, coupled with yearly variations in claims, have limited the committee's ability to meet obligations to claimants. A glimpse of the Client Protection Funds of Wisconsin's neighboring states show that Wisconsin falls behind in building a reserve account. For 2018, Illinois' Fund paid \$2,324,786.00 while having a reserve account of about \$500,000.00. As of December 2019, Michigan's Fund held \$1.9 million in their Fund while paying out more than \$500,000.00 to claimants. For 2018, Minnesota's Fund reported a \$3,000,000.00 reserve account.

For FY 19, the deferred payment of claims approved in FY 18 resulted in a negative balance at the beginning of FY 19. If not for the deferment of the two large claims in FY 19, FY 20 would have begun with a negative balance as well. If the annual assessment was \$25 for FY 13 – FY 19, three of the five deferred payments would be eliminated and FY 19 would not have a beginning negative balance. Without an increase to the annual assessment, which would allow a reserve account to be established, the Fund is not equipped to pay more than one or two maximum value claims per year while having enough funds to pay smaller claims. Therefore, building a reserve account is imperative to the Fund's core mission. The committee is recommending that the annual assessment be set at \$25 per year to allow the committee to pay legitimate claims of clients in an adequate and timely manner despite yearly variations. See Chart 2 which shows the Fund's balance with an annual assessment of \$25 per year for FY 13 – FY 19.

Based on claims paid from FY 13 to FY 19, the committee expects the frequency of larger claims and claims against the same attorneys to continue to increase. As attorney ratings and information on disciplinary actions have become more readily available to clients, the committee has seen an increase in the filing of multiple claims against the same attorneys. The majority of claims paid from FY 13 – FY 19 are claims against the same attorneys. See Approved Large and Multiple Claims FY 13 – FY 19.

The Fund has received multiple claims exceeding \$100,000.00 against a once prominent personal injury attorney from Milwaukee. Just one of these claims will account for over 20% of the Fund's yearly allocation. Only a handful of these claims will decimate the Fund. The Fund committee is aware of a criminal complaint filed against this attorney. The complaint states multiple counts of theft and forgery against former clients for significant amounts. Past clients of this attorney have begun to submit Fund applications, and the Fund committee anticipates reimbursement applications to increase as more clients become aware of the criminal complaint.

Current and former attorneys like this Milwaukee personal injury attorney have and will continue to deplete the Fund with only a few claims. The Fund committee has seen similar large claims (i.e. Randy White, Sarah Laux, Tina Dahle, Jeffrey Elverman, Perry Friesler, James Gatzke, Margaret Haggerty, Cole White, Michael Krill, Steven Wilson, etc.) and will continue to see large claims that will drain the Fund unless a sufficient reserve account is built.

The proposed change to the language of the rule is set forth in the attached petition.

Dated this 16<sup>th</sup> day of December, 2019.

Respectfully Submitted,



Benjamin T. Kurten

Chair, Wisconsin Lawyers' Fund for Client Protection

State Bar No. 1024144

1000 N. Water Street, Suite 1700, Milwaukee, WI 53202

(414) 298-8222

## Thank You Email from Reimbursed Claimant

**From:** [REDACTED]  
**To:** [Bryant Park](#)  
**Subject:** Client Protection File No. File 19-39  
**Date:** Wednesday, May 15, 2019 8:13:32 PM

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Hi Bryant Park:

I am writing in regards to the letter I just received in regards to the above file number.

I am truly grateful to the WLFCP committee for approving my claim amount being returned to me.

Please thank all of them on my behalf. I am thankful for the person at the Office of Lawyer Regulation that shared the information about the Client Protection process.

This has been a year long journey for me and It has been a learning process for sure.

I also wanted you to know that I have changed my last name to D [REDACTED] during the divorce process.

Have a great day and don't laugh to hard at my email address !

