

CLIENTS' PROTECTION FUND RULES
RESOLUTION OF THE COUNCIL OF THE VIRGINIA STATE BAR

Establishing a Clients' Protection Fund

WHEREAS, it is the desire of the lawyers of Virginia acting through the State Bar to preserve and protect the honor and integrity of the profession, and;

WHEREAS, it is recognized that despite the high standards of ethical conduct required of and generally maintained by the Virginia State Bar, a member of the Virginia State Bar may engage in dishonest conduct and that such conduct may result in losses to clients, and;

WHEREAS, it is the desire of the Virginia State Bar to alleviate the injury to persons so sustaining loss or damage in certain cases.

NOW, THEREFORE, BE IT RESOLVED BY THE VIRGINIA STATE BAR:

1. That there is hereby established a special Board of the Virginia State Bar to be known as the Clients' Protection Fund Board (hereinafter called the "Board") whose function it shall be to receive, hold, manage and distribute, pursuant to the terms herein contained, such funds as may from time to time be appropriated to it by the Council of the Virginia State Bar or through voluntary contribution or otherwise for the purpose of maintaining the integrity and protecting the good name of the legal profession by reimbursing to the extent deemed proper and feasible by the Board losses caused by the dishonest conduct of members of the Virginia State Bar.
2. The Board shall consist of fourteen members, one of whom shall be a nonlawyer, appointed by the Council. One member shall be from each of the ten (10) Disciplinary Districts in Virginia, and four (4) shall be appointed from the State at large. All appointments shall be for a term of three years. No appointees shall serve more than two consecutive full terms until after the expiration of at least one year. Vacancies shall be filled by appointment by the President of the Virginia State Bar for the unexpired term.
3. The Board shall be authorized to consider petitions for reimbursement of losses arising after January 1, 1976 and 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 to the extent such losses are otherwise covered, provided such member has been disbarred or suspended from the practice of law pursuant to any provision of Paragraph 13 of Part 6, Section IV of the Rules of the Supreme Court of Virginia, has voluntarily resigned from the practice of law in Virginia, has died, has been adjudicated incompetent, has been the subject of a bankruptcy case that would stay, reduce or discharge the claims of the lawyer's past or present clients, or whose whereabouts is unknown to the Virginia State Bar. The Board shall be authorized and empowered to admit or reject such petitions in whole or in part, and the Board shall have complete discretion in determining the order, extent, and manner of payment. On establishing the Clients' Protection Fund, the Virginia State Bar does not create or acknowledge any legal responsibility for the acts of individual lawyers in the practice of law. All reimbursements of losses from the Clients' Protection Fund shall be in the sole discretion of the Board and not as a matter of right. No client or member of the public shall have any right in the Clients' Protection Fund as a third party beneficiary or otherwise. No attorney shall be compensated for presenting a petition except as authorized by the Board.
4. The Board shall operate pursuant to rules of procedure approved by the Council of the Virginia State Bar for the management of the Board's funds and affairs, for the presentation of petitions, and the processing and payment thereof.
5. All sums appropriated by the Council of the Virginia State Bar for the use of the Board shall be held and invested as a separate account known as Clients' Protection Fund, subject to the written direction of the Board under written Board rules approved by the Council of the Virginia State Bar; the interest or other income thereby received to be added to and automatically become a part of the Fund.
6. The Board may use or employ the Clients' Protection Fund for any of the following purposes within the scope of the Board's objectives, as heretofore outlined:
 - (a) To make payments or reimbursements on approved petitions as herein provided to clients and members of the public;

