

CLIENTS' PROTECTION FUND BOARD MEETING
January 11, 2019 at 10:00 a.m.
Virginia CLE Offices
105 Whitewood Road
Charlottesville, Virginia 22901

AGENDA

- I. Call to Order – **Susan B. Tarley, Chair**
 - A. Officers
 - 1. Susan B. Tarley, Chair
 - 2. Adam D. Elfenbein, Vice Chair

- II. Approval of September 21, 2018 Minutes – **Susan Tarley – Tab 1**

- III. Review of Pending Petitions/Dockets – **Tab 2**

- IV. Committee and Financial Reports
 - A. Financial Report – **Crystal Hendrick – Tab 3**
 - 1. Collection Efforts – **Vivian Byrd**
 - B. Subcommittee Reports
 - 1. Public Awareness Subcommittee – **Sue Baker - Tab 4**
 - a. Report on efforts to increase awareness
 - b. Claims Report
 - 2. Finance Subcommittee Report – **Phillip Anderson**

- V. Board Administrative Matters
 - A. VSB Policy on Electronic Participation/FOIA – *to be adopted* – **Tab 5**
 - B. Policy on Meetings Outside Regularly Scheduled Meetings – *to be adopted* - **Tab 6**
 - C. Policy to pay CPF Board expenses for 2018-2019 – *to be adopted* – **Tab 7**
 - D. CPF Disqualification Rule – **Susan Tarley**
 - E. Implementing a Consent Agenda – **Susan Tarley**
 - F. Status Report – **Jane Fletcher**
 - G. CPF letter of appreciation from Jason Blye – **Tab 8**

- VI. Future Meeting Date
 - 1. May 3, 2019 (Richmond)

- VII. Adjourn



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The Virginia CLE Building

105 Whitewood Road
Charlottesville, VA 22901
(434) 979-5644 / (800) 979-VCLE (8253)

Map It

From Northern Virginia via Route 29:

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From Richmond via I-64 West:

I-64 to Exit 118B (Route 29). Travel several miles and then exit to the right at Barracks Rd. Turn left onto Barracks Road. At the second traffic light, turn right onto Georgetown Rd. Travel just under a mile to the stoplight where Georgetown Rd terminates, turn left onto Hydraulic Rd. Travel a short distance to the first traffic light at the intersection of Hydraulic and Whitewood Rd, then turn right onto Whitewood Rd. The Virginia CLE building is the second entry drive on your right.

From Harrisonburg via I-64:

I-64 to Exit 118B (Route 29). Travel several miles and then exit to the right at Barracks Rd. Turn left onto Barracks Road. At the second traffic light, turn right onto Georgetown Rd. Travel just under a mile to the stoplight where Georgetown Rd terminates, turn left onto Hydraulic Rd. Travel a short distance to the first traffic light at the intersection of Hydraulic and Whitewood Rd, then turn right onto Whitewood Rd. The Virginia CLE building is the second entry drive on your right.

From Lynchburg via Route 29:

Exit right onto Barracks Road exit. Turn left onto Barracks Road. At the second traffic light, turn right onto Georgetown Rd. Travel just under a mile to the stoplight where Georgetown Rd terminates, then turn left onto Hydraulic Rd. Travel a short distance to the first traffic light at the intersection of Hydraulic and Whitewood Rd, then turn right onto Whitewood Rd. The Virginia CLE building is the second entry drive on your right.

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VIRGINIA STATE BAR

Activities Report

2018-2019

Clients' Protection Fund

03-Jan-2019

Member	Address	Contact	Term Expires / Number
6 Susan Bradford Tarley, Esq. Chair	Tarley Robinson, PLC 4808 Courthouse St Ste 102 Williamsburg, VA 23188	757-229-4281 Fax:229-7439 starley@tarleyrobinson.com	2020 /2
4 Adam David Elfenbein, Esq. Vice Chair	Elfenbein Law, PLLC 2007 North 15th St Ste 4 Arlington, VA 22201	703-243-9223 Fax:243-9224 elflaw@verizon.net	2019 /2
8 Phillip Verne Anderson, Esq. Member	Frith Anderson & Peake, P.C. 29 Franklin Rd Roanoke, VA 24006-1240	540-725-3361 Fax:772-9167 panderson@faplawfirm.com	2020 /1
10 Donna Sue Baker, Esq. Member	D. Sue Baker, P.C. P.O. Box 429 Wise, VA 24293	276-328-8122 Fax:328-8130 bakerlawoffice@dsuebaker.com	2019 /2
3 Paul Geoffrey Gill, Esq. Member	Federal Public Defender Office Suite 3600 701 East Broad Street Richmond, VA 23219-1884	804-565-0870 Fax:648-5033 paul_gill@fd.org	2020 /1
7 Charles Franklin Hilton, Esq. Member	Wharton, Aldhizer & Weaver, P.L.C. 100 South Mason Street P.O. Box 20028 Harrisonburg, VA 22801-7528	540-434-0316 Fax:434-5502 fhilton@wawlaw.com	2021 /1
1 Kenneth B. Murov, Esq. Member	The Law Office of Kenneth B. Murov Suite B 716 J. Clyde Morris Boulevard Newport News, VA 23601	757-595-2100 Fax:595-7199 kbm@kbmurovlaw.com	2019 /1
9 Margaret Angela Nelson, Esq. Member	Margaret A. Nelson, PLLC 716 Court Street Lynchburg, VA 24504	434-528-1078 x10 Fax:845-0510 manelsonlaw@gmail.com	2019 /2
2 David Brandt Oakley, Esq. Member	POOLE BROOKE PLUMLEE PC 4705 Columbus Street Virginia Beach, VA 23462-6749	757-552-6035 Fax:552-6016 doakley@pbbp-attorneys.com	2019 /1
5 Mary Grace Anne O'Malley, Esq. Member	Mary Grace A. O'Malley, PLLC 9236 B Mosby Street Manassas, VA 20110	703-257-9777 Fax:562-6993 marygrace.omalley@gmail.com	2019 /1
Thomas Andrew Edmonds, Esq. Member at Large	9401 Michelle Place Richmond, VA 23