Sincerely,

J [REDACTED] (J [REDACTED]) D [REDACTED]

Chart 1

Fiscal Year	Fund Balance	Claims Paid	Total Deferred Claims Paid
2013	\$136,509	\$204,809	\$0
2014	\$349,381	\$655,878	\$27,505
2015	\$121,764	\$432,700	\$79,321
2016	\$125,663	\$350,614	\$0
2017	\$192,502	\$379,977	\$300,000
2018	\$235,286	\$678,649	\$122,000
2019	\$-11,100	\$263,795	\$28,000

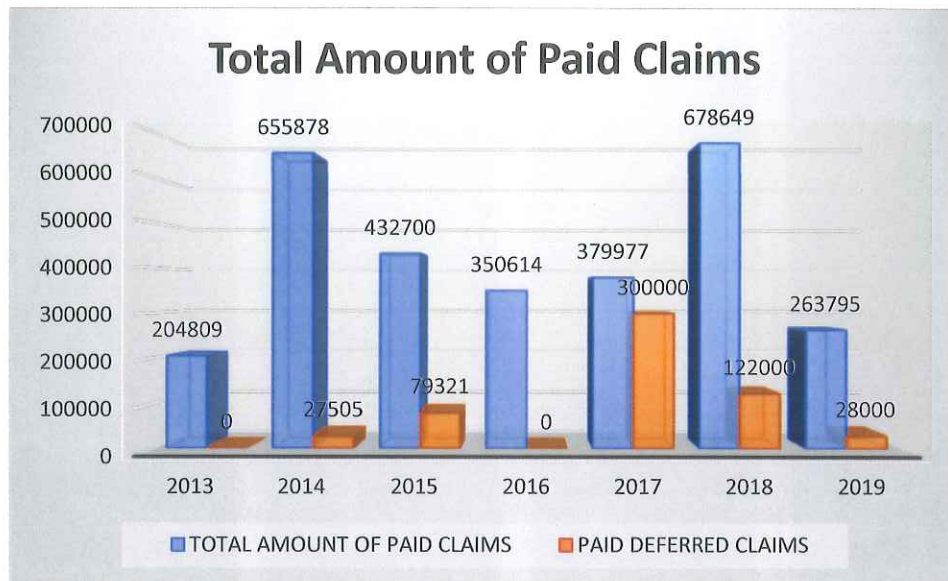
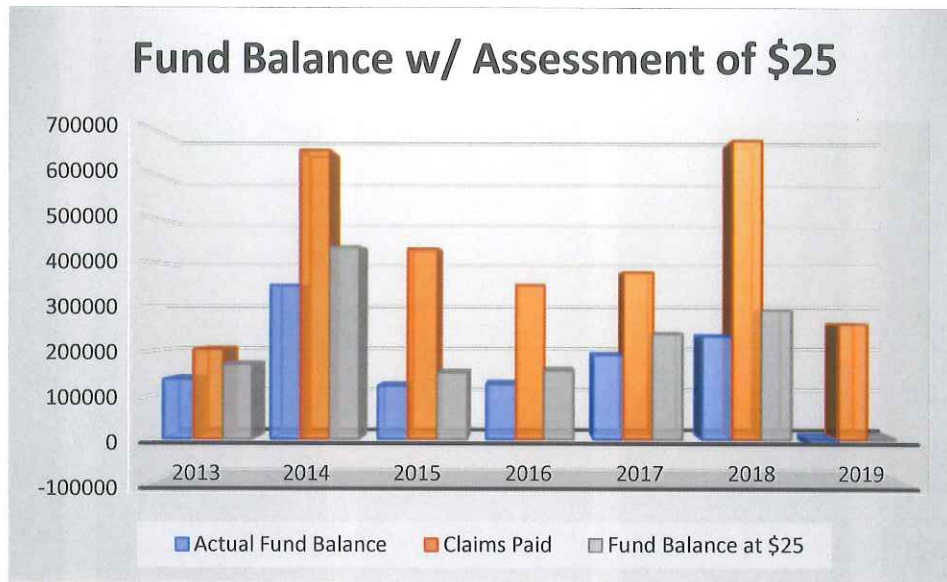


