

CHAPTER 40
REGULATIONS OF THE CLIENT SECURITY COMMISSION

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CHAPTER 40

REGULATIONS OF THE CLIENT SECURITY COMMISSION

Rule 40.1 Definitions. For the purpose of this chapter, the following definitions apply:

“Commissioner” means the commissioners of the Client Security Commission.

“Dishonest conduct” means wrongful acts committed by a lawyer against a person in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.

“Fund” means the Clients’ Security Trust Fund of the Bar of Iowa.

“Lawyer” means one who, at the time of the act complained of, had the right to practice law in the State of Iowa. The fact that the act complained of took place outside of Iowa does not necessarily mean that the lawyer was not engaged in the practice of law in Iowa.

“Reimbursable losses” means those losses as set out in Iowa Court Rule 39.9.

[Court Order November 9, 2001, effective February 15, 2002; July 1, 2005; December 13, 2017, effective January 1, 2018]

Rule 40.2 Applications for reimbursement.

40.2(1) The commissioners must prepare a form of application for reimbursement. In their discretion, the commissioners may waive a requirement that a request be filed on such form.

40.2(2) The form must require, at a minimum, the following information:

- a. The name and address of the lawyer.
- b. The amount of the alleged loss claimed.
- c. The date or period of time during which the alleged loss was incurred.
- d. Name and address of the party requesting reimbursement.
- e. The general statement of facts relative to the request for reimbursement.
- f. Verification by the party requesting reimbursement.

40.2(3) The form or application must contain the following statement in bold type:

In establishing the Clients’ Security Trust Fund of the Bar of Iowa the Iowa Supreme Court did not create, nor acknowledge any legal responsibility for the acts of individual lawyers in the practice of law. All reimbursements of losses of the Clients’ Security Trust Fund of the Bar of Iowa are a matter of grace in the sole discretion of the commissioners administering the fund and not a matter of right. No client or any other person or organization has any right in the fund as a third-party beneficiary or otherwise.

40.2(4) Applications must be in the form attached and must be addressed to the Client Security Commission, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

[Court Order November 9, 2001, effective February 15, 2002; April 9, 2003; July 1, 2005; December 5, 2007; December 13, 2017, effective January 1, 2018]

Rule 40.3 Processing applications.

40.3(1) The director of the office of professional regulation will cause each such application to be sent to the commissioners or other parties or organizations for investigation and report. A copy must be served upon or sent by certified mail to the lawyer, at the lawyer’s last-known address, who it is claimed committed the dishonest act. Whenever feasible, any investigative lawyer to whom such application is referred must not practice in the county wherein the alleged defalcating attorney practiced.

40.3(2) When, in the opinion of the person or persons to whom the application has been referred for investigation the application is clearly not for a reimbursable loss, no further investigation need be conducted, but a report with respect to such application must be made to the commission.

40.3(3) The person or persons to whom a report is referred for investigation will conduct such investigation as to them seems necessary and desirable in order to determine whether the claim is for a reimbursable loss and in order to guide the commissioners in determining the extent, if any, to which the claim must be reimbursed from the fund. Any information so obtained by the person or persons will be used solely by or for the commissioners and will constitute confidential information. When information is received by the commission indicating an apparent violation of the criminal laws by a lawyer, such information must be reported to the attorney disciplinary board.

40.3(4) Reports with respect to applications must be submitted by the director of the office of professional regulation to each member of the commission as soon as reasonably possible.

40.3(5) At the meetings of the commission the commissioners will conduct such investigation or review as seems necessary or desirable in order to determine whether the applications are for a reimbursable loss and to guide the commissioners in determining the extent, if any, to which the applicant may be reimbursed. After studying the summaries or applications to be processed, any commissioner may request that testimony be presented. Absent such recommendation or request, applications will be processed on the basis of information contained in the report of the person or persons who investigated such application and in the summary. In all cases, the alleged defalcating attorney or the attorney's personal representative must be given an opportunity to be heard by the commissioners if they so request.

40.3(6) The commission in its sole discretion will determine the amount of loss, if any, for which any person may be reimbursed from the fund. *See* Iowa Ct. R. 39.9(2). However, the maximum amount that any one claimant may recover from the fund is \$100,000 and the aggregate maximum amount which may be recovered from the fund because of the dishonest conduct of any one attorney is \$300,000.

Comment: The November 26, 2013, amendments of claim reimbursement limits apply only to claims arising from attorney conduct occurring on or after January 1, 2014.

[Regulation amendment July 8, 1981; Court Order July 16, 1984; December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; November 26, 2013, effective January 1, 2014; July 1, 2005; December 13, 2017, effective January 1, 2018]

Rule 40.4 Subrogation for reimbursement made. In the event reimbursement is made to a person or organization, the fund will be subrogated to the person's or organization's rights in said amount, and the fund may bring such action as is deemed advisable against the lawyer, the lawyer's assets or estate, either in the name of the person, or in the name of the Clients' Security Trust Fund of the Bar of Iowa. The party receiving funds is required to execute a subrogation agreement in this regard. Upon commencement of an action by the fund pursuant to its subrogation rights, it must advise the reimbursed party at the party's last-known address. The reimbursed party may then join in such action to press a claim for any loss in excess of the amount of the above reimbursement, but the fund will have first priority to any recovery on such suit.

[Amended by Court Order December 15, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; December 13, 2017, effective January 1, 2018]

Rule 40.5 General purposes. In any given case, the commissioners may waive technical adherence to these regulations in order to achieve the objectives of the fund.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 40.6 General provisions. The annual report of the commissioners to the supreme court is public information after it is filed with the court. Upon prior approval of the commission, such information as the commission may approve concerning payments made to applicants for reimbursement, including information with regard to the lawyer involved and the facts upon which the reimbursement is made, may be released as public information. Other than as set out above, other information regarding applications for reimbursement, payments made by the fund, or any actions of the commissioners are not considered public information without the express prior approval of the court.

[Regulation Order January 4, 1974; February 15, 1979; November 9, 2001, effective February 15, 2002; December 13, 2017, effective January 1, 2018]