

**STATE OF WISCONSIN
SUPREME COURT**

**In the Matter of the Amendment of
Supreme Court Rule 12.11 - Confidentiality**

**In the Matter of the Addition of
Supreme Court Rule 12.12 - Immunity
Supreme Court Rule 12.13 - Reimbursement from the Fund is Discretionary, and
Supreme Court Rule 21.16(5m) - Restitution**

PETITION

To the Justices of the Wisconsin Supreme Court:

I. The Board of Governors of the State Bar of Wisconsin hereby petitions the Wisconsin Supreme Court to amend SCR 12.11 Confidentiality. Such a change requires the following specific amendments:

SCR 12.11 Confidentiality.

~~All applications, proceedings and reports concerning applications for reimbursement from the fund shall be confidential until such time as the committee authorizes or denies payment to the claimant unless the attorney upon whose alleged dishonest conduct the application is predicated requests that the matter be made public. This rule shall not be construed so as to deny access to relevant information to the supreme court or to such appropriate agencies as the committee shall authorize by rule or as the law may otherwise provide or to prohibit the committee from giving publicity to its activities as the committee deems appropriate.~~

A. (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 shall not publicize the name and address of the claimant unless authorized by the claimant.

(2). The Fund may:

- (a) Authorize access to relevant information by professional discipline agencies or other 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.

DISCUSSION

This rule is patterned after Rule 18 of the American Bar Association's *Model Rules for Lawyers' Funds for Client Protection*. The Comments to the Model Rules state:

[1] The need to protect wrongly accused lawyers and to preserve the independence of the Board's deliberations should be balanced with the strong public interest in protecting legal consumers and promoting public confidence in the administration of justice.

[2] Publication of awards by the Board demonstrates the legal profession's responsiveness to clients and its commitment to self-regulation. Responsible public information programs are essential to achieving the purposes of the Fund. The public, bar, and judicial leaders, and the news media should be kept informed of the activities of the Board and the status of its reimbursement efforts.

[3] The Board must also be sensitive to the privacy concerns of claimants, and of the constitutional rights of lawyers who may be the subject of criminal proceedings. Deferring publicity may therefore be appropriate where there is a pending criminal prosecution against a lawyer. Securing a claimant's consent to the release of information concerning a claimant's loss and reimbursement may also be a desirable

practice, particularly for a voluntary fund which may not be protected by the immunity that is afforded a court-established Fund under Rule 9.

[4] It is within the discretion of the Board to determine which public agencies should be provided access to claim files. Lawyer discipline, law enforcement, and agencies considering nominations to public offices may have a legitimate need for information contained in the Fund's records that would otherwise be confidential.

II. The Board of Governors of the State Bar of Wisconsin hereby petitions the Wisconsin Supreme Court to create SCR 12.12 Immunity and SCR 12.13 Reimbursement from the Fund is Discretionary. Such a change requires the following:

SCR 12.12 Immunity.

The committee members and agents of the Fund are immune from civil liability for all acts performed in the course of their official duties.

DISCUSSION

This rule is patterned after Rule 9 of the American Bar Association's *Model Rules for Lawyers' Funds for Client Protection*. The Comments to the Model Rules state:

[1] Immunity from civil liability encourages lawyers and nonlawyers to serve on the Board, and protects their independent judgment in the evaluation of claims. Immunity also protects the fiscal integrity of the fund, and encourages claimants and lawyers to participate in seeking reimbursement for eligible losses.

[2] As a matter of public policy, immunity should attach to the Fund's activities and proceedings in the same way that absolute immunity attaches in lawyer disciplinary proceedings.

[3] In the absence of court rule or statute, immunity may not be available in proceedings involving voluntary funds. Insurance may therefore be required to protect Trustees [Committee members], staffs, claimants, and the volunteer lawyers who assist claimants in processing their claims.

SCR 12.13 Reimbursement from the Fund is discretionary.

The Fund's decision to pay claims is discretionary. Decisions of the Fund are not appealable.

DISCUSSION

This rule is patterned after Rule 15 of the American Bar Association's *Model Rules for Lawyers' Funds for Client Protection*. The Comments to the Model Rules state:

[1] Although these Rules establish procedures for the processing of claims seeking reimbursement from the Fund, they are not intended to create either substantive rights to reimbursement, compensation, damages or restitution for a lawyer's dishonest conduct, or procedural rights subject to judicial review with respect to determination of claims.

[2] The Fund is not a guarantor of honesty and integrity in the practice of law. Dishonest conduct by a member of the bar imposes no separate legal obligation on the

profession collectively, or on the Fund, to compensate for a lawyer's misconduct. The Fund is a lawyer-financed public service, and payment by the Board is discretionary.

III. The Board of Governors of the State Bar of Wisconsin further petitions the Wisconsin Supreme Court to add SCR 21.16 Restitution as follows:

SCR 21.16 Discipline. (1) Any of the following may be imposed on an attorney as discipline for misconduct pursuant to the procedure set forth in SCR chapter 22:

- (a)** Revocation of license to practice law.
 - (b)** Suspension of license to practice law.
 - (c)** Public or private reprimand.
 - (d)** Conditions on the continued practice of law.
 - (e)** Monetary payment.
 - (f)** Conditions on seeking license reinstatement.
 - (g)** Restitution.
- (2)** When the Court orders restitution:
- (a)** The amount of restitution shall be determined in the related disciplinary proceeding.
 - (b)** If the Wisconsin Lawyers' Fund for Client Protection makes payment on a claim as the result of related proceedings involving an attorney, the Court may order the attorney to reimburse the Fund. Upon ordering restitution to the Fund, a judgment and transcript of judgment shall be issued in favor of the Fund. The Fund may file and docket the judgment in any county and that judgment shall have the same effect as a judgment docketed under §§ 806.16 and 809.25, Stats.
 - (c)** The amount of the restitution, either ordered or paid, does not affect the attorney's liability for damages in any civil action or proceeding.

DISCUSSION

Collection efforts by the Fund have been hampered by the inability to find collection counsel to take cases on a contingent fee basis. The vast majority of awards are made against disbarred or suspended attorneys. Collection counsel are concerned

these attorneys would vigorously defend their cases. Allowing a restitution order to be reduced to judgment will help the Fund collect restitution from dishonest attorneys against whom awards have been made.

The restitution orders which will be reduced to judgment are those which will have been processed under the current disciplinary procedure. Therefore, due process requirements will be met.

Respectfully submitted on behalf of the Board of Governors of the State Bar of Wisconsin this _____ day of March, 2006.

D. Michael Guerin, President
State Bar of Wisconsin