

## **Detailed Statement of Revisions**

### **Outline Summary of Revisions to Resolution and Rules of Procedure**

Resolution Establishing a Clients' Protection Fund Resolution and Rules of Procedure as follows:

#### **Purpose, Funding, Authority and Administration**

Paragraph 1	Purpose and Funding
Paragraph 2	CPF Board
Paragraph 3	Powers of the Board
Paragraph 4	Eligible Claims
Paragraph 5	Duties and Responsibilities of the Board
Paragraph 6	Board Meetings
Paragraph 7	Notice of Meetings
Paragraph 8	Quorum
Paragraph 9	Officers and Terms
Paragraph 10	Conflict of Interest

#### **Rules of Procedure**

Section I	Definitions
Section II	Board's Discretion and Factors to Consider in Evaluating Petition
Section III	Petition for Reimbursement
Section IV	Processing Petitions
Section V	Request for Reconsideration
Section VI	Restitution to Fund
Section VII	Assignment and Subrogation
Section VIII	Payment of Receivership Costs
Section IX	Confidentiality
Section X	General Purposes
Section XI	Amendments

## **CLIENTS' PROTECTION FUND RULES**

### **PURPOSE, FUNDING, AUTHORITY AND ADMINISTRATION**

#### **PARAGRAPH 1 PURPOSE AND FUNDING**

Paragraph 1 sets forth (1) the purpose of the CPF; (2) the roles and duties of the CPF Board and Council; (3) the funding of the CPF, including the statutory assessment, Council's annual review of the financial condition of the CPF, limited authorized investments, and the application of interest and income from any source; and (4) Council's authority to abolish the CPF, at which time the CPF remains the property of the bar, the use of which is to be determined by Council.

Paragraph 1 largely restates the applicable provisions of the 1976 Resolution establishing the CPF (Resolution) as to the purpose of the CPF and the duties of the CPF Board and Council and Council's authority to abolish the CPF, with reference to subsequently enacted legal authority.

Subparagraph A references [Part Six, Section IV, Paragraph 16 of the Rules of Court](#) (Paragraph 16) enacted pursuant to [Va. Code § 54.1-3913.1](#). Both Paragraph 16 and Va. Code § 54.1-3913.1 postdate the Resolution. Consistent with the Resolution, Paragraph 16 states the purpose of the CPF and provides for a CPF Board to receive, hold, manage, invest and distribute funds appropriated by Council or otherwise received, in accordance with the CPF rules of procedure, approved by Council. Paragraph 16 also authorizes a \$25.00 special assessment on VSB members to fund the CPF and provides that the bar shall report annually to the Supreme Court of Virginia on the financial condition of the CPF and that the assessment shall be discontinued whenever directed by the Court.

Subparagraph C references Va. Code § 54.1-3913.1, which permitted the Court to adopt Paragraph 16 and assess members up to \$25.00 for the CPF to be paid into the State Treasury of Virginia and transferred to the CPF. Council's duty to make appropriations to maintain the CPF at an adequate level derives from the Resolution, Paragraph 10. The portions of Paragraph 10 that did not permit appropriations in excess of \$5,000,000 have been deleted in light of the enactment of Va. Code § 54.1-3913.1.

Subparagraph D is consistent with the Resolution, Paragraph 10, that Council shall review the financial condition of the CPF annually in conjunction with the VSB's budgetary process. Paragraph D adds that at the time of the annual review, Council may approve disbursements to the CPF.

Subparagraph E, the Authorized Investment Rule, has been moved from section VIII of the Rules of Procedure and modified to permit investments in interest-bearing deposits and corporate notes as authorized by the Virginia Security for Public Deposits Act, Va. Code §§ [2.2-4407](#), [2.2-4509](#), [2.2-4510](#) and [2.2-4518](#). These limited additional investment options are consistent with the conservative investments authorized for other Virginia agencies and promote the dual goals of preserving and protecting the CPF and enhancing the potential for modest growth.

Subparagraph 1.F. is consistent with Resolution, Paragraph 5, which provides that the interest or other income received by the CPF is to be added to and automatically become a part of the CPF.

Subparagraph G restates the Resolution, Paragraph 9.

## **PARAGRAPH 2 THE CLIENTS' PROTECTION FUND BOARD**

Paragraph 2 restates the Resolution, Paragraph 2 and clarifies that a Board member may not be reappointed until the expiration of one year after his/her second full term.

## **PARAGRAPH 3 POWERS OF THE BOARD**

Paragraph 3 restates the Resolution, Paragraph 6 a – c regarding the purposes for which the Board can use the monies in the CPF and adds that the Board may pay its operating expenses in accordance with Council policies. The latter provision is consistent with the Resolution, Paragraph 7, which allowed the Board to contribute to its administration costs by designating a sum to be paid out of the CPF to the VSB.

## **PARAGRAPH 4 ELIGIBLE CLAIMS**

Paragraph 4 is substantially similar to the Resolution, Paragraph 3. The changes are to the organization and structure and to ensure that the Rule defining Eligible Claims is consistent with corresponding language in the CPF Rules of Procedure and the actual practice of the CPF Board. The noteworthy changes include:

- Changes verb tense from the Board “shall be” to “is” authorized to consider eligible claims and deletes reference to January 1, 1976, as unnecessary forty years after the CPF creation.
- Modifies losses to be reimbursed as “actual, quantifiable losses.” The revision is intended to make all CPF Rules internally consistent and clear.
- Adds: “The Fund is intended to be a remedy of last resort for persons who cannot obtain reimbursement from other sources.”
- Adds: “The Fund does not cover malpractice or the inadequate, insufficient 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.”

## **PARAGRAPH 5 DUTIES AND RESPONSIBILITIES OF THE BOARD**

Subparagraphs 1 and 2 requiring the Board to investigate, review and decide claims in accordance with its Rules of Procedure derive from Paragraph 16’s requirement that the Board distribute funds in accordance with Council procedures and are consistent with the Resolution, Paragraphs 3, 4, and 6(a), which authorize the Board to process and decide petitions in accordance with Council’s Rules of Procedure

Subparagraph 3, permitting the Board to make recommendations to Council as appropriate, was not previously expressly stated. The revision recognizes that the CPF Board, as administrator, manager and steward of the CPF, may guide Council as appropriate with respect to CPF policies and procedures.

Subparagraph 4, which requires the Board to report annually to Council, is consistent with the Resolution, Paragraph 8.

Subparagraph 5 provides that the Board may publicize, as permitted by law, its activities to the public and bar members. This revision is a change to the Resolution, Paragraph 8, which permitted only such publicity as Council deems advisable.

Subparagraph 6's requirement that the Board manage funds stems from Paragraph 16 and is consistent with the Resolution, Paragraph 1.

## **PARAGRAPH 6 BOARD MEETINGS**

Paragraph 6 derives from Rule of Procedure, VI, Paragraph 1, that the Board shall meet at least one time during each fiscal year. Paragraph 6 strikes the requirement that the Annual Meeting must be the first meeting of the year scheduled by September 30. Language has been added that the Board shall meet as frequently as necessary to conduct the business of the Fund and to timely process claims. The current language allowing for meetings upon call of the Chair or two members, remains. Paragraph 6 requires written minutes consistent with Rule of Procedure VI, Paragraph 4 requiring written minutes, but it is revised to provide that such minutes shall be maintained as provided by law and Library of Virginia guidance, instead of "permanently maintained."

## **PARAGRAPH 7 NOTICE OF MEETINGS**

Paragraph 7 derives from and restates current Rule of Procedure, VI, Paragraph 2.

## **PARAGRAPH 8 QUORUM**

Paragraph 8 derives from and restates, with slight modifications, the current first sentence of Rule of Procedure, VI, Paragraph 3. The remainder of former Rule of Procedure VI, Paragraph 3 is deleted. Deleted language: "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." This language was deleted as possibly inconsistent with FOIA.

## **PARAGRAPH 9 OFFICERS AND TERMS**

Paragraph 9 derives from and restates Rule of Procedure, VI, Paragraph 5.

## **PARAGRAPH 10 CONFLICT OF INTEREST**

Paragraph 10 derives from and restates Rule of Procedure, III, Paragraph 8. The only change is in the first sentence changing "financial" to "fiduciary." "A Board member who has or has had an attorney-client relationship or ~~financial~~ fiduciary relationship with a Petitioner or Lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that Petitioner or Lawyer."

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

- **Proposed Rule of Procedure, I. A-E, Definitions, restates current Rule of Procedure, I. 1-5(a)-(c), Definitions.**

Proposed Rule of Procedure, I.C, defining “Lawyer,” deletes the requirement for the Lawyer to have been domiciled in Virginia.

Proposed Rule I.E., defining “Reimbursable Losses,” deletes current Rule of Procedure, I.5(a) as unnecessary because of the passage of time since the fund was created in 1976: “the conduct which occasioned the loss occurred on or after January 1, 1976.”

Proposed Rule of Procedure I.E.1 adds a provision to current Rule of Procedure I.5.b., “The Fund is intended to be a remedy of last resort for persons who cannot obtain reimbursement from other sources. The Fund does not cover malpractice or the inadequate, insufficient 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. Fee disputes are not reimbursable losses.” This clarification is to ensure internal consistency in the definition of Eligible Claims and the Rules of Procedure and to ensure that the Rules of Procedure reflect actual practice.

- **Rule of Procedure I.F., Exclusions from Reimbursable Losses restates current Rule of Procedure I.5.1(a)-(h) with the following revisions:**

Current Rule of Procedure I.5.1(a) excludes from Reimbursable Losses the losses of “spouses, other close relatives, partners, associates and employees of Lawyers causing the losses.”

Proposed Rule of Procedure I.F.1 clarifies that the claims of the following classes of persons who have a familial or business relationship with the Lawyer are not reimbursable: “spouses, parents, children, grandparents, siblings or other close relatives, partners, associates, employers and employees of the Lawyer causing the losses.”

Proposed Rule of Procedure I.F.2 is consistent with current Rule I.5.1(d).

Proposed Rule of Procedure I.F.3 is consistent with current Rule I.5.1(e).

Proposed Rule of Procedure I.F.4 is consistent with current Rule I.5.1(f).

Proposed Rule of Procedure I.F.5 is new. The exclusion of losses arising from the malpractice or the inadequate, insufficient or negligent rendition of services is intended to ensure clarity and consistency with the definition of Eligible Claims, the Rules of Procedure and actual practice.

Proposed Rule of Procedure I.F.6 is consistent with current Rule I.5.1(g).

Proposed Rule of Procedure I.F.7 is consistent with current Rule I.5.1(h).

Proposed Rule of Procedure I.F.8 contains current Rules I.5.1(b) and (c), but clarifies that the described losses are not covered because the Fund is a remedy of last resort and the Petitioner must first pursue other sources of recovery. These revisions are to ensure clarity and internal consistency. Proposed Rule I.F.8 also adds as a subcategory of excluded losses those losses that may be covered from any source, such as through litigation, mediation or enforcement of a judgment by a Petitioner. This exclusion is added to make the Rules consistent with practice and clear to the Board, the public and VSB members.

- **Proposed Rule of Procedure I.G., definition of Dishonest Conduct, restates current Rule of Procedure I.6, with the following revision:**

Rule I.G.3 is new. “The Fund does not cover malpractice or the inadequate, insufficient 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.” This revision is for clarity and internal consistency within the Rules and with practice.

- **Proposed Rule of Procedure II, Board’s Discretion and Factors to Consider in Evaluating Petition, restates current Rule of Procedure 6.1.**

The only revision is in the second sentence, “In making its determination, the Board may consider as ~~compelling~~ evidence of such Dishonest Conduct, in addition to other factors ...” The word “compelling” is deleted from the proposed rule.

- **Proposed Rule of Procedure III, Petition for Reimbursement, derives from current Rule of Procedure II. Rule III’s proposed revisions seek additional information through the Petition for Reimbursement form to assist in the timely, thorough and accurate evaluation of Petitions.**

Proposed Rule of Procedure III.A. restates current Rule of Procedure II.1, except to provide that VSB staff, not the Board, shall prepare the Petition form.

Proposed Rule of Procedure III. revises current Rule of Procedure II.3 to clarify to the public that the CPF is a remedy of last resort, and Petitioners must pursue other recovery options before filing a claim. This revision of the language to be displayed prominently on the Petition form is to ensure consistency and clarity between the Rules and the Petition.

Proposed Rule of Procedure III.C. restates and significantly revises Rule of Procedure II.2., as to Petition requirements.

Paragraphs 5-8 and 10-16 are new requirements.

Proposed Rule of Procedure III.D. requires that information and statements by Petitioner be under oath.

- **Rule of Procedure IV, Processing Petitions, restates and derives from current Rule of Procedure III with the following revisions:**

Proposed Rule of Procedure IV.A. restates current Rule of Procedure III.1. with the modification that bar staff, instead of the Board Chair or such staff the Chair designates, shall promptly send each Petition to a Board member for investigation. This revision acknowledges the current and historic practice and facilitates efficient distribution and review of petitions.

Proposed Rule of Procedure IV.B. restates the second paragraph of current Rule of Procedure Rule III.1.

Proposed Rule of Procedure IV.C. restates current Rule of Procedure III.2, with minor language changes for clarity.

Proposed Rule of Procedure IV.D. changes language in current Rule of Procedure III.4 stating Petition should be “paid or denied” to “approved or denied.”

Current Rule of Procedure III.5. has been deleted as unnecessary verbiage.

Proposed Rule of Procedure IV.E. revises current Rule of Procedure III.6 to clarify the procedure for the Board’s receipt of evidence and/or information relating to claims. The proposed revision does not substantively change current Rule of Procedure III.6.

Proposed Rule of Procedure IV.F. revises current Rule of Procedure III.7 to add the underlined portion below:

“The Board shall, in its sole discretion and by a majority vote, determine 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 should aspire to come to a consensus on every Petition...”

Proposed Rule of Procedure IV.F.7.e deletes the following language from Rule of Procedure III.7.g. regarding claims that will not be considered by the Board unless filed within seven years from the date the Petitioner knew or should have known of the Dishonest Conduct or within one year after the first occurrence of certain enumerated events, whichever is later:

(e). the Lawyer has been the subject of a bankruptcy that would stay, reduce or discharge the claims ~~of the Lawyer’s past or present clients;~~

➤ **Proposed Rule of Procedure V, Request for Reconsideration, restates current Rule of Procedure III.9, with one change:**

“The Petitioner or Lawyer may request reconsideration in writing within thirty (30) days of the ~~denial or determination of the amount of a claim~~ decision.”

➤ **Proposed Rule of Procedure VI, Restitution to Fund, restates current Rule of Procedure III.10.**

- **Proposed Rule of Procedure VII, Assignment and Subrogation, restates current Rule of Procedure IV, with revisions as follows:**

The current first sentence requires Petitioner to execute an assignment of the Petitioner's claims against the Lawyer if the Fund pays Petitioner, and further provides that the Fund can bring an action in the Petitioner's name against the Lawyer or the Lawyer's successors in interest.

The proposed revision clarifies the Petitioner's obligation to execute an assignment of his or her rights against the Lawyer if the Board pays the claim. The proposed revision also clarifies how the bar may bring an action pursuant to the assignment.

Proposed Rule of Procedure VII further adds a new sentence: "The net proceeds collected by reason of such assignment shall be for the sole benefit of the Fund and deposited therein, and enforcement of this right shall be within the sole discretion of the Board."

- **Proposed Rule of Procedure VIII, Payment of Receivership Costs, restates current Rule of Procedure V.**
- **Rule of Procedure IX, Confidentiality, derives and departs from Resolution, Paragraph 12, which restricted publication. The proposed revision clarifies that the dissemination of information about CPF claims will comply with Virginia law.**
- **Proposed Rule of Procedure X, General Purposes, restates current Rule of Procedure VII regarding liberal interpretation of the Rules of Procedure, with deletion to reference to the Resolution.**
- **Proposed Rule of Procedure XI, Amendments, restates current Rule of Procedure IX.**