

OUTLINE
ANATOMY OF A VIRGINIA
CLIENTS' PROTECTION FUND CLAIM

Four Parts: About CPF, Notable Rules, The Process, An Example Claim

Part I: About CPF (15 Minutes)

- The Virginia State Bar established the Clients' Protection Fund in 1976 to reimburse clients who suffer a quantifiable financial loss due to the dishonest conduct of a Virginia lawyer.
- To promote public confidence in the administration of justice and the honor and integrity of the legal profession by reimbursing all or part of losses sustained by clients or those to whom a fiduciary duty is owed as a result of a Virginia lawyer's dishonest conduct.
- Awards from the Clients' Protection Fund are discretionary and are not a matter of right. The fund is intended to be a remedy of last resort for clients who cannot obtain reimbursement from other sources.
- The CPF operates under the Clients' Protection Fund Rules as defined under the Virginia State Bar Professional Guidelines.
- A 14-member Board (13 lawyer members, 1 lay member) appointed by the Virginia State Bar Council operates the fund. It meets, on average, three times a year. The Board and the Fund are supported by a dedicated staff: **An Administrator (Vivian Byrd)**, who manages everything, **A Fiscal Director (Crystal Hendrick)**, who manages the money, **Counsel to the Board (Jane Fletcher, Esq.)**, who provides legal guidance and advice; and **VSB Deputy Executive Director (Janet Van Cuyk)**, who provides liaison to the Bar at large.
- The Fund is funded by payments Virginia lawyers make along with their annual Bar dues. The amount is established by the Supreme Court of Virginia but capped statutorily at \$25.00 per year. The current lawyer's annual contribution is \$5.00. The Fund has a balance of approximately \$11,000,000.
- Awards from the Fund are discretionary and are not a matter of right. Losses are capped, per petitioner, at \$100,000 for losses incurred on or after July 1, 2021, or \$75,000 for losses incurred on or after July 1, 2015 and prior to July 1, 2021, or \$50,000 for losses incurred on or after July 1, 2000, and prior to July 1, 2015, or \$25,000 for losses incurred prior to July 1, 2000. Losses reimbursable on account of the misconduct of any one lawyer or association of lawyers are capped at fifteen percent (15%) of the net worth of the Fund at the time the first claim is made.

- There are roughly 50 claims per year on average, and paid claims roughly total, on average, \$200,000 per year. In FY 2022-2023 a total of \$272,996 was paid on 32 claims (17 denied). In FY 2023-2024 (as of April 1, 2024) a total of \$312,179.64 has been paid on 40 claims (9 denied), and there are 28 FY 2023-2024 claims pending with a total sought of \$621,808.50. In its heaviest year, 2010, the Fund received well over 200 claims and paid nearly \$1 million. It has paid approximately \$8,000,000 since 1976.
- The Board and Fund are subject to the Virginia Freedom of Information Act.

Part II: Notable Rules (15 Minutes)

- The CPF operates under the Clients' Protection Fund Rules as defined under the Virginia State Bar Professional Guidelines. The rules are composed of a Preamble consisting of 10 sections regarding the Purpose, Funding, Authority and Administration of the Clients' Protection Fund, and 12 Rules of Procedure. The rules may be found online at <https://vsb.org/Site/about/rules-regulations/cpf-rules.aspx> and are attached as Handout No. 1.
- Eligible claims arise from cases in which the lawyer has been disbarred or suspended, made a qualifying status change, voluntarily resigned from the practice of law, died, been adjudicated incompetent, been the subject of a bankruptcy case that would stay, reduce or discharge the claims of the member's past or present clients; or whose whereabouts are unknown to the Petitioner after reasonable efforts to locate the lawyer.
- Rule I: The Board is authorized to consider petitions for reimbursement of actual, quantifiable losses caused by the dishonest conduct of a member of the Virginia State Bar, acting either as a lawyer or as a fiduciary in the matter in which the loss arose, except to the extent to which they are bonded or such losses are otherwise covered. The Fund is intended to be a remedy of last resort for persons who cannot obtain reimbursement from other sources, including from the Lawyer after the exercise of reasonable efforts proportional to the value of the case. The Fund does not cover malpractice or the inadequate, insufficient, ineffective, or negligent rendition of services by the lawyer or collateral losses suffered as a result of the lawyer's malpractice or the inadequate, insufficient or negligent rendition of services.
- Rule II.E (in part): "Reimbursable Losses" are limited to actual, quantifiable losses, supported by documentation, of money or other property that . . . was caused by the dishonest conduct of the Lawyer and arose out of, and by reason of, a lawyer-client or fiduciary relationship; and . . . had a nexus to the Commonwealth of Virginia.
- Rule II.G.1 (emphasis added): "Dishonest Conduct" **may include, but is not necessarily limited to:** 1. Any act committed by a Lawyer in the nature of theft, conversion, embezzlement or withholding of money or property from its rightful owner, recipient or person entitled to receive such money or property.

Compare ABA Model Rule 10.C: As used in these Rules, "dishonest conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:

- Rule II.G.2: Any act committed by a Lawyer in the nature of failure, refusal or inability to refund unearned fees received in advance where the Lawyer performed no legal services or such an insignificant service that the failure, refusal or inability to refund the unearned fees constitutes a wrongful taking or conversion.

