



FONDO DE PROTECCIÓN AL CLIENTE

<http://www.azbar.org/cpf/>

Según su pedido, incluidos está el formulario del Fondo de Protección al Cliente "Claim for Relief" ("Reclamo para Alivio") y la Declaration of Trust (Declaración del Fideicomiso), que describe las reglas y criterios para reclamos al Fondo. Todos los reclamos deben ser presentados en el formulario de reclamo oficial con documentos de apoyo.

El Fondo de Protección al Cliente fue creado para compensar a clientes que han perdido dinero debido a la conducta deshonesto de su abogado. "Conducta deshonesto" se refiere a conducta como el robo, malversación, o apropiación indebida de dinero, por ejemplo, tomando honorarios legales y realizando **ningún** servicio jurídico. Otra forma en la que el Fondo de Protección al Cliente puede asistir a clientes es en situaciones en las que el abogado muere antes de realizar trabajo jurídico ya pagado. El fondo *no* cubre negligencia profesional o negligencia por parte de un abogado, ni tampoco cubre disputas sobre honorarios legales cobradas cuando el abogado si realizó algún trabajo. El Fondo es establecido a través de donaciones de abogados; ningún dinero de los impuestos se utiliza en el Fondo de Protección al Cliente. **No hay ningún derecho a cualquier dinero del Fondo.** Los pagos de reclamos son hechos en la discreción única y absoluta del los Fideicomisarios del Fondo.

Los reclamos deben ser presentados dentro de **cinco años** a partir de cuando el cliente sabía o debía haber sabido de la conducta deshonesto o muerte, y solamente podrá presentarse si existió una relación de abogado/cliente. Además, en orden para que el reclamo sea elegible para consideración el abogado debe haber sido expulsado de la abogacía, puesto en suspensión disciplinaria definitiva por más de seis meses, puesto en suspensión interina, transferido a estatus discapacitado inactivo, declarado culpable por un delito grave relacionado, o fallecido. Si ninguno de esos acontecimientos han ocurrido, el reclamo se mantendrá en archivo hasta que cambie el estatus del abogado.

Adicionalmente, el proceso disciplinario de la Barra Estatal es independiente del Fondo de Protección al Cliente y el Fondo **no está sujeto** a órdenes de restitución emitidas en asuntos disciplinarios. De acuerdo con la Regla 12(C) del Client Protection Fund Declaration of Trust (Declaración Del Fideicomiso del Fondo de Protección al Cliente), "[t]he Trustees shall consider findings and restitution orders in discipline matters, but are not bound by them in determining claims" (los fideicomisarios considerarán las conclusiones y ordenes de restitución en asuntos disciplinarios, pero no están sujetos por ellos en la determinación de reclamos).

Si le gustaría presentar un reclamo al Fondo de Protección al Cliente por favor:

1. Lea la Declaración de Fideicomiso incluida, en particular, las Reglas (A-F) y 4 (C-D) (*guarde este documento para sus archivos*).
2. Por favor conteste todas las preguntas en el formulario de reclamo de manera legible y a lo mejor de su capacidad. Si una pregunta no se aplica a su

situación, por favor escriba "N/A" por "not applicable" (no aplicable). Por favor, asegúrese de firmar y fechar el formulario de reclamo.

3. Por favor proporcione cualquier documentación de apoyo** que usted sienta que prueba lo que alega en su reclamo. Incluya **copias** de comprobante de pago al abogado y/o que el abogado recibió dinero en su nombre (como el frente y detrás de cheques cancelados, cualquier recibos, estados de cuenta/facturas, contrato de honorarios, copias de información de un acuerdo, etc.). Esta información se requiere y reclamos sin esta información pueden ser negados por falta de pruebas.
4. Por favor incluya información sobre los casos ante cualquier tribunal por los cual el abogado estaba involucrado en su nombre, específicamente cualquier **número de casos judiciales** pertinentes a su reclamo.
5. Regrese el formulario de reclamo completo y documentación de apoyo a la dirección que aparece en la última página del formulario de reclamo.

Una vez recibida la documentación anteriormente solicitada, su reclamo será revisado e investigado para determinar elegibilidad, integridad y exactitud. Si se considera elegible, el reclamo será enviado al Board of Trustees of the Fund (Junta de Fideicomisarios del Fondo) para consideración en su próxima reunión trimestral.

Por favor tenga en cuenta que consideración de un reclamo puede tardar en exceso de un año debido a los requisitos de elegibilidad y el proceso investigativo. Por consiguiente, su paciencia y cooperación continua es muy apreciada. **Recuerde: No existe el derecho a recibir dinero de este fondo – las decisiones relativas a pagos están a la discreción absoluta de los Fideicomisarios.**

Si usted tiene un abogado asistiéndolo con este reclamo, por favor note que, según establecido en la Regla 17 de la Declaración de Fideicomiso, abogados que asisten a un miembro del público con un reclamo del Fondo de Protección al Cliente no le pueden cobrar honorarios a ese cliente por tal asistencia. La Barra Estatal de Arizona le agradece su encuesta.

POR LA JUNTA ADMINISTRATIVA DEL FONDO DE PROTECCIÓN AL CLIENTE,

Karen Weigand, CP
Administradora del Fondo de Protección al Cliente

Documentos adjuntos

** El proceso disciplinario de la Barra Estatal es **independiente** al Fondo de Protección al Cliente. Si ya presentó una queja contra el abogado, es posible que tenga que presentar copias de documentos con este reclamo que ya presentó a la Barra Estatal con su queja disciplinaria. Su asistencia es apreciada.

Requisitos Para un Reclamo del Fondo de Protección al Cliente:

¿Cuáles son los requisitos básicos para un reclamo elegible?

Los requisitos básicos que **deben** cumplirse para que un reclamo sea elegible para ser considerado por el fondo incluyen (pero no se limitan a):

- El abogado contra quien presenta un reclamo debe ser admitido y licenciado para ejercer en Arizona. Esto no incluye los que no son abogados o los abogados de otros estados admitidos para ejercer en Arizona en estatus *pro hac vice*.
- El reclamante debe haber tenido una relación de abogado-cliente con el abogado, o una relación fiduciaria con el abogado que está relacionada con la práctica de ley, como un administrador, representante personal, albacea, fideicomisario, guardián o curador. Si la situación es la tal que usted pagó por servicios jurídicos de otra persona, esa persona sería el "reclamante," y usted sería considerado el "co-reclamante."
- La pérdida debe haber sido causada por la "conducta deshonesta" del abogado. Para el propósito del fondo, "conducta deshonesta" se refiere a uno o más de lo siguiente solamente:
 - Actos improcedentes como robo o la malversación de dinero, o la toma improcedente o conversión de dinero, bienes, u otras cosas de valor de un cliente;
 - Falta de reembolsar honorarios inmerecidos recibidos de antemano cuando muy poco o nada de trabajo fue realizado; o,
 - El acto de un abogado de deshonestidad intencional o engaño que próximamente conduce a la pérdida de dinero o bienes.
- Antes de que un reclamo sea elegible para consideración, el estatus del abogado ante la Barra Estatal de Arizona debe ser uno de los siguientes:
 - Suspendido (por más de seis meses por orden de la Corte Suprema);
 - Expulsado de la abogacía;
 - Suspensión Interina;
 - Discapacitado Inactivo; o,
 - Fallecido

Reclamos también pueden ser elegibles para consideración si el abogado ha sido declarado/a culpable de un delito grave que surja de los hechos del reclamo.

(NOTE: Si el abogado no ha recibido ninguna sanción disciplinaria de la Barra Estatal, o ha recibido una sanción disciplinaria de la Barra Estatal de menos de una suspensión de seis meses y un día, el reclamo no será elegible para consideración. También, reclamos aprobados no son elegibles para pago hasta **seis meses después** del acontecimiento de uno de los eventos mencionados anteriormente.)

- El reclamo debe ser presentado dentro de cinco (5) años a partir del tiempo de que el reclamante sabía, o debía haber sabido, de la conducta deshonesta del abogado.

Aun si su reclamo potencialmente cumple con los susodichos criterios, esto no significa que el Fondo de Protección al Cliente le reembolsará – solo significa que usted puede presentar un reclamo que los Fideicomisarios del Fondo considerarán para reembolso. Los pagos del Fondo están a la discreción exclusiva de los Fideicomisarios del Fondo. (Por favor vea el reverso para criterios adicionales.)

Criterio adicional de reclamo:

¿Quién **NO** es elegible para recibir dinero del Fondo?

- El cónyuge actual o anterior del abogado
- El hijo, padre, nieto, abuelo, o hermano del abogado, ya sea por sangre o matrimonio
- Los socios, asociados, co-accionistas, o empleados del abogado
- Cualquier entidad de negocio, sin embargo, los Fideicomisarios *pueden* aprobar el pago de un reclamo que ha sido presentado por una pequeña empresa familiar (empresas grandes o corporaciones no son consideradas reclamantes elegibles).
- Cualquier agencia de garantía o fianza
- Cualquier entidad de negocios controlada por el abogado
- Cualquier entidad o agencia gubernamental
- Proveedores de servicios médicos u otro terceros con reclamos contra el abogado

¿Qué tipo de pérdidas **NO** son reembolsables?

- Reclamos basados en **negligencia, incompetencia, o negligencia profesional** por un abogado. Si su abogado hizo cosas como la presentación tardía o incorrecta de documentos ante el tribunal, negándose a realizar las tareas necesarias, o el resultado de su asunto legal no fue lo que usted pensó que debería ser, su reclamo puede no ser elegible para reembolso.
- Reclamos basados en **disputas con respeto a honorarios cobrados por el abogado** en casos en que el abogado si realizo algún trabajo para el reclamante. Si su abogado hizo más que “una cantidad insignificante” de trabajo para usted, su reclamo puede no ser elegible para reembolso.
- Dinero que fue dado a un abogado para **inversión, préstamo, o cualquier otro propósito** que no formaba parte de una relación de abogado-cliente acostumbrada.
- Reclamos solicitando compensación por intereses, honorarios pagados a otros abogados, daños y perjuicios, u otros gastos. Sólo el dinero y/o propiedad dada al abogado/a, o recibida por el abogado para el cliente, son potencialmente reembolsables.

Para obtener una lista completa de las reglas y criterios para reclamos al Fondo de Protección al Cliente, por favor lea la Client Protection Fund Declaration of Trust (Declaración del Fideicomiso del Fondo de Protección al Cliente) incluida en este paquete.

POR FAVOR NOTE:

- 1) El Fondo de Protección al Cliente es independiente del proceso disciplinario de la Barra Estatal. Si ya presentó una queja de Barra Estatal contra el abogado, es posible que tenga que presentar copias de documentos con este reclamo que ya presentó con su queja disciplinaria. Su asistencia es apreciada.
- 2) También, si ha recibido una Orden de Restitución en un asunto disciplinario de la Barra Estatal contra el abogado, sólo ese abogado particular está sujeto a esa Orden. Al revisar su reclamo al Fondo de Protección al Cliente, los Fideicomisarios tomarán en cuenta el hecho que el abogado fue ordenado a pagarle restitución, pero el Fondo de Protección al Cliente no está sujeto a Orden. Tener una Orden de Restitución no le da derecho a reembolso por el Fondo de Protección al Cliente.



For State Bar Use Only Claim #: _____ Attorney: _____ Claimant: _____

FONDO DE PROTECCION AL CLIENTE – RECLAMO DE AYUDA

AL RECLAMANTE

Solamente el dinero que fue pagado al abogado, o recibido por el abogado del reclamante, cuando éste ha sufrido una pérdida debido a la conducta deshonesta del abogado califica para posible reembolso [ver *Declaration of Trust Rule 3(D)*]. El Fondo *no* cubre reclamos basados en disputas, mala práctica o negligencia y no considera reclamos por montos adicionales tales como daños, interés, costos de la corte y/o honorarios pagados a otros abogados, etc. [ver *Declaration of Trust Rule 3(E)*].

Escriba claramente o a máquina para completar cada pregunta de este formulario (puede agregar páginas adicionales). Envíe copias de cada evidencia que compruebe su pérdida (información del caso en la corte, correspondencia, etc.) y prueba del pago (cheques cancelados (frente y atrás), recibos, facturas, acuerdos de honorarios o compromisos de pago, etc.). Esta información es obligatoria y la revisión de su reclamo puede demorarse significativamente si no se incluye. Por favor lea el formulario completo, firmelo y envíelo a la dirección que figura en la última página.

1. Reclamante(s) (*cliente del abogado*)

Nombre: _____

Dirección: _____ Ciudad: _____ Estado: _____ Código Postal _____

Teléfono de contacto: (____) _____ Correo electrónico: _____

2. Co-Reclamante(s) (*persona(s) que pagó por los servicios legales, si es distinto del reclamante*)

Nombre: _____

Dirección: _____ Ciudad: _____ Estado: _____ Código Postal _____

Teléfono de contacto: (____) _____ Correo electrónico: _____

3. Abogado que presuntamente causó la pérdida

Nombre: _____

Dirección: _____ Ciudad: _____ Estado: _____ Código Postal _____

4. Fecha en que el abogado fue contratado: _____
Fecha en que terminaron los servicios del abogado hacia el reclamante: _____

5. Fecha en que el reclamante descubrió la pérdida: _____

6. ¿Cuánto se le pagó al abogado por los servicios legales O cuánto dinero recibió el abogado en nombre del reclamante? \$ _____ (*Adjunte copias de pruebas tales como frente y atrás de cheques cancelados, recibos de pagos, facturas, acuerdos de honorarios o arreglos de pagos. Esta información es obligatoria.*)

7. Monto de la presunta pérdida alegado por el reclamante: \$ _____

8. Si la pérdida fue una propiedad, describa el estado y valor de la propiedad (*adjunte copias de valuación, recibos o cualquier otra evidencia del valor*): _____

9. ¿Qué servicios legales debía realizar el abogado para el reclamante? (**IMPORTANTE:** incluya los números de caso o la información de la corte si corresponde) _____

10. Describa la conducta deshonesto del abogado que causó la pérdida al reclamante. (**Debe** proveer documentación que compruebe dicha pérdida, tal como correspondencia, cartas del nuevo abogado del reclamante, documentos de la corte, etc.): _____

11. ¿Qué servicios legales realmente realizó el abogado _____

12. ¿Contrató el reclamante o designó la corte otro abogado para continuar con su caso? Sí____ No____
Si respondió sí, provea el nombre y la dirección del nuevo abogado:
Nombre: _____
Dirección: _____ Ciudad: _____ Estado: _____ Código Postal _____
13. ¿Ha sido el reclamante o el co-reclamante alguna vez el cónyuge, familiar, pareja, socio, empleador o empleado del abogado que presuntamente causó la pérdida? Sí____No____
Si respondió sí, por favor explique: _____

14. ¿Ha reclamado el reclamante la devolución de los fondos perdidos o de la propiedad al abogado?
Sí _____ No____ Si respondió sí, indique la fecha del reclamo: _____
(*Si el reclamo y/o la respuesta del abogado fueron por escrito, por favor adjunte copias*)
Si respondió no, explique las razones por las cuales el reclamante no efectuó un reclamo: _____

15. ¿Ha recibido el reclamante un reembolso por alguna parte del reclamo? Sí____ No____
Si respondió sí, provea la siguiente información:
Monto pagado: \$ _____
Fecha del pago: _____
Pagado por: _____

16. Según su mejor conocimiento, ¿fue o es esta pérdida cubierta por algún seguro, indemnización o fianza?

Sí _____ No _____ Si respondió sí, provea la siguiente información:

Nombre del asegurador, compañía de fianza, o fiador: _____

Dirección: _____ Ciudad: _____ Estado: _____ Código Postal _____

17. ¿Ha sido este reclamo presentado al Fondo de Protección al Cliente en algún otro Estado?

Sí _____ No _____ Si respondió sí, en cuál Estado _____

18. Describa, si conoce, si algún procedimiento civil o criminal ha sido o será iniciado en relación con los hechos expuestos en esta aplicación. Si corresponde, describa quién inició esos procedimientos y el estado presente. (*incluya el número de caso si lo conoce*) _____

19. Si corresponde, provea una copia del Cargo de Disciplina la Barra de Abogados de Arizona (State Bar Lawyer Discipline Charge) iniciado por usted y provea el estado de cualquier procedimiento disciplinario la Barra de Abogados de Arizona (si lo conoce): _____

20. Si un abogado lo está asistiendo a usted con esta aplicación, indique su nombre y dirección:

Nombre: _____

Dirección: _____ Ciudad: _____ Estado: _____ Código Postal _____

21. ¿Cómo se enteró acerca del Fondo de Protección al Cliente? _____

LIMITACIONES Y ACUERDOS
IMPORTANTE: Por favor lea y firme

- A. Este reclamo es ejecutado e iniciado para inducir a los Administradores del Fondo de Protección al Cliente de la Barra de Abogados de Arizona a procesar, investigar y considerar a su sola discreción el reembolso desde el Fondo de Protección al Cliente, de todas las pérdidas sufridas por el reclamante como resultado de la conducta deshonesto del abogado nombrado en este reclamo.
- B. El reclamante acuerda notificar rápidamente cualquier cambio de dirección al Administrador del Fondo
- C. El reclamante entiende y reconoce que el monto máximo adjudicado por reclamante es \$100,000.00 y que el máximo adjudicado por abogado es \$250,000.00.
- D. El reclamante entiende y acuerda que luego del pago desde el Fondo de Protección al Cliente, el reclamante firmante:
 - 1. Transfiere, asigna y da prioridad al Fondo de Protección al Cliente de la Barra de Abogados de Arizona, *pro tanto*, todos los reclamos no firmados, demandas, causas de acción, acciones y juicios contra el abogado arriba nombrado, que surjan fuera de la conducta deshonesto descrita arriba y sobre la cual está basado este reclamo de reembolso.
 - 2. Autoriza al Fondo de Protección al Cliente de la Barra de Abogados de Arizona a procesar dichos reclamos, demandas, causas de acción, acciones o juicios contra el abogado arriba mencionado, ya sea en nombre del reclamante firmante o en nombre del Fondo de Protección

al Cliente, como los Administradores en ejercicio de su función consideren apropiado, y según su sola discreción.

3. Acuerda que cooperará con el Fondo en cualquier esfuerzo por reforzar el reclamo, demanda, causa de acción, acciones o juicios contra el abogado arriba nombrado.
4. Además acuerda que todas las acciones civiles que se tomarán contra el abogado arriba nombrado bajo los términos de este acuerdo estarán bajo el control absoluto del Fondo y que los Administradores pueden procesar, dejar de procesar o abandonar cualquier tipo de reclamo, demanda, causa de acción, acciones o juicios contra el abogado arriba nombrado, según consideren apropiado, haciendo ejercicio de su discreción y sin necesidad de consentimiento o aprobación por el reclamante firmante.

- E. El reclamante firmante entiende que antes que reciba ningún pago del Fondo, al reclamante o a su representante legal se le requerirá que ejecute y envíe a los Administradores un acuerdo escrito declarando que en el caso que reciba algún reembolso de parte del abogado arriba nombrado, el reclamante que ha sido reembolsado acuerda devolver al Fondo el monto original reembolsado, junto con los intereses legales acumulados.

CONSIDERANDO LO PRECEDENTE, el reclamante acuerda cooperar en la investigación de este reclamo y también en cualquier procedimiento disciplinario relacionado contra el abogado o abogados en cuestión y como condición precedente a cualquier pago desde el mencionado Fondo, el reclamante acuerda ejecutar y enviar a los Administradores el instrumento o instrumentos que puedan ser requeridos.

Yo, el firmante, declaro: Yo el Reclamante o Co-Reclamante en los hechos descritos arriba, he leído el precedente Reclamo de Alivio y conozco los contenidos del mismo; yo certifico que lo mismo es verdad según mi conocimiento personal, excepto en los hechos y cosas en los cuales he declarado según mi información o creencia, y que esos hechos y cosas yo creo que son la verdad. He leído la Declaración de Fianza del Fondo de Protección al Cliente, corregida el 30 de mayo de 2008 y acuerdo adherir a todas las reglas allí establecidas.

Juro o declaro bajo pena de perjurio que lo precedente es verdadero y correcto.

Firma del Reclamante

Firma del Co-Reclamante

Fecha

Por favor vea los anuncios importantes en la siguiente página.

**Esta página es para su información solamente.
Por favor no incluya esta página con su formulario de reclamo completado.**

NOTICIA IMPORTANTE PARA EL RECLAMANTE:

El abogado **debe** reunir uno de los siguientes criterios para que un reclamo se considere elegible: 1) haber sido suspendido por lo menos por seis meses por orden de la Suprema Corte; 2) haber sido puesto en Suspensión temporal por orden de la Suprema Corte; 3) haber sido expulsado de la Barra de Abogados por orden de la Suprema Corte; 4) haber fallecido; 5) haber sido transferido a estado de discapacidad inactiva de acuerdo a Ariz.R.S.Ct.63; o 6) haber sido convicto de una felonía fuera de los hechos subyacentes en este reclamo. Si el abogado no ha recibido una sanción disciplinaria, o no ha recibido una suspensión o expulsión por parte de la Barra de Abogados de Arizona por lo menos a seis meses y un día, este reclamo **no** es elegible para ser considerado.

La Barra de Abogados de Arizona no tiene responsabilidad legal por los actos individuales de los abogados. Los pagos del Fondo de Protección al Cliente se harán a discreción de los Administradores que administran el Fondo y **no es una cuestión de derecho**. Ningún cliente o miembro del público tendrá ningún derecho en el Fondo de Protección al Cliente como tercera parte beneficiada o de ninguna otra manera.

**AVISO PARA CUALQUIER ABOGADO ASISTIENDO AL RECLAMANTE
CON ESTA RECLAMACIÓN:**

Artículo 17 de la declaración del trust del fondo de protección al cliente establece que "**ningún abogado deberá recibir o aceptar pago por asistir o representar a un/una reclamante en una reclamación del fondo de protección al cliente solamente que ese pago haya sido aprobado previamente por el patronato**" (énfasis añadido).

**Envíe el formulario completado y firmado
con documentación que acompaña a:**

Client Protection Fund Administrator
State Bar of Arizona
4201 N. 24th St., Suite 200
Phoenix, AZ 85016-6288

**El siguiente documento es
la Declaración de Fideicomiso del Fondo de
Protección del Cliente.**

**Por favor lea la Declaración de Fideicomiso
(en particular la Regla 3 A-F y Regla 4 C-d), y
guárdela para sus registros.**

**Por favor, no devuelva esta página o la
Declaración de Fideicomiso con su
formulario de reclamo.**



**THE CLIENT PROTECTION FUND OF
THE STATE BAR OF ARIZONA**

DECLARATION OF TRUST

**CREATED JANUARY 7, 1961
(AS FURTHER AMENDED ON APRIL 16, 2021)**

The Client Protection Fund of the State Bar of Arizona was authorized by the membership of the State Bar on April 19, 1960 and established by the Declaration of Trust of January 7, 1961. The Supreme Court of Arizona, pursuant to Rule 32(d)(8), Ariz. R. Sup. Ct., required the creation of the original Trust and delegated authority to the State Bar of Arizona Board of Governors ("Board") to amend the Trust from time to time as may be appropriate. Under the terms of the original trust agreement, the Board of Governors reserved the right to amend or revoke the Trust from time to time, in whole or in part, by written instrument. The Board previously amended the Trust on November 26, 1971, May 31, 1974, May 6, 1981, April 23, 1993, February 27, 1998, January 18, 2002, November 18, 2005, January 20, 2006, May 30, 2008, amended and restated on December 13, 2013, and further amended on November 21, 2014, September 29, 2017, and April 16, 2021. This agreement, as amended and restated in its entirety, sets forth the terms and provisions relating to the Administration of the Trust after this date.

The name of the trust shall hereinafter be the Client Protection Fund of the State Bar of Arizona ("Fund").

RULE 1: PURPOSE AND SCOPE

- A. The purpose of the Fund is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers or legal paraprofessionals admitted and licensed or otherwise allowed to practice in Arizona, occurring in the course of the client-lawyer or fiduciary relationship between the lawyer and the claimant.
- B. For purposes of these Rules, "lawyer" and shall include a person:
- (1) licensed to practice law in this jurisdiction, regardless of where the lawyer's conduct occurs;
 - (2) authorized to practice as in-house counsel;
 - (3) admitted *pro hac vice*;
 - (4) authorized to practice as a foreign legal consultant;
 - (5) admitted only in a non-United States jurisdiction but who is authorized to practice law in this jurisdiction; or,
 - (6) recently suspended or disbarred whom clients reasonably believed to be licensed to practice law when the dishonest conduct occurred.

- C. For purposes of these Rules, "legal paraprofessional" shall include a person licensed pursuant to the Arizona Code of Judicial Administration § 7-210 to provide legal services without the supervision of an attorney in the areas of law and within the scope of practices, as defined in ACJA § 7-210.
- D. Every lawyer and legal paraprofessional has an obligation to the public to participate in the collective effort of the Bar to reimburse persons who have lost money as a result of the dishonest conduct of another lawyer or legal paraprofessional. Contribution to the Fund is required of all active, inactive, and affiliate members of the State Bar of Arizona, pursuant to the Supreme Court of Arizona's mandate, as set forth in Rule 32(c)(8) and (9) and (d)(8), Ariz. R. Sup. Ct.

RULE 2: ESTABLISHMENT

- A. There is established the State Bar of Arizona Client Protection Fund to reimburse claimants for losses caused by dishonest conduct committed by lawyers or legal paraprofessionals as defined in these rules.
- B. The trust shall exist as a separate entity from the State Bar of Arizona and is established, under the authority of the Board, and as required by the Supreme Court, pursuant to Rule 32(d)(8), Ariz. R. Sup. Ct. The Client Protection Fund Board of Trustees ("Trustees") shall receive, hold, manage, and disburse from the Fund such monies as may be allocated to the Fund pursuant to Rule 32(c)(8), Ariz. R. Sup. Ct., and from any other sources.
- C. These rules shall be effective for claims filed with the Trustees after the effective date of this amended and restated Declaration of Trust.

RULE 3: ELIGIBLE CLAIMS

- A. The loss must be caused by the dishonest conduct of the lawyer or legal paraprofessional and shall have arisen out of and by reason of a client-lawyer or client-legal paraprofessional relationship or a fiduciary relationship between the lawyer or legal paraprofessional and the claimant that is customary and related to the practice of law.
- B. The claim shall have been filed within five years after the claimant knew or should have known of the dishonest conduct of the lawyer or legal paraprofessional.
- C. The loss must be caused by the dishonest conduct of a lawyer or legal paraprofessional who has: 1) received a disciplinary suspension of longer than six months; 2) been placed on interim suspension pursuant to Rule 61, Ariz. R. Sup. Ct.; 3) been disbarred; 4) had their license revoked; 5) died; 6) been transferred to disability inactive status pursuant to Rule 63, Ariz. R. Sup. Ct.; or 7) been convicted of a felony arising out of the facts that gave rise to the claim. In appropriate circumstances, the Trustees may determine that a claim is appropriate for consideration for reimbursement because the loss was caused by the lawyer's or legal paraprofessional's dishonest conduct regardless of the lawyer's or legal paraprofessional's status.
- D. As used in these Rules, "dishonest conduct" refers to the following circumstances, and **not** to the quality or outcome of any legal work performed (unless deemed relevant by the Trustees).: 1) wrongful acts committed by a lawyer or legal paraprofessional in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property, or other things of value; 2) failure to refund unearned fees received

in advance as required by Rule 1.16(d) of the *Arizona Rules of Professional Conduct*, Rule 42, Ariz. R. Sup. Ct., when very little to no work of value was performed; or 3) a lawyer's or legal paraprofessional's act of intentional dishonesty or deceit that proximately leads to the loss of money or property.

- E. Except as provided by Paragraph I of this Rule, the following losses shall **not** be reimbursable: 1) claims based solely upon negligence, incompetence, or malpractice by a lawyer or legal paraprofessional; 2) money lost by a claimant that was given to a lawyer or legal paraprofessional for investment or any other purpose that did not arise from the client-lawyer or client-legal paraprofessional relationship; 3) claims requesting compensation for interest, legal fees paid to other lawyers or legal paraprofessionals, damages, or other expenses; and 4) disputes regarding the reasonableness of a fee.
- F. Except as provided in Paragraph I of this Rule, the following claimants shall **not** be eligible for reimbursement: 1) the spouse (present or former), child, parent, grandchild, grandparent, or sibling of the lawyer or legal paraprofessional, whether by blood or marriage; 2) partners, associates, co-shareholders, or employees of the lawyer or legal paraprofessional; 3) any insurer, surety, or bonding agency or company that seeks reimbursement for payment made under an insurance or surety contract or bond covering the risk involved in the lawyer's or legal paraprofessional's dishonest conduct; 4) any business entity controlled by the lawyer or person described in paragraphs F.1 or 2 above; 5) any governmental entity or agency; 6) medical providers or other third parties with claims against the lawyer or legal paraprofessional pursuant to law; or 7) any business entity unless considered pursuant to Paragraph I of this Rule.
- G. In determining whether it would be more appropriate for this Fund or another state's Fund to pay a claim, the Trustees should consider the following factors with respect to lawyers, and to legal paraprofessionals if applicable:
- (1) the Fund(s) into which the lawyer or legal paraprofessional is required to pay an annual assessment or into which an appropriation is made on behalf of the lawyer or legal paraprofessional by the bar association;
 - (2) the domicile of the lawyer or legal paraprofessional;
 - (3) the domicile of the client;
 - (4) the residence(s) of the lawyer or legal paraprofessional;
 - (5) the number of years the lawyer or legal paraprofessional has been licensed in each jurisdiction;
 - (6) the location of the lawyer's or legal paraprofessional's principal office and other offices;
 - (7) the location where the client-lawyer or client-legal paraprofessional relationship arose;
 - (8) the primary location where the legal services were rendered;
 - (9) whether at the time the legal services were rendered, the lawyer or legal paraprofessional was engaged in the unauthorized practice of law as defined by the jurisdiction in which the legal services were rendered; and
 - (10) any other significant contacts.
- H. The Trustees may enter into an agreement with the Fund of another jurisdiction to reimburse a portion of the loss suffered by a claimant whose claim may be eligible for payment under both Funds. The Trustees may take into consideration the other Fund's rules on payment of claims for reimbursement prior to entering into such an agreement.

- I. In cases of extreme hardship or special and unusual circumstances, the Trustees may, in their sole and absolute discretion, recognize a claim that would otherwise be excluded under these Rules.
- J. In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Trustees, may, in their sole and absolute discretion, deny the claim.

RULE 4: PROCEDURES AND RESPONSIBILITIES FOR CLAIMANTS

- A. The Trustees shall prepare and approve a form for claiming reimbursement from the Fund that will be available, at no charge, from the State Bar.
- B. The form shall include at least the following information provided by the claimant under penalty of perjury:
 - 1. The name, address, email address, and telephone number(s) of claimant;
 - 2. The name, address, email address, and telephone number(s) of the lawyer or legal paraprofessional alleged to have dishonestly taken the claimant's money or property, and any family or business relationship of the claimant to the lawyer;
 - 3. The legal or other fiduciary services the lawyer or legal paraprofessional was to perform for the claimant;
 - 4. The amount paid to the lawyer or legal paraprofessional;
 - 5. A copy of any written agreement pertaining to the claim;
 - 6. Copies of any checks, money orders, receipts, or other proofs of payment;
 - 7. The form of the claimant's loss (e.g., money, securities, or other property);
 - 8. The amount of loss and the date when the loss occurred;
 - 9. The date when the claimant discovered the loss, and how the claimant discovered the loss;
 - 10. The lawyer's or legal paraprofessional's dishonest conduct;
 - 11. The name of the person, if any, to whom the loss has been reported (e.g., county attorney, police, disciplinary agency, or other person or entity) and a copy of any complaint and description of any action that was taken;
 - 12. The source, if any, from which the loss can be reimbursed, including any insurance, fidelity, or surety agreement;
 - 13. The description of any steps taken to recover the loss directly from the lawyer or legal paraprofessional or any other source;

14. The circumstances under which the claimant has been, or will be, reimbursed for any part of the claim (including the amount received, or to be received, and the source), along with a statement that the claimant agrees to notify the Fund of any reimbursements the claimant receives during the pendency of the claim;
 15. The existence of facts believed to be important to the Fund's consideration of the claim;
 16. The manner in which the claimant learned about the Fund;
 17. The name, address, email address, and telephone number(s) of the claimant's present lawyer or legal paraprofessional;
 18. The claimant's agreement to cooperate with the Fund in reference to the claim or as required by Rule 16, in reference to civil actions which may be brought in the name of the Fund pursuant to a subrogation and assignment clause which shall also be contained within the claim;
 19. The claimant's agreement to repay the Fund if the claimant is subsequently reimbursed from another source;
 20. The name and address of any other state Funds to which the claimant has applied or intends to apply for reimbursement, together with a copy of the application; and
 21. A statement that the claimant agrees to the publication of appropriate information about the nature of the claim and the amount of reimbursement if reimbursement is made.
- C. Claimants must substantially complete the claim form and provide satisfactory evidence of a reimbursable loss in order to file a claim with the Fund. The claim shall be filed with the Trustees by addressing the completed claim and supporting evidence to the Phoenix office of the State Bar of Arizona.
- D. Claimants shall provide such additional information as requested by the Trustees or staff in order to assist in the consideration of the claim.

RULE 5: FUNDING

- A. The Supreme Court of Arizona, pursuant to Rule 32(c)(8) and (9), Ariz. R. Sup. Ct., requires that all active, inactive, and affiliate members of the State Bar shall contribute to the Fund annually, in an amount established by the Court.
- B. A lawyer or legal paraprofessional whose dishonest conduct has resulted in reimbursement to a claimant shall make restitution to the Fund, including interest and the expense incurred by the Fund in processing the claim.
- C. The Trustees may invest such balances as are in the Fund, in accordance with the Board's investment policy. All income realized from such investments, realized capital appreciation, restitution, annual member assessments, and all other income shall accrue to the Fund.

RULE 6: FUNDS

- A. All monies or other assets of the Fund shall constitute a trust and shall be held in the name of the Fund, as required by Rule 32(c)(9) and (10), Ariz. R. Sup. Ct.
- B. All administrative expenses incurred in the administration of the Fund by the State Bar, including but not limited to salaries, reproduction, telephone, postage, travel, accommodations, rent, overhead, costs of investigation, clerical expenses, and expenses of hearings, shall be paid from the Fund.

RULE 7: BOARD OF TRUSTEES

- A. The Board of Trustees shall consist of five trustees who shall be appointed by the Board.
- B. Any active or judicial member in good standing with the State Bar of Arizona who shall have practiced law or served in a judicial capacity in the State of Arizona for at least ten (10) years shall be eligible for appointment as a Trustee; provided, however, that no more than two (2) lawyer Trustees shall, at any time, reside in the same county. The Board in its discretion may appoint one non-lawyer Trustee.
- C. Trustees shall be appointed for terms of five (5) years. Trustees may serve no more than two five-year terms. The Board may remove a Trustee for cause at any time.
- D. Any vacancy occurring during a term shall be filled by the Board for the unexpired portion of the term.
- E. The Trustees shall have the authority to elect from among their members, a chairperson, a secretary, and a treasurer. A Trustee elected as treasurer shall procure a personal surety bond in adequate amount to cover all Trustees and staff of the Fund, and the cost thereof shall be considered an administrative expense of the Fund.
- F. The Trustees shall serve without compensation, but shall be entitled to reimbursement from the Fund, if no other source of funds is available, for their expenses reasonably incurred in performance of their duties as Trustees, including transportation, meals, and lodging, on the same basis as the expenses of the Board are reimbursed.

RULE 8: TRUSTEE MEETINGS

- A. The Trustees shall meet as frequently as necessary to conduct the business of the Fund and to timely process claims.
- B. The chairperson shall call a meeting at any reasonable time or upon the request of at least two Trustees.
- C. Three Trustees shall constitute a quorum. A majority of the Trustees present at a meeting may exercise any powers held by the Trustees.
- D. Trustee meetings shall be open to the public in accordance with the Public Meetings Policy of the State Bar of Arizona. The chairperson may invite guests as appropriate.

RULE 9: DUTIES AND RESPONSIBILITIES OF TRUSTEES

The Trustees shall have the following duties and responsibilities:

- A. To receive, evaluate, determine, and pay claims;
- B. To promulgate rules of procedure not inconsistent with these Rules;
- C. To invest Fund money in accordance with the Board's investment policies;
- D. To ensure that the Fund maintains sufficient reserves to pay present and future claims;
- E. To provide a full report at least annually to the Board and to make other reports as necessary;
- F. To publicize activities of the Fund to the public and the Bar;
- G. To employ adequate staff to assure the Fund's effective and efficient functions;
- H. To retain and compensate consultants, investigators, accountants, agents, legal counsel, and other persons as necessary;
- I. To prosecute claims for restitution to which the Fund is entitled;
- J. To engage in studies and programs for client protection and prevention of dishonest conduct by lawyers or legal paraprofessional;
- K. To promote effective communication between lawyer disciplinary authorities and the Fund;
- L. To perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the Fund; and
- M. To prepare a form of application for reimbursement upon which all claims shall be made.

RULE 10: CONFLICTS OF INTEREST

- A. A Trustee who has or has had a client-lawyer relationship or financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.
- B. A Trustee with a past or present relationship, other than as provided in Paragraph A, with a claimant, lawyer, or legal paraprofessional whose alleged conduct is the subject of a claim, shall disclose such relationship to the Trustees and, if the Trustees deem appropriate, that Trustee shall not participate in any proceeding relating to such claim.
- C. A Trustee may recuse himself or herself from consideration of a claim for any reason.

RULE 11: IMMUNITY

The Fund and its Trustees, employees, and agents shall be absolutely immune from civil liability for all acts performed in the course of their official duties pursuant to Rule 48(I), Ariz. R. Sup. Ct. Claimants, lawyers, or legal paraprofessionals who assist claimants with any claim

or communications with the Fund shall be immune from liability to respondent lawyers or legal paraprofessionals.

RULE 12: PROCESSING OF CLAIMS

- A. Whenever it appears, upon initial review by Fund staff, that a claim is not eligible for consideration by the Trustees, pursuant to Rule 3, Paragraphs A, B, D, E, or F, the claimant shall be advised of the reasons why the claim is not eligible, and that unless additional facts to support eligibility are submitted to the Fund within thirty (30) calendar days of the date of letter of notification of insufficiency, the claim file shall be closed. If the claimant submits sufficient additional supporting facts within the thirty days, the claim shall be processed as set forth below.
- B. A copy of each claim shall be sent by certified mail to the lawyer or legal paraprofessional at the lawyer's or legal paraprofessional's last known address, or to the personal representative of the lawyer's or legal paraprofessional's estate, conservator, or other representative. The lawyer or legal paraprofessional shall have thirty (30) calendar days from the date of mailing of the claim to provide the Trustees with a written response to the claim.
- C. Staff shall review each claim and conduct an investigation as seems necessary and appropriate in order to assist the Trustees in deciding the eligibility for reimbursement. Staff and/or the Trustees may request additional information from the claimant with respect to the alleged dishonest conduct.
- D. To the extent permitted by Rule 70, Ariz. R. Sup. Ct., the State Bar shall allow the Trustees to have access to its files and records, if any, pertaining to the dishonest conduct alleged. Information from documents obtained by the Fund shall be used solely for the purpose of determining the validity of the claim and shall not be otherwise disclosed. The Trustees shall consider findings and restitution orders in discipline matters but are not bound by them in determining claims.
- E. Once the Fund staff deems the investigation to be materially completed, a copy of all documents obtained through the investigation shall be sent to the lawyer or legal paraprofessional. The lawyer or legal paraprofessional shall have thirty (30) calendar days from the date of mailing to provide the Trustees with a supplemental written response to the claim.
- F. Failure of the lawyer or legal paraprofessional to respond to the substance of the claim at any stage in its processing may be deemed an admission of the allegations in the claim.
- G. After the 30 days referred to in paragraph E above have expired, the Fund staff shall send to each Trustee a copy of each claim, any written responses submitted by the lawyer or legal paraprofessional, and any investigatory reports and supplementary documentation.
- H. At the request of a Trustee, or at the written request of either the claimant or the lawyer or legal paraprofessional alleged to have caused the loss, the Trustees may afford both the claimant and the lawyer or legal paraprofessional an opportunity to be heard by the Trustees. The request for a hearing shall be filed with the Fund administrator within thirty (30) calendar days after the lawyer or legal paraprofessional receives notice of the claim. Any such proceeding shall be informal, and all relevant testimony and evidence may be received. Absent such a request, a claim shall be

processed on the basis of the information obtained in the application for reimbursement, any information obtained by Staff, and any written response from the lawyer.

I. Reconsideration.

1. If a claim has been denied by the Fund, a claimant may request reconsideration of the determination within thirty (30) calendar days of the denial by submitting a written request to the Fund administrator.
2. To have a claim reconsidered, the claimant must provide new information to the Fund. Any submission containing new information shall be mailed to the lawyer or legal paraprofessional, who shall have thirty (30) calendar days from the date of mailing to provide the Trustees with a written response to the new information.
3. A claimant may not seek reconsideration if the Trustees approve any amount of payment of a claim, even if the payment approved is less than the amount requested in the claim.
4. If a claimant fails to make a request or the request is denied, the decision of the Trustees shall be final.
5. Written notice of the Trustees' decision on the request for reconsideration shall be given to all interested parties.

RULE 13: PAYMENT OF REIMBURSEMENT

- A. In authorizing payment of claims, the Trustees shall not award more than \$100,000 to any one claimant and shall not award more than \$250,000 in the aggregate on account of claims arising out of the dishonest conduct of any one lawyer or legal paraprofessional. The Trustees are authorized to exceed these limits only in extraordinary circumstances and only by unanimous vote of all Trustees and the approval of the Board of Governors.
- B. The Trustees shall determine, in their sole discretion, whether a claim merits reimbursement from the Fund, the amount, time, and manner of its payment, and the conditions upon which payment shall be made. Unless the Trustees direct otherwise, no claim shall be paid until the expiration of six months following the lawyer's or legal paraprofessional's death, transfer to disability inactive status, suspension, interim suspension, disbarment, or conviction of a felony in a prosecution arising out of facts which give rise to the claim, as the case may be.
- C. Determination of amount of claim:
 1. If the aggregate of all claims pertaining to a lawyer or legal paraprofessional which are filed prior to the expiration of the six-month period and approved for payment by the Trustees is less than the \$250,000 aggregate limitation, not exceeding \$100,000 to any one claimant, then all such approved claims may be paid in full; provided, however, if any approved claimant has not completed exhaustion of their remedies against any insurance policy, bond, or any other reasonable source of recovery, payment to such claimant shall be withheld until they have realized final recovery thereon.

2. If the aggregate of all claims exceeds the \$250,000 limitation, then all such approved claims, not exceeding \$100,000 to any one claimant, may be paid on the basis of a pro rata sharing of the \$250,000; provided, however, if any approved claimant has not exhausted their remedies against any insurance policy or bond or any other reasonable source of possible recovery, no part of the claim shall be paid at that time, but the other claimants shall receive payments on their claims with all approved claims, including such claims not to be paid at that time, being included in their apparent maximum allowable amounts to determine the initial pro rata shares. When the aforementioned claimant whose remedies were not exhausted has realized their final recovery, the pro rata shares of all claimants shall be recalculated, and final payment shall be made to them. In the event any claimant does not or is unable to realize final recovery on the insurance policy or bond or other means of recoupment within one year following the expiration of the six months mentioned in sub-part 1, *above*, the Trustees are authorized to establish, in their absolute discretion, the net amount of the claim to be paid by the Trustees in view of the claim on claimant's insurance policy or bond or other source and thereupon to recalculate the pro rata claims of all claims and to make final payment thereon.
3. If the claimant's full and complete recovery on all known insurance policies and bonds or other sources would not, in the judgment of the Trustees, reduce the amount of the allowable claim under the terms of this Declaration of Trust, then sub-parts 1 and 2 above, for withholding final payment on the claim shall not apply.
4. In the event the \$250,000 limitation per lawyer or legal paraprofessional is not exhausted by the claims filed within the six months mentioned above, approved claims that are filed subsequent to the expiration of six months shall be granted priority on the basis of the date of filing, the earlier claim to be paid the full amount allowed before payment on any claim filed thereafter, until the \$250,000 limitation has been reached.

RULE 14: REIMBURSEMENT FROM THE FUND IS A MATTER OF GRACE

No person or entity shall have any legal right to reimbursement from the Fund whether as claimant, third-party beneficiary, or otherwise. Decisions on claims are in the sole and absolute discretion of the Trustees, and all decisions on requests for reconsideration by the Trustees are final.

RULE 15: RESTITUTION AND SUBROGATION

- A. A lawyer or legal paraprofessional whose dishonest conduct results in reimbursement to a claimant shall be liable to the Fund for restitution, and the Fund may bring such action as the Trustees deem advisable to enforce such obligation.
- B. A lawyer or legal paraprofessional whose dishonest conduct has resulted in reimbursement to a claimant shall make restitution to the Fund, including interest and the expense incurred by the Fund in processing the claim, as well as any attorney's fees and costs incurred by the Fund in connection with the claim. A lawyer's or legal paraprofessional's failure to make satisfactory arrangement for restitution shall be cause for suspension, disbarment, or denial of an application for reinstatement.

- C. As a condition of reimbursement, and to the extent of the reimbursement provided by the Fund, a claimant shall be required to provide the Fund with a transfer of the claimant's rights against the lawyer or legal paraprofessional, the lawyer's or legal paraprofessional'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.
- D. Upon commencement of an action by the Fund as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.
- E. In the event that the claimant commences an action to recover unreimbursed losses against the lawyer, legal paraprofessional, or another entity that may be liable for the claimant's loss, the claimant shall be required to notify the Fund of such action.
- F. The claimant shall be required to agree to cooperate in all efforts that the Fund undertakes to achieve restitution for the Fund, and to repay the Fund if claimant is subsequently reimbursed from another source an amount that exceeds the difference between the principal misappropriated and the Fund award. Such repayment shall not exceed the amount of the Fund award.

RULE 16: CONFIDENTIALITY

- A. Files and all documents related to claims and all claims proceedings shall be confidential to the extent that they contain confidential personal information or information confidential under the client-lawyer privilege, the Rules of Professional Conduct, or other adopted policies, rules, or law.
- B. This Rule shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Trustees may authorize, or the release of statistical information that does not disclose the identity of the claimants.

RULE 17: COMPENSATION FOR REPRESENTING CLAIMANTS

No lawyer or legal paraprofessional shall receive or accept payment for assisting or representing a claimant in a Client Protection Fund claim unless such payment has been approved in advance by the Trustees.

TERM

This amended and restated Declaration of Trust shall remain in full force and effect as now adopted and shall only be amended by the Board by instrument in writing.

The Board shall retain the right to amend or revoke this trust by instrument in writing, except that revocation must be approved by the Supreme Court of Arizona. If, at the time of revocation, any monies remain in the Fund, those monies shall be directed and distributed to the Arizona Foundation for Legal Services & Education, also known as the Arizona Bar Foundation, a nonprofit organization created for a designated charitable purpose under Internal Revenue Code § 501(c)(3), and shall be used by the Foundation for the purposes listed in Rule 43(f)(6)(A) and (B), Ariz. R. Sup. Ct.

Dated: May 28, 2021



 Denis M. Fitzgibbons, President