- (b) To purchase insurance to cover such losses in whole or in part, provided that such insurance is obtainable at reasonable costs and is deemed appropriate and provided that the purchase of such insurance is approved by the Council of the Virginia State Bar;
 - (c) To reimburse to the Virginia State Bar those costs of receiverships initiated by the Virginia State Bar occasioned by the need for the receiver to administer, pursue or defend assets, the recovery or preservation of which would inure to the benefit of one or more clients or other members of the public who have suffered losses as a result of the dishonest conduct of the Virginia State Bar member who is the subject of the receivership, acting as either a lawyer or as a fiduciary in the matter or matters in which the loss or losses occurred.
7. The administrative expenses of the Board shall be paid out of the general fund of the Virginia State Bar in accordance with policies established by the Council. However, the board annually at its discretion may contribute to the cost of administration by designating a sum to be paid out of the Clients' Protection Fund to the Virginia State Bar.
 8. The Board shall provide a full report of its activities at least yearly to the Council of the Virginia State Bar, and it shall make such other report of its activities and give only such publicity to same as the Council may deem advisable.
 9. The Council at any time may abolish the Board and the Fund. In the event of such abolition, all assets of the Fund shall be and remain the property of the Virginia State Bar to be used for its general purposes, as determined by the Council.
 10. The financial condition of the Clients' Protection Fund shall be reviewed annually in conjunction with the State Bar's annual budgeting process. The Council of the Virginia State Bar shall make appropriations adequate to maintain the funding of the Clients' Protection Fund at a reasonable level, provided, however, that no appropriation may be made which will increase the assets of the fund to an amount in excess of \$5,000,000.00.
 11. Payment shall be made from the Fund only upon condition that the Virginia State Bar receive a *pro tanto* assignment from the payee of the payee's assignable rights against the lawyer or others involved, their personal representatives, heirs, devisees and assigns, and upon condition that the Fund shall be entitled to reimbursement on such terms as the Board may deem proper under the circumstances, including reimbursement of costs incurred in prosecuting a claim against said lawyer, his personal representatives, etc. The net proceeds collected by reason of such assignment shall be for the sole benefit of the Fund and applied thereto, and enforcement of this right shall be within the sole discretion of the Board.'
 12. The Board may give such publicity to awards made or to the work, procedures, and existence of the Clients' Protection Fund as it shall deem proper, except that in no case shall the name of the payee be stated in any release to the media. Copies of all releases shall be sent to the Executive Director of the Virginia State Bar to ensure conformity with this rule. No publicity shall be given to pending claims without the express approval of the Council of the Virginia State Bar.

**RULES OF PROCEDURE
OF THE CLIENTS' PROTECTION FUND OF THE VIRGINIA STATE BAR**

I. Definitions

For the purpose of these Rules of Procedure, the following definitions shall apply:

1. The "BOARD" shall mean the Clients' Protection Fund Board.
2. The "FUND" shall mean the Clients' Protection Fund of the Virginia State Bar.
3. A "LAWYER" shall mean one who, at the time of the act complained of, was a member of the Virginia State Bar, was domiciled in Virginia, and was actually engaged in the practice of law in Virginia. The fact that the act complained of took place outside of the State of Virginia does not necessarily mean that the Lawyer was not engaged in the practice of law in Virginia.
4. A "PETITIONER" or "CLAIMANT" shall mean a person or entity that applies to the Clients' Protection Fund Board for payment pursuant to the rules applicable to the Fund.
5. "REIMBURSABLE LOSSES" are limited to actual, out-of-pocket or quantifiable losses, supported by documentation, of money or other property that meet the following tests:

- (a) The conduct which occasioned the loss occurred on or after January 1, 1976.
 - (b) The loss must be caused by the dishonest conduct of the Lawyer and shall have arisen out of and by reason of a lawyer-client relationship or a fiduciary relationship between the Lawyer and the Claimant.
 - (c) The Lawyer has been disbarred or suspended from the practice of law pursuant to any provision of Paragraph 13 of Part 6, Section IV of the Rules of the Supreme Court of Virginia, has voluntarily resigned from the practice of law in Virginia, has died, has been adjudicated incompetent, has been the subject of a bankruptcy case that would stay, reduce or discharge the claims of the Lawyer's past or present clients, or whose whereabouts is unknown to the Virginia State Bar.
- 5.1 The following shall be excluded from "REIMBURSABLE LOSSES":
- (a) Losses of spouses, other close relatives, partners, associates and employees of Lawyers causing the losses;
 - (b) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated;
 - (c) Losses of any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;
 - (d) Losses by any business entity controlled by the Lawyer;
 - (e) Losses incurred by any governmental entity or agency;
 - (f) Losses occasioned by a loan or an investment transaction with a Lawyer, unless it arose out of and in the course of the attorney-client relationship and but for the fact that the dishonest attorney enjoyed an attorney-client relationship with the Claimant such loss could not have occurred. In considering whether that standard has been met, the following factors will be considered:
 - 1. The disparity in bargaining power between the attorney and the client and their respective educational backgrounds and business sophistication.
 - 2. The extent to which the attorney-client relationship overcame the normal prudence of the applicant.
 - 3. The extent to which the attorney, by virtue of the attorney-client relationship with the applicant, became privy to information as to the applicant's financial affairs.
 - 4. Whether a principal part of the service arose out of a relationship requiring a license to practice law.
 - (g) Claims by a Petitioner for damages for a cause of action in which a Lawyer represented a Petitioner and that never resulted in a settlement or judgment;
 - (h) Claims for interest, late fees, penalties, surcharges or other consequential damages, even if such damages arise out of Reimbursable Losses.
6. "DISHONEST CONDUCT" may include, but is not necessarily limited to
- (a) 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;
 - (b) 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.
- 6.1 The Board shall exercise its discretion in deciding whether a Lawyer committed Dishonest Conduct. In making its determination, the Board may consider as compelling evidence of such Dishonest Conduct, in addition to other factors:
- (a) an order from any court or disciplinary tribunal disciplining a Lawyer for the same act or conduct alleged in a Petition or otherwise finding that a Lawyer committed Dishonest Conduct; or
 - (b) a final judgment imposing civil or criminal liability upon a Lawyer for such conduct.

II. Application for Reimbursement

1. The Board shall prepare a form of Petition for reimbursement; in its discretion the Board may waive a requirement that a Petition be filed on such form.
2. At a minimum, the form shall require the Petitioner to state:
 - (a) The name, address and telephone number of the Petitioner.
 - (b) The name and last known address of the Lawyer allegedly responsible for the claimed loss.
 - (c) The amount of the loss claimed.
 - (d) Documentation supporting the loss, including proof of payment for monies the Petitioner or anyone on his behalf paid directly to the Lawyer.
 - (e) The date or period of time the alleged loss occurred.
 - (f) A description of the efforts by the Petitioner to recover the alleged loss from the Lawyer or from other sources of payment besides the Virginia State Bar.
 - (g) The notarized signature of the Petitioner.
3. The Petition shall contain the following statement in bold type:

“IN ESTABLISHING THE CLIENTS’ PROTECTION FUND, THE VIRGINIA STATE BAR DID NOT CREATE OR ACKNOWLEDGE ANY LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS IN THE PRACTICE OF LAW. ALL REIMBURSEMENTS OF LOSSES FROM THE CLIENTS’ PROTECTION FUND SHALL BE IN THE SOLE DISCRETION OF THE BOARD ADMINISTERING THE FUND AND NOT AS A MATTER OF RIGHT. NO CLIENT OR MEMBER OF THE PUBLIC SHALL HAVE ANY RIGHT IN THE CLIENTS’ PROTECTION FUND AS A THIRD PARTY BENEFICIARY OR OTHERWISE.”
4. Petitions shall be submitted to the central office of the Virginia State Bar in Richmond, Virginia. If the staff of the Virginia State Bar determines that the Petition complies with the minimum requirements of these Rules, the Petition or informative summary thereof shall be transmitted to the Chair of the Board and each member of the Board.

III. Processing Petitions

1. The Chair of the Board or such bar staff as the Chair designates shall cause each Petition to be sent to a member of the Board or other member of the Virginia State Bar for investigation and report. A copy shall be sent by certified mail, return receipt requested, to the Lawyer at his address of record maintained by the membership department of the bar. An additional copy of the Petition may also be sent to the Lawyer at an address other than the Lawyer’s address of record. The Lawyer or his representative may respond to the Petition within thirty (30) days of the date of the letter or letters transmitting the Petition to him.

Petitions shall be assigned considering 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.
2. A member to whom a Petition is referred for investigation shall conduct such investigation as to him seems necessary and desirable in order to determine whether the same is for a Reimbursable Loss and in order to guide the Board in determining the extent, if any, to which the loss should be reimbursed from the Fund. The Clerk of the Disciplinary System, District Committees, Disciplinary Board, and Office of Bar Counsel of the Virginia State Bar shall allow such member to have access, during such investigation, to the files and records, if any, pertaining to the Petition. Any information obtained by the member from these files and records shall be used solely by or for the Clients’ Protection Fund Board.
3. When, in the opinion of the member to whom the Petition has been referred, the Petition is clearly not for a reimbursable loss, no further investigation need be conducted, but a report with respect to such Petition shall be made by the member to whom the Petitioner was referred, as hereinafter specified.
4. Reports with respect to Petitions shall be submitted by the members to whom they have been referred for investigation to the Chair of the Board. Copies of all reports shall be distributed to all Board members for review prior to each meeting.

5. No Petition with respect to which an inadequate opportunity for investigation has been afforded need be considered by the Board for reimbursement in the year in which such claim is presented.
6. In those instances where the reporting member in his report suggests or any other member of the Board, after studying the reports of Petitions to be processed, requests that the Board hear evidence, the Board shall hear the Petitioner, the attorney complained of and such other evidence as may be presented. Absent such recommendation or request, Petitions may be processed on the basis of information contained therein and in the report of the member who investigated such Petitions. In all cases, the attorney complained of or his personal representative will be given an opportunity to be heard by the Board if he so requests. The Petitioner shall be given an opportunity to be heard by the Board if the attorney complained of exercises his right to be heard by the Board.
7. The Board shall, in its sole discretion, determine the amount of loss, if any, for which any Petitioner shall be reimbursed from the Fund. In making such determination, the Board shall consider *inter alia*, the following:
 - (a) Any conduct of the Petitioner which contributed to the loss.
 - (b) The loss to be paid to any one Petitioner shall not exceed \$50,000 for losses incurred on or after July 1, 2000, or \$25,000 for losses incurred prior to July 1, 2000. For purposes of this provision, the Board may regard two or more persons, firms or entities as one Petitioner with respect to a Lawyer's dishonest conduct in handling a given matter where the facts and entities are found to justify such a conclusion.
 - (c) The total amount of losses reimbursable hereunder on account of the misconduct of any one lawyer or association of lawyers (including, without limitation, a law firm, professional corporation, or an office-sharing arrangement among lawyers) shall be limited to ten percent (10%) of the net worth of the Clients' Protection Fund at the time the first claim is made. In the event of multiple claims on account of the misconduct of any one lawyer or association of lawyers, claims may be considered in any order or grouping which the Board, in its discretion, finds appropriate, taking into account the equities and timeliness of each claim, and no further payment shall be made in respect to misconduct of any one lawyer or association of lawyers once the ten percent limit has been reached.
 - (d) The total amount of reimbursable losses in previous years for which payment has not been made and the total assets of the Fund.
 - (e) The Board may, in its sole discretion, allow further payment in any year on account of a reimbursable loss allowed by it in prior years which has not been fully paid; provided such further payment would not be inconsistent or in conflict with any previous determination with respect to such loss.
 - (f) No payment shall be made upon any Petition, a summary of which has not been submitted to the members in accordance with these Rules of Procedure. No payment shall be made to any Petitioner unless said payment is duly approved by the Board.
 - (g) No claim shall be considered by the Board unless the same shall have been filed within seven years from the date of the occurrence giving rise to the claim, or within one year after the first occurrence of one of the events set forth in Paragraph I.4.(c), whichever date is later.
 - (h) The Board may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.
8. A member who has or has had a lawyer-client 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. A member with any other past or present relationship with a Claimant or the Lawyer whose alleged conduct is the subject of the claim, shall disclose such relationship to the Board and, if the Board deems appropriate, that member shall not participate in any proceeding relating to such claim.
9. No person shall have the legal right to reimbursement from the Fund. The claimant or respondent may request reconsideration in writing within 30 days of the denial or determination of the amount of a claim. If the claimant or respondent fails to make a request or the request is denied, the decision of the Board is final. There shall be no appeal from a decision of the Board.
10. A Lawyer 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.

IV. Assignment When Payment Made

In the event payment is made from the Fund to a Petitioner, the Fund shall require an assignment from the Petitioner of such claim as he may have against the Lawyer complained of and may bring such action thereon in the name of the Petitioner as is deemed advisable against the Lawyer, his assets or his estate. The Petitioner shall be required to execute such an assignment. Prior to the commencement of an action by the Board, it shall advise the Petitioner thereof at his last known address. The Petitioner may then join in such action to press a claim for his loss in excess of the amount of the payment made by the Fund or for any other claims. The Board may impose such other conditions and requirements as it may deem appropriate in connection with payment to any Petitioner.

V. Payment of Receivership Costs

Costs of any Virginia State Bar receivership occasioned by the need for the receiver to administer, pursue or defend assets, the recovery or preservation of which would inure to the benefit of one or more clients or other members of the public who have suffered losses as a result of the dishonest conduct of the Virginia State Bar member who is the subject of the receivership, acting as either a lawyer or as a fiduciary in the matter or matters in which the loss or losses occurred, shall be documented and certified to the Board by the Virginia State Bar staff for consideration of payment from the Fund by the Board as an agenda item at a meeting of the Board.

VI. Meeting of the Board

1. The Board shall meet annually after the close of the fiscal year, but not later than September. In addition, the Board shall meet from time to time upon call of the Chair, or of any two members of the Board.
2. The members shall be given not less than 15 days' written notice of the time and place of the annual meeting and not less than 5 days' written notice of each special meeting. Notice of any meeting may be waived by a member either before or after the meeting.
3. A quorum at any meeting of the Board shall be six (6) members. No action shall be taken by the Board in the absence of a quorum; except that any action which might be taken at a meeting may be taken without a meeting if a consent in writing, setting forth the action so to be taken, shall be signed before such action by all the members of the Board.
4. Written minutes of each meeting shall be prepared and permanently maintained.
5. The Chair of the Board shall be elected by a majority of the Board at each annual meeting; his term shall extend until the next annual meeting of the Board and until his successor is elected and qualified. Should a vacancy occur in the office of Chair, such vacancy shall be filled by like vote of the members of the Board at the meeting next following the occurrence of the vacancy.

VII. General Purposes

These Rules of Procedure shall be liberally interpreted and, in any given case, the Board may waive technical adherence to these Rules of Procedure in order to achieve the objectives of the Fund, as contained in the enabling Resolution establishing the Fund.

VIII. Authorized Investments

Investment of monies of the Clients' Protection Fund shall be restricted to the following:

- (a) Interest-bearing deposits (including as well certificates of deposit) in federally insured banks and savings institutions located in the state of Virginia.
- (b) Direct obligations of the Commonwealth of Virginia and the United States Government, and securities of entities created by Congress and authorized to issue such securities; provided that no such deposit, certificate or obligation shall have a maturity beyond ten years from the date of the investment; and provided further that the interest, discount or other gain or income realized from any such investment, net of any bank or brokerage charges incurred in connection therewith, shall automatically become a part of the Fund.

IX. Amendments

These Rules may be changed at any time by a majority vote of the Board at a duly held meeting at which a quorum is present, and subject to the approval of the Council of the Virginia State Bar.