Compare ABA Model Rule 10.C.(1): (1) Failure to refund unearned fees received in advance as required by [Rule 1.16 of the ABA *Model Rules for Professional Conduct*] [refunding any advance payment of fee or expense that has not been earned or incurred]

- Rule II.G.3: Any act where the Board finds that the legal services performed by the Lawyer are more than insignificant, but the Lawyer has not fully earned the entire fee, the failure, refusal or inability to refund the unearned fees may still constitute a wrongful taking or conversion.

Rule V.F.3: Where the Board finds that the Lawyer performed more than insignificant legal services, but the Lawyer has not fully earned the entire fee, the failure, refusal or inability to refund the unearned fees constitutes a wrongful taking or conversion, and the Board may reimburse 50% percent of the total fees paid by the Petitioner.

Part III: The Process (15 Minutes)

- Upon receipt of a petition *See* Handout No. 3 for an example the CPF Administrator and Counsel will review the petition for compliance with Rule jurisdictional requirements. If the petition does not comply it is rejected, but if it complies, the CPF Administrator will open the claim in the system and send the notices to the petitioner and to the lawyer respondent, who may respond to the petition within thirty (30) days of the date of the letter transmitting the petition to him or her. (Rule V.A). The new petition is then forwarded to CPF Counsel. *See* Handout No. 4 for an example of a response.
- CPF Counsel will then prepare the petition for assignment to a Board member by summarizing the elements of the claim, clarifying the license status of the subject attorney, and highlighting issues or problems with the claim, such as defects in documentation, untimely filing under Virginia's seven-year limitations period or possible exclusions. *See* Handout No. 5 for an example.
- CPF Counsel and CPF Administrator coordinate the choice of the Board member who will get the assignment. By Rule, petitions are assigned based on the workload of each Board member, and, when possible, by giving preference for assignment to a Board member who works or lives in the jurisdiction in which the Lawyer maintained his office, place of employment or address of record with the Virginia State Bar. (Rule V.B)

- Each petition, along with supporting documentation and the investigator’s memo is sent to one Board member for investigation and report (*See Handout No. 5 for example*) of the Investigator Memorandum). By Rule, the assigned Board member conducts such investigation as to him or her seems necessary and desirable in order (1) to determine whether the petition is for a Reimbursable Loss, and (2) to guide the Board in determining the extent, if any, to which the loss should be reimbursed from the Fund. (Rule V.C)
- The Board member who investigates a petition prepares a written report and recommendation as to whether the petition should be approved or denied. (*See Handout No. 7 for an example*) of an Investigator’s Report. Such report shall be available for inspection by the Board members attending the meeting at which the petition is reviewed. (Rule V.D). Although no “presentation” is required, the Board does typically have each Member present his or her report and recommendation.
- Upon request of a Board member, the Board shall hear the Petitioner, the Lawyer or such other evidence as may be presented. The Lawyer or his or her personal representative, or the Petitioner or his or her personal representative, may request to address the Board at a meeting at which the Board is considering the claim. Any such request must be made to the Chair or his or her designee, and the Chair may restrict or limit the length or subject matter of any statements permitted. (Rule V.E). We do not have a formal trial or evidentiary hearing.
- The Board, in its sole discretion and by a majority vote, determines whether a claim is approved or denied, and if approved, the amount of loss, if any, for which any Petitioner shall be reimbursed from the Fund. Although only a majority vote is required to approve or deny a petition, the Board tries very hard to reach a consensus/unanimity (Rule V.F, in part).
- Once a decision is made, CPF Counsel and the Administrator work together to issue notification and opinion letters to petitioners and attorneys explaining the CPF Board decision, and if applicable coordinate payment with the CPF Fiscal director.

Part IV: An Example Claim (15 Minutes)

- The following exemplar petition is an actual petition. Virginia Clients’ Protection Fund matters are subject to the Virginia Freedom of Information Act and are a matter of public record.
- Petition No: CPF NO. 21-555-003333. Petitioner was Ms. James (Ms. James was the fee payor, Rashaun Taylor was the actual client), Petitioner CPF Attorney was Mr. La Mondue. Investigating Board Member was Brian D. Lytle.
- Petitioner James alleged Respondent Virginia attorney La Mondue charged her a flat \$50,000 fee to represent her grandson at his (Federal) criminal trial contingent upon

court-approval of Respondent's representation. When the court denied Respondent's motion to represent Mr. Taylor, Respondent did not refund the \$50,000.00.

- Respondent La Mondue asserted that he charged Petitioner \$50,000 (or alternatively \$100,000), of which \$20,000 was a non-refundable retainer, and of the \$30,000 balance he earned and kept part (\$15,837.50) and refunded the unearned part (\$14,162.50).
- Note that the Board does not have subpoena power, and as noted, nor formal trial or evidentiary hearing occurs. In this petition, the investigator considered Virginia State Bar materials, including the disciplinary matters that pertained to the conduct forming the basis of the Petition along with two exhibits from that hearing, communication with petitioner by email and by phone, communication with Respondent by email, and the investigator obtained and reviewed the relevant criminal trial documents via Pacer.
- The investigator's recommendation and report (See Handout No. 7).
- The Board granted the petition, and then later denied Respondent's petition for reconsideration.

HANDOUTS:

1. CPF Rules
2. National Survey of Dishonest Conduct Definitions
3. Petition: CPF NO. 21-555-003333
4. Respondent's response to the Petition. Respondent's response to the investigator.
5. Memo to Investigator from Bar Counsel
6. VSB Memorandum Order of Suspension
7. Investigator's Report
8. Request for Reconsideration
9. Investigator's Supplemental Report