

27 NCAC 01D .1418 PROCESSING APPLICATIONS

- (a) The board shall cause an investigation of all applications filed with the State Bar to determine whether the application is for a reimbursable loss and the extent, if any, to which the application should be paid from the Fund.
- (b) The chairperson of the board shall assign each application to a member of the board for review and report. Wherever possible, the member to whom such application is referred shall practice in the county wherein the attorney practices or practiced.
- (c) A copy of the application shall be served upon or sent by registered mail to the last known address of the attorney who it is alleged committed an act of dishonest conduct.
- (d) After considering a report of investigation as to an application, any board member may request that testimony be presented concerning the application. In all cases, the alleged defalcating attorney or his or her representative will be given an opportunity to be heard by the board if the attorney so requests.
- (e) The board shall operate the Fund so that, taking into account assessments ordered by the Supreme Court but not yet received and anticipated investment earnings, a principal balance of approximately one million dollars (\$1,000,000) is maintained. Subject to the foregoing, the board shall, in its discretion, determine the amount of loss, if any, for which each applicant should be reimbursed from the Fund. In making such determination, the board shall consider, inter alia, the following:
- (1) the negligence, if any, of the applicant which contributed to the loss;
 - (2) the comparative hardship which the applicant suffered because of the loss;
 - (3) the total amount of reimbursable losses of applicants on account of any one attorney or firm or association of attorneys;
 - (4) the total amount of reimbursable losses in previous years for which total reimbursement has not been made and the total assets of the Fund;
 - (5) the total amount of insurance or other source of funds available to compensate the applicant for any reimbursable loss.
- (f) The board may, in its discretion, allow further reimbursement in any year of a reimbursable loss reimbursed in part by it in prior years.
- (g) Provided, however, and the foregoing notwithstanding, in no case shall the Fund reimburse the otherwise reimbursable losses sustained by any one applicant as a result of the dishonest conduct of one attorney in an amount in excess of one hundred thousand dollars (\$100,000).
- (h) No reimbursement shall be made to any applicant unless reimbursement is approved by a majority vote of the entire board at a duly held meeting at which a quorum is present.
- (i) No attorney shall be compensated by the board for prosecuting an application before it.
- (j) An applicant may be advised of the status of the board's consideration of the application and shall be advised of the final determination of the board.
- (k) All applications, proceedings, investigations, and reports involving applicants for reimbursement shall be kept confidential until and unless the board authorizes reimbursement to the applicant, or the attorney alleged to have engaged in dishonest conduct requests that the matter be made public. All participants involved in an application, investigation, or proceeding (including the applicant) shall conduct themselves so as to maintain the confidentiality of the application, investigation or proceeding. This provision shall not be construed to deny relevant information to be provided by the board to disciplinary committees or to anyone else to whom the council authorizes release of information.
- (l) The board may, in its discretion, for newly discovered evidence or other compelling reason, grant a request to reconsider any application which the board has denied in whole or in part; otherwise, such denial is final and no further consideration shall be given by the board to such application or another application upon the same alleged facts.

*History Note: Authority Orders of the NC Supreme Court, August 29, 1984, October 10, 1984;
Readopted Eff. December 8, 1994;
Amended Eff. March 6, 1997.*