Chart 2

Fiscal Year	Actual Fund Balance	Claims Paid	Fund Balance at \$25	Total Deferred Claims Paid
2013	\$136,509	\$204,809	\$170,636.25	\$0
2014	\$349,381	\$655,878	\$436,726.25	\$27,505
2015	\$121,764	\$432,700	\$152,205	\$79,321
2016	\$125,663	\$350,614	\$157,078.75	\$0
2017	\$192,502	\$379,977	\$240,627.5	\$300,000
2018	\$235,286	\$678,649	\$294,107.5	\$122,000
2019	\$-11,100	\$263,795	\$2,775	\$28,000

\*An annual assessment of \$25 would eliminate 2 of the 5 deferred payments



## Approved Large and Multiple Claims FY 13 - FY 19

Last Name	First Name	# of Claims Since 2013	Total Approved Amount Paid	Breakdown of Claims
Blessinger	Jeffrey M.	7	\$15,578	Jan. 10, 2019: Claim #19-25 for \$2,000.00 (Unearned advanced fee) Mar. 21, 2018: Claim #17-56 for \$3,000.00 (Unearned advanced fee) Mar. 21, 2018: Claim #17-57 for \$2,000.00 (Unearned advanced fee) Mar. 21, 2018: Claim #18-32 for \$2,751.25 (Unearned advanced fee) Dec. 5, 2017: Claim #17-61 for \$826.75 (Unearned advanced fee) Dec. 5, 2017: Claim #18-12 for \$2,000.00 (Unearned advanced fee) Aug. 15, 2017: Claim #17-59 for \$3,000.00 (Unearned advanced fee)
Boyd	Joan M.	5	\$19,700	Feb. 4, 2014: Claim #14-56 for \$3,000.00 (Unearned advanced fee) Sep. 26, 2013: Claim #14-15 for \$600.00 (Unearned advanced fee) Sep. 26, 2013: Claim #14-08 for \$7,500.00 (Unearned advanced fee) May 7, 2013: Claim #09-29 for \$200.00 (Unearned advanced fee) Feb. 20, 2013: Claim #13-10 for \$2,000.00 (Unearned advanced fee)
Boyle	Bridget E.	5	\$18,700	Dec. 13, 2016: Claim #17-27 for \$1,700.00 (Unearned advanced fee) Dec. 9, 2014: Claim #15-26 for \$2,000.00 (Unearned advanced fee) Aug. 5, 2014: Claim #15-38 for \$2,500.00 (Unearned advanced fee) May 13, 2014: Claim #14-83 for \$5,000.00 (Unearned advanced fee) Feb. 4, 2014: Claim #13-07 for \$2,500.00 (Unearned advanced fee)
Cannaday	Ericka A.	5	\$5,412	Sept. 7, 2016: Claim #17-11 for \$1,306.00 (Unearned advanced fee) Dec. 9, 2014: Claim #15-45 for \$500.00 (Unearned advanced fee) Aug. 5, 2014: Claim #14-67 for \$1,000.00 (Unearned advanced fee) Aug. 5, 2014: Claim #15-06 for \$1,606.00 (Unearned advanced fee) May 13, 2014: Claim #14-46 for \$1,000.00 (Unearned advanced fee)

Cooper	Sean D.	28	\$29,181	Jan. 7, 2016: Claim #16-01 for \$1,400.00 (Unearned advanced fee) Sept. 16, 2015: Claim #14-95 for \$1,500.00 (Unearned advanced fee) 28 additional claims beginning Sept. 18, 2012 totaling \$26,281.00
D'Arruda	Robert P.	6	\$11,500	May 11, 2016: Claim #16-74 for \$2,500.00 (Unearned advanced fee) Apr. 29, 2015: Claim #15-44 for \$500.00 (Unearned advanced fee) 5 additional claims beginning Aug. 2, 2011 totaling \$8,500.00
Dahle	Tina M.	2	\$157,008	Sept. 7, 2016: Claim #17-04 for \$150,000.00 (Invest) Sept. 16, 2015: Claim #15-13 for \$7,007.72 (Unearned advanced fee)
Elverman	Jeffrey L.	1	\$150,000	Aug. 15, 2017: Claim #15-80 for \$150,000.00 (Estate) Sept. 16, 2015: Claim #15-13 for \$7,007.72 (Unearned advanced fee)
Friesler	Perry H.	2	\$157,000	Jan. 7, 2016: Claim #14-57 for \$84,500.00 (Estate) Sept. 26, 2013: Claim #13-55 for \$72,500.00 (Estate)
Gatzke	James E.	2	\$300,000	Sept. 7, 2016: Claim #14-09 for \$150,000.00 (Trust) Sept. 7, 2016: Claim #14-10 for \$150,000.00 (Trust)
Gegner	Thad M.	6	\$11,894	Dec. 13, 2016: Claim #16-08 for \$1,000.00 (Unearned advanced fee) May 11, 2016: Claim #16-69 for \$1,600.00 (Unearned advanced fee) 4 additional claims beginning Apr. 29, 2015 totaling \$9,294.00
Haggerty	Margaret E.	1	\$124,979	Aug. 5, 2014: Claim #12-39 for \$124,978.90 (Estate)
Kelbel	Courtney K.	4	\$9,375	Jan. 10, 2019: Claim #19-25 for \$625.00 (Unearned advanced fee) Jan. 10, 2019: Claim #19-30 for \$4,750.00 (Unearned advanced fee) Oct. 4, 2018: Claim #18-49 for \$1,000.00 (Unearned advanced fee) Oct. 4, 2018: Claim #19-05 for \$3,000.00 (Unearned advanced fee)



Krill	Michael M.	1	\$147,000	Mar. 21, 2018: Claim #18-14 for \$147,000.00 (Invest) Jan. 10, 2019: Claim #19-11 for \$4,000.00 (Unearned advanced fee) Jan. 10, 2019: Claim #19-12 for \$3,500.00 (Unearned advanced fee) Jan. 10, 2019: Claim #19-27 for \$3,500.00 (Unearned advanced fee) Oct. 4, 2018: Claim #18-48 for \$5,000.00 (Unearned advanced fee) Mar. 21, 2018: Claim #18-11 for \$3,400.00 (Unearned advanced fee) Mar. 21, 2018: Claim #18-28 for \$4,000.00 (Unearned advanced fee) 26 additional approved claims beginning Aug. 5, 2014 and totaling \$392,270.00
Laux	Sarah E.K.	32	\$415,670	Jan. 10, 2019: Claim #19-20 for \$1,612.89 (Conversion) Jan. 10, 2019: Claim #19-14 for \$5,000.00 (Unearned advanced fee) Jan. 10, 2019: Claim #19-13 for \$5,000.00 (Unearned advanced fee)
Runyon	James T.	3	\$11,613	Jan. 10, 2019: Claim #19-19 for \$2,500.00 (Unearned fee) Oct. 4, 2018: Claim #18-47 for \$10,840.00 (Unearned advanced fee) Oct. 4, 2018: Claim #19-04 for \$1,500.00 (Unearned advanced fee) Mar. 21, 2018: Claim #18-24 for \$3,000.00 (Unearned advanced fee) Mar. 21, 2018: Claim #18-23 for \$4,000.00 (Unearned advanced fee)
White	Cole J.	5	\$21,840	Dec. 9, 2014: Claim #14-37 for \$3,087.00 (Trust Account) Aug. 5, 2014: Claim #14-84 for \$11,079.80 (Trust Account) 16 additional claims beginning Feb. 4, 2014 totaling \$457,462.78
Wilson	Steven L.	18	\$471,629.58	Dec. 5, 2017: Claim #17-51 for \$35,530.72 (Misappropriation of Funds) May 11, 2017: Claim #16-68 for \$8,142.84 (Misappropriation of Funds) 19 additional claims beginning Feb. 4, 2014 totaling \$95,0965.65
Wynn	Randy J.	21	\$138,769.21	

Wisconsin Lawyers' Fund for Client Protection Committee

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*Atty. Benjamin Taylor Kurten*

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*Atty. Bryant Park*

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10/23/17 to 6/30/20

Underlined names are subject to Lobby law restrictions

*Italic* names don't have a current Lobby law restriction form on file

# SCR CHAPTER 12

## CLIENT PROTECTION

### SCR 12.04 Wisconsin lawyers' fund for client protection: creation and purpose.

A Wisconsin Lawyers' Fund for Client Protection of the state bar of Wisconsin is created to reimburse, to the extent and in the manner provided by this chapter, losses caused by the dishonest conduct of members of the state bar of Wisconsin.

#### COMMENT

The Wisconsin Lawyers' Fund for Client Protection was established in 1981 and was originally entitled The Clients' Security Fund. The name change reflects amendments to the ABA Model Rules for Lawyer's Funds for Client Protection, and is more descriptive of the funds' purpose.

#### SCR 12.045 Definitions. In ss. 12.04 to 12.11:

(1) "Attorney" means a person who, at the time of the act complained of, was a member of the state bar of Wisconsin, except a person who was an inactive member at that time.

(2) "Claimant" means a person who has applied to the fund for reimbursement.

(3) "Client" means a person engaging the professional legal services of an attorney or for whose benefit the attorney is acting in a fiduciary capacity.

(4) "Committee" means the Wisconsin lawyers' fund for client protection committee.

(5) "Dishonest Conduct" means any of the following:

(a) A willful act committed by an attorney that causes a reimbursable loss to a client in the manner of defalcation or embezzlement of money.

(b) The intentional taking or conversion of money, property or other things of value.

(c) The failure to refund an unearned advanced fee.

(6) "Fund" means the Wisconsin lawyers' fund for client protection of the state bar of Wisconsin.

(7)(a) "Reimbursable Loss" means a loss of money or other property of a client that meets all of the following conditions:

1. The loss was caused by the dishonest conduct of an attorney while performing services under his or her license to practice law in Wisconsin.

2. The attorney was acting either as attorney in the matter out of which the loss arose or in a fiduciary capacity customary to the practice of law.

3. The attorney has:

a. Died;

b. Been adjudicated a bankrupt;

c. Been adjudicated incompetent;

d. Been disbarred or suspended from the practice of law;

- e. Consented to the revocation of his or her license to practice law;
  - f. Failed to refund an unearned advanced fee;
  - g. Become a judgment debtor of the person claiming the loss;
  - h. Been adjudged guilty of a crime based upon the dishonest conduct of the attorney; or
  - i. Left the jurisdiction or cannot be found.
4. The act that occasioned the loss occurred on or after March 1, 1981.
- (b) "Reimbursable Loss" does not include any of the following:
- 1. Losses of a spouse, child, parent, grandparent, sibling, partner, associate, or employee of the attorney or attorneys 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 bondsman or surety or insurer is subrogated to the extent of that subrogated interest.
  - 3. Losses of any financial institution that could be recoverable under a "banker's blanket bond" or similar insurance or surety contract, whether or not the institution had such bond or contract in force.
  - 4. Losses that are recoverable from some other source.
  - 5. Losses barred under any applicable statute of limitations.
- (8) "State bar" means the state bar of Wisconsin.

**SCR 12.05 Administration.**

(1) The fund shall be operated and administered by the committee of the state bar to be known as the Wisconsin lawyers' fund for client protection committee. The committee shall consist of 5 lawyers and 2 nonlawyer members who are appointed by the president of the state bar. The initial terms of the members are: one lawyer to serve until July 1, 1982; one lawyer to serve until July 1, 1983; one lawyer and one nonlawyer member to serve until July 1, 1984; one lawyer to serve until July 1, 1985; one lawyer and one nonlawyer member to serve until July 1, 1986. Upon the expiration of the initial appointments, each subsequent appointment shall be for a term of 5 years. No person who has served a full term of 5 years shall be eligible for reappointment until one year after the termination of his or her last term. A vacancy on the committee shall be filled by appointment by the president of the state bar for the unexpired term.

(2) Each year the chairperson of the committee shall be appointed by the president of the state bar from among the members of the committee. The committee shall meet from time to time upon the call of the chairperson.

(3) The committee members shall serve without compensation but shall be entitled to reimbursement from the fund for their expenses reasonably

incurred in the performance of their duties.

**SCR 12.06 Powers and duties of the committee.**

(1) Consideration of claims. The committee shall consider applications for reimbursement from the fund for losses caused by the dishonest conduct of an attorney. The committee shall investigate claims of losses coming to its attention and may reject or allow claims in whole or in part.

(2) Committee discretion. The committee may, in its discretion, determine the order and manner of payment of claims. In cases of extreme hardship or if other interests of justice so warrant, the committee may, in its discretion, recognize a claim which would otherwise be excluded under this chapter.

(3) Rules of procedure. The committee shall adopt rules of procedure not inconsistent with this chapter for the management of the fund and its affairs, for the presentation of claims, for the processing and payment thereof and for the subrogation or assignment to the state bar for the benefit of the fund of the rights of the claimant to the extent paid from the fund.

(4) Investment. All sums received by the state bar for the fund shall be maintained in a separate account and shall be managed by the state bar pursuant to the provisions of SCR chapter 10 and the state bar bylaws pertaining to the investment and management of state bar assets, subject to the written direction of the committee under rules adopted by the committee.

(5) Use of funds. The committee may use the fund for any of the following purposes within the scope of the fund's objectives:

(a) To make payments on claims as provided in this chapter.

(b) To purchase insurance to cover such payments in whole or in part as is deemed appropriate.

(c) To pay the reasonable and necessary expenses of the committee and administration of the fund.

(6) Access to office of lawyer regulation files. Notwithstanding other supreme court rules to the contrary, during the investigation of a claim the committee or its designee shall have access to the files of the office of lawyer regulation which pertain to the alleged loss.

(7) Audit and report of activities. The fund shall be audited by auditors annually and at such other times as the supreme court shall direct, such audits to be at the expense of the fund. The annual audit shall be included in a report to be submitted annually by the committee to the supreme court reviewing in detail the administration of the fund and the committee's activities during the preceding year.

(8) Enforcement of claims. The committee may press claims which the

state bar may have on behalf of the fund and may pay all reasonable and necessary expenses connected therewith.

**SCR 12.07 Assessment of attorneys; reserve; enforcement.**

(1) Initial assessment. Every attorney shall pay to the fund an initial assessment of \$5.

(2) Annual assessments; reserve. (a) *Annual assessments.* Commencing with the state bar's 2013 fiscal year, every attorney shall pay to the fund an annual assessment of \$20. An attorney whose annual state bar membership dues are waived for hardship shall be excused from the payment of the annual assessment for that year. An attorney shall be excused from the payment of the annual assessment for the fiscal year during which he or she is admitted to practice in Wisconsin. (b) *Reserve.* As of May 1 of each year, any funds in excess of those required for payment of approved claims shall be maintained in a reserve account for the Wisconsin Lawyers Fund for Client Protection.

(3) Sufficiency; report. (a) *Sufficiency of the fund.* The committee shall determine the net value of the fund as of May 1 of each year. The committee shall determine the net value of the fund, including the reserve, after deducting all claims which the committee has determined to pay and which are not disposed of at the date of valuation, deferred claims, claims received but not yet considered by the committee, and all expenses properly chargeable against the fund.

(b) Report. The committee shall file a report of the net value of the fund with the supreme court by May 31 of each year.

(4) Collection; failure to pay. The initial assessment and annual assessments shall be collected at the same time and in the same manner as the annual membership dues for the state bar are collected. An attorney who fails to timely pay the initial assessment or any annual assessment shall have his or her right to practice law suspended pursuant to SCR 10.03(6).

(5) Periodic review. The supreme court shall review SCR 12.07 every five years to determine if the assessment and reserve fund is adequate to timely meet the legitimate claims of clients.

**SCR 12.08 Payment of claims.**

(1) Considerations. No claim shall be paid unless there is an affirmative vote for payment of at least 4 members of the committee. In determining payment the committee shall consider, among other appropriate factors, the following:

(a) The amounts available and likely to become available to the fund

for the payment of claims and the size and number of claims which are likely to be presented;

(b) The amount of the claimant's loss as compared with the amount of losses sustained by other eligible claimants;

(c) The degree of hardship suffered by the claimant as a result of the loss;

(d) The degree of negligence, if any, of the claimant which may have contributed to the loss;

(e) The existence of any collateral source for the reimbursement of the loss.

(2) Limitations on payment.

(a) The committee shall, by rule, fix the maximum amount which any one claimant may recover from the fund and may, by rule, fix the aggregate amount which may be recovered because of the dishonest conduct of any one attorney.

(b) If the fund is not sufficient to pay all claims which the committee determines should be paid, the committee may, in its discretion, defer payment of all or any portion of one or more claims. If the full amount of the claim has not been paid within 5 years from the date the claim is made, any balance remaining unpaid shall remain unpaid and the claim shall be closed.

(3) Rights to fund. No claimant or any other person or organization shall have any right in the fund as beneficiary or otherwise. All payments from the fund shall be a matter of discretion and not of right.

(4) Attorney's fee. No attorney representing a claimant shall be compensated from any source for his or her services.

#### **SCR 12.09 Claims for reimbursement.**

(1) The claimant shall prepare or cause to be prepared an application for reimbursement containing the following information:

(a) The name and address of the attorney alleged to have caused the loss;

(b) The amount of the loss claimed;

(c) The date or period of time during which the alleged loss was incurred;

(d) The name and address of the claimant;

(e) A general statement of facts relative to the claim;

(f) Verification by the claimant;

(g) Other information which the committee may require.

(2) The committee shall conduct or cause to be conducted an investigation to determine whether the claim is for a reimbursable loss and to

guide the committee in determining the extent, if any, to which reimbursement shall be made. When the claim is for a non-reimbursable loss or is otherwise barred, no further investigation need be conducted.

(3) A copy of the application shall be personally served upon the attorney or sent by certified mail to his or her address shown on the state bar's membership roll. The attorney or, in the event the attorney is deceased, his or her personal representative shall be given an opportunity to be heard by the committee.

(4) The committee shall advise the claimant of its final determination of the claim.

#### **SCR 12.10 Subrogation.**

(1) If payment is made from the fund, the fund shall be subrogated in the amount of that payment and may bring such action as is deemed advisable against the attorney, his or her assets or estate. The action may be brought either in the name of the claimant or in the name of the state bar on behalf of the fund. The claimant shall be required to execute a subrogation agreement which shall include a provision that in the event the claimant or his or her estate should ever receive any restitution from the attorney or his or her estate, the claimant shall repay to the fund the amount received up to the amount of the payment made from the fund. Upon commencement of any action by the fund pursuant to its subrogation rights, the committee shall advise the claimant, who may then join in the action to press a claim for his or her loss in excess of the amount of the reimbursement from the fund.

(2) Any amounts recovered from the attorney, either by the fund or by the claimant, in excess of the amount to which the fund is subrogated, less the actual costs of such recovery, shall be paid to or retained by the claimant.

#### **SCR 12.11 Confidentiality.**

(1) Claims, proceedings and reports involving claims for reimbursement are confidential until the fund authorizes payment to the claimant, except as otherwise provided by these rules or by law. After payment of a claim, the fund may publicize the nature of the claim, the amount of the payment, and the name of the lawyer. The fund may not publicize the name and address of the claimant unless authorized by the claimant.

(2) The fund at any time may do any of the following:

(a) Authorize access to relevant information by professional discipline agencies or law enforcement authorities.

(b) Release statistical information that does not disclose the identity of the attorney or the claimant.



(c) Use any information in its possession to pursue its subrogation rights.

**SCR 12.12 Reimbursement from the fund is discretionary.**

The fund's decision regarding payment of claims under ss. 12.08 and 12.09 is discretionary. Any such decision of the fund is not appealable.

Adopted March 2, 1981; amended May 29, 1981; May 4, 1993; April 16, 1997; September 25, 2000; November 14, 2001; April 25, 2002; August 2, 2004; May 11, 2007; July 1, 2007; October 6, 2010; January 1, 2012.