

Executive Director's Message

by Karen A. Gould



The Clients' Protection Fund Assessment

EFFECTIVE JULY 1, 2018, the Supreme Court of Virginia has reduced the amount active lawyers are required to pay to the Clients' Protection Fund from \$25 to \$10.

The CPF assessment, a statutory requirement, is due to sunset on June 30, 2020, unless extended by the General Assembly. The VSB is seeking to have the assessment continued until July 1, 2023.

The CPF is the last option for clients who have suffered financial losses from the dishonest conduct of Virginia lawyers whose licenses have been suspended or revoked. Claimants must have exhausted all other possible avenues of recovery before seeking reimbursement from the CPF. The fund is a critical component of self-regulation. Every state has the equivalent of a Clients' Protection Fund. It is important for Virginia's CPF to be adequately funded to meet the needs of future claims arising from defalcation. Continuation of the assessment will ensure that this will happen.

For the first 20 years of the fund's existence, the VSB transferred money from its operating budget to the CPF or made loans, later forgiven, with the express purpose of accruing interest income to capitalize the CPF. The contributions to the CPF were inconsistent and dependent on the VSB year-end financial position. In 1995, the Joint Legislative and Audit Review Commission (JLARC) recommended that the General Assembly consider statutory authorization to maintain and finance the CPF through a specific

funding mechanism. In 1996, the General Assembly provided statutory authority for the CPF and required the VSB to use its annual budgetary process to appropriate revenue for the CPF.

In 2003, claims paid exceeded \$200,000 (\$244,893) for the first time, and the claims remained over \$200,000 (\$227,074 and \$280,956) for the next two years. In 2004 and 2005, the VSB had to make large contributions to the fund — \$500,000 and \$250,000.

Actuarial Study

A 2005 actuarial study recommended the CPF reach a corpus of \$9 million to provide interest earnings sufficient to satisfy projected future claims. The study opined that with an annual assessment of \$25 per year, the CPF would reach \$9 million by 2015.

Following up on the recommendation of the 2005 actuarial study, the VSB decided in 2006 to seek a special annual assessment payable by each active member of the VSB. An annual assessment would provide consistent and independent funding. Such funding would help the CPF grow to a sustainable level and enable payment of most claims in full. The Council and Supreme Court approved seeking a proposed amendment to Va. Code § 54.1-3913.1 to permit the Supreme Court to adopt rules and regulations providing for a special assessment up to \$25 for the Clients' Protection Fund.

The General Assembly passed the proposed change to the statute, and the Court amended the dues provi-

sion to provide for a CPF fee. The 2007 changes to Paragraph 16, Part Six, Section IV of the Rules of Court governing the Virginia State Bar read as follows:

Effective, July 1, 2007, each active member of the Virginia State Bar shall be assessed a required fee of \$25 for the Clients' Protection Fund on the bar's annual dues statement. The fee shall be in addition to each member's annual dues as presented in Part 6, Section IV, Paragraph 11 of these rules, and it shall be paid on or before the 31st day of July each fiscal year. All monies collected under this Paragraph 16 shall be accounted for and paid into the State Treasury of Virginia and transferred by the bar from the Treasury to the Clients' Protection Fund. The bar shall report annually on or about January 15 to the Supreme Court of Virginia on the financial condition of the Clients' Protection Fund, and the assessment will be reduced or discontinued whenever directed by the Court.

In 2010 and 2012, due to large defalcations by attorneys Stephen Conrad and Troy Titus, the fund paid out \$900,560 and \$648,902 respectively. Even with the assessment, the VSB had to transfer \$100,000 to the CPF in 2012.

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In 2011, the VSB payee notification task force recommended strengthening the CPF by raising limits from \$50,000 to \$100,000 per claimant and increasing maximum payments for each defalcating attorney from 10 percent to 15 percent of the net worth of the CPF.

In 2013, a second actuarial study analyzed the effect of the increase on limits and recommended continuation of the assessment. As of FY 2014, the CPF had not achieved the \$9 million benchmark; the balance was slightly less than \$7 million, and the average yield on the conservative investments permitted the CPF (certificates of deposit, US governmental securities, and federal agency securities) was lower than the investment yield that formed the basis of the 2005 actuarial projections.

Assessment Extended

In 2014, at the request of the VSB, the General Assembly extended the assessment from 2015 to 2020.

On September 28, 2017, the Supreme Court of Virginia amended Paragraph 16 of Part Six, Section IV of the Rules of Court governing the Virginia State Bar, reducing the amount Virginia's active lawyers are required to pay to the Clients' Protection Fund from \$25 to \$10, effective July 1, 2018. As of September 30, 2017, the fund has grown to approximately \$9.7 million.

With approximately 31,000 active members, the \$10 assessment plus interest income will sustain payments of \$330,000 per year, which should be adequate to cover the average per year of claims approved over the last five years. The corpus of the fund will be available to cover any extraordinary needs in the event of a large-scale defalcation. The CPF Board has determined that a more

vigorous effort is necessary to ensure that the public is aware of the existence of the fund and those who should benefit from the fund have access to it.

The Virginia State Bar received permission from its governing body, Council, at its October 27, 2017, meeting to proceed with asking the General Assembly to amend Va. Code § 54.1-3913.1 to provide for a three-year extension beyond 2020. The Supreme Court of Virginia must also approve such a legislative endeavor.

For over 40 years, the VSB Clients' Protection Fund has compensated clients who have suffered financial losses resulting from the dishonest conduct of Virginia lawyers whose licenses have been suspended or revoked. The fund is a critical component of self-regulation.

Should you have any questions regarding the Clients' Protection Fund or continuation of the assessment, feel free to contact me at gould@vsb.org.



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