

Neil Gillespie

From: "Jenny Jolinski" <JJolinski@flabar.org>
To: "Neil Gellespie" <neilgillespie@mfi.net>
Sent: Friday, January 13, 2012 12:00 PM
Attach: CSFRegs_1995-1996.pdf
Subject: Public Record Request - 2011/12/27

Dear Mr. Gillespie,

I am responding to your request of 12/27/2011 for "the rules in place at the time" per rule Rule 2.240 of the Florida Rules of Judicial Administration and other applicable laws. Pursuant to your request, the 1995 and 1996 Clients' Security Fund regulations regarding payments are attached (see regulation 4).

Please note that the payout amount originally provided by the Clients' Security Fund department was incorrect as the wrong column in the report was reported. The corrected amounts that were paid out from the fund on behalf of Dennis Correa to the claims referenced in your initial request are as follows: \$34,762, \$34,732, \$34,742, \$39,750.30. Pursuant to the regulations in place at the time, three of the claims were approved in the amount of \$50,000 and one claim was approved in the amount of \$39,750.30. An initial payment of \$10,000 was made upon approval. The remaining approved amount, \$40,000, \$40,000, \$40,000 and \$29,750.30, were pooled with all other excess amounts and paid on a pro rata basis at the end of the fiscal year (see regulation 20).

Regards,

Jenny R. Jolinski CRM CDIA+

Records Management

The Florida Bar

651 East Jefferson Street

Tallahassee, FL 32399

850-561-5708

jjolinski@flabar.org

7-4. AMENDMENTS

RULE 7-4.1 GENERALLY

The clients' security fund rules may be amended in accordance with rule 1-12.1.

Amended Oct. 10, 1991, effective Jan. 1, 1992 (587 So.2d 1121); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

7-5. RECORDS

RULE 7-5.1 ACCESS TO RECORDS

(a) **Confidentiality.** All matters, including, without limitation, claims proceedings (whether transcribed or not), files, preliminary and/or final investigation reports, correspondence, memoranda, records of investigation, and records of the committee and the board of governors involving claims for reimbursement from the client's security fund are property of The Florida Bar and are confidential.

(b) **Publication of Payment Information.** After the board of governors has authorized payment of a claim, the bar may publish the nature of the claim, the amount of the reimbursement, and the name of the lawyer who is the subject of the claim. The name, address, and telephone number of the claimant shall remain confidential unless specific written permission has been granted by the claimant permitting disclosure.

(c) **Response to Subpoena.** The Florida Bar shall, pursuant to valid subpoena issued by a regulatory agency (including professional discipline agencies) or other law enforcement agencies, provide any documents that are otherwise confidential under this rule unless precluded by court order. The Florida Bar may charge a reasonable fee for the reproduction of the documents.

(d) **Response to False or Misleading Statements.** The Florida Bar may make any disclosure necessary to correct a false or misleading statement made concerning a claim.

(e) **Statistical Information.** Statistical information and/or analyses that are compiled by the bar from matters designated as confidential by this rule shall not be confidential.

Added effective Oct. 29, 1992 (608 So.2d 472).

REGULATIONS OF THE CLIENTS' SECURITY FUND

Promulgated by the Clients' Security
Fund Committee

Publisher's Note

The Regulations of the Clients' Security Fund are not part of the Rules Regulating The Florida Bar. Instead, the Clients' Security Fund Committee has adopted these Regulations to implement Chapter 7 of the Rules Regulating The Florida Bar. The Publisher has inserted these Regulations at the end of Chapter 7 to assist practitioners in using this Chapter.

In order to carry out the purposes and achieve the objectives of the provisions of chapter 7, Rules Regulating The Florida Bar, the Clients' Security Fund Committee, with the approval of the Board of Governors of The Florida Bar, promulgates the following regulations to serve as a guide, but not to bind, the operation of the Clients' Security Fund:

1. The fund will operate on a fiscal year basis, concurrent with the fiscal year of The Florida Bar.

2. Investigating members of the committee shall prepare a written report on a form furnished by The Florida Bar on all claims assigned to each of them. The report should be completed and returned to The Florida Bar no later than 90 days from the date the claim is mailed to the investigating member.

The committee shall consider the claim at the next scheduled meeting and shall forward a complete report to the designated reviewer.

The designated reviewer shall promptly review the report of the committee and report his or her recommendations to staff for inclusion in the agenda for the consideration of the Board of Governors.

Upon receipt of the report of the designated reviewer, the claim will be placed on the agenda of the Board of Governors.

3. No reimbursement on account of a claim shall be made from the fund unless and until the same has been authorized by the Board.

CLIENTS' SECURITY FUND RULES

* 4. The maximum amount payable for any valid loss except attorneys' fees shall be \$50,000.

5. Ordinarily, no claim will be considered unless an application for relief has been filed with the Bar within 2 years after the applicant has discovered, or with reasonable diligence should have discovered, the loss.

6. The Public Interest Programs and Services Department shall serve as the staff agency for Clients' Security Fund matters with primary responsibility for

(a) investigating and reporting on claims for amounts of \$500 or less;

(b) recommending denial of those claims received which are clearly not covered by the Fund;

(c) preparation of the committee agenda and recording the minutes of the committee meetings;

(d) presentation of claims to the Board of Governors;

(e) notifying claimants of ultimate disposition;

(f) coordinating payouts with the Finance and Accounting Department and the director of Public Information and Bar Services Department;

(g) monitoring subrogation rights on previously paid claims; and

(h) preparation of annual Fund reports.

7. Claimants should reasonably exhaust other remedies before seeking reimbursement from the Clients' Security Fund. Other remedies include bonds, professional liability policies, third party responsibility, the defalcating attorney's partners and deceased attorney's estate.

8. Of the annual allocation up to \$15.00 may be allocated to create and maintain a reserve fund of \$500,000. This reserve and interest accumulated thereon shall not be used to satisfy claims without authorization of two-thirds of the Board of Governors present and voting on the issue of the use of the reserve.

9. The Clients' Security Fund Committee may require that the claimant file a complaint against the attorney with the appropriate state attorney's office; file a civil suit in an appropriate court, or cooperate with the committee in appropriate proceedings against such lawyer as prerequisites to the granting of relief from the Fund.

10. Claims by relatives, partners, or other close associates of the attorney will ordinarily be denied.

11. The Clients' Security Fund Committee will consider for payment only those claims arising out of an attorney and client relationship. Investment advice given by the claimant's attorney, although such advice may result in the loss of claimant's money, is not, in and of itself, a ground for seeking reimbursement from the Fund.

Claims arising out of investments may be considered for payment, however, when the attorney is in the possession of the claimant's money, which the attorney has obtained by virtue of an attorney and client relationship with the claimant, when the attorney advises the claimant to invest the money in a business or other venture, and the attorney then misappropriates the claimant's money.

Ordinarily, interest on investments will not be reimbursed. Unless a claimant establishes otherwise, all payments received on the investment, from whatever source, will be considered to be return of principal and will be deducted from the claimant's initial investment with the attorney in order to determine, for Fund purposes, the claimant's reimbursable loss.

12. Where the attorney, unrelated to an attorney and client relationship, is a personal representative, testamentary trustee, guardian or escrow agent for the claimant, the claim will be denied pursuant to The Florida Bar, In re: Amendment to the Integration Rule and Bylaws Respecting Clients' Security Fund, 346 So.2d 537 (Fla.1977).

13. Claims by government agencies, institutional lenders, insurance companies, publicly owned corporations and subrogees, brought on their behalf and not as representatives, will not ordinarily be considered for payment.

14. Claims or portions of claims representing fees paid to a member of the Bar for services to be rendered shall not be paid in excess of \$2,500. If services were performed that were useful to the claimant, the claim will be denied.

15. Claims against members in good standing will ordinarily be denied or payment delayed until discipline is ordered by the supreme court.

16. No claim shall be approved where the defaulting attorney was bonded in any capacity which protected the rights of the applicant, where the defalcating attorney was insured under a lawyers' professional liability policy or a policy of a similar nature which protected the rights of the applicant, or where the claim might be payable from any other source; provided, however, that the committee, in a case of extreme hardship, may recommend approval of such a claim provided the Fund is substituted in place of the applicant for any amounts which might be due the applicant by the bonding or insurance company, or other source.

17. An attorney representing an applicant shall be required to give to the committee a written statement that he or she will not accept a fee from the applicant for services rendered in connection with a claim against the Fund.

18. Publicity of Fund activities shall be at the discretion of the Board of Governors members and Clients' Security Fund Committee members in the circuit where an award is made.

19. An annual report detailing the financial activities of the Fund shall be prepared by staff, approved by the committee chairman and published in *The Florida Bar Journal* or *News*.

20. A claim of \$10,000 or less shall be paid in full upon approval by the board of governors. On any claim that exceeds \$10,000, payment of \$10,000 shall be made upon approval of by the board of governors. The amount of an approved claim in excess of \$10,000 shall be pooled with all other such excess amounts and at the end of the fiscal year the remaining allocated funds for that fiscal year shall be applied to pro rata payment of the excess amounts.

If any claim remains unclaimed at the close of the fiscal year following the fiscal year in which the claim is approved, those funds will be returned to the Clients' Security Fund General Fund. A final request for response will be sent to the claimant(s) prior to the return of funds to the Clients' Security Fund General Fund. If there was a shortfall for the year in which the claims were approved, claimants not fully compensated will be eligible to receive additional funds.

21. The foregoing regulations may be amended by the committee with the approval of the Board.

Amended May 13-15, 1992; amended Dec. 8, 1995.

CHAPTER 8. LAWYER REFERRAL RULE

8-1. GENERALLY

RULE 8-1.1 STATEMENT OF POLICY AND PURPOSES

Every citizen of the state should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Citizens often encounter difficulty in identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. To this end bona fide not-for-profit state and local bar associations are uniquely qualified to provide lawyer referral services under supervision by The Florida Bar for the benefit of the public. It is the policy of The Florida Bar to support the establishment of local lawyer referral services and to encourage those services to: (a)

make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem; (b) provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; (c) inform the public when and where to seek legal services and provide an initial determination of whether those services are necessary or advisable; and (d) provide referral to consumer, government, and other agencies when the individual's best interests so dictate.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

8-2. REQUIREMENTS

RULE 8-2.1 REQUIREMENTS FOR ESTABLISHING A LAWYER REFERRAL SERVICE SPONSORED BY A LOCAL BAR ASSOCIATION

The board of governors of The Florida Bar may adopt such regulations as it deems desirable governing the establishment, operation, and termination of lawyer referral services operated by a local bar association.

No local bar association shall operate a lawyer referral service except upon application to and approval by the board of governors of The Florida Bar. No lawyer referral service shall be approved by The Florida Bar unless such lawyer referral service is offered primarily for the benefit of the public and unless such lawyer referral service is established and operated by a nonprofit organization exempt from federal taxation under section 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code of 1986.

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RULE 8-2.2 CONTENTS OF APPLICATION

An application by a local bar association to the board of governors of The Florida Bar for authority to operate a lawyer referral service shall be in writing and shall be filed with the executive director. Such application shall contain the following:

(a) **Statement of Benefits.** A statement of the benefits to the public to be achieved by the implementation of the lawyer referral service.

(b) **Proof of Nonprofit Status.** Proof that the referral service is established and operated by a nonprofit organization exempt from federal taxation under section 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code of 1986.

(c) **Submission and Content of Bylaws.** The proposed bylaws or rules and regulations that will govern the lawyer referral service. The proposed bylaws shall include the following regulations:

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(c) **Submission and Content of Bylaws.** The proposed bylaws or rules and regulations that will govern the lawyer referral service. The proposed bylaws shall include the following regulations:

(1) All members of the proposed referral service shall provide proof of professional liability insurance in the minimum amount of \$100,000 unless the proposed lawyer referral service itself carries professional liability insurance in an amount not less than \$100,000 per claim or occurrence.

(2) The proposed lawyer referral service shall accept membership applications only from attorneys who maintain an office in the geographic area served by the proposed lawyer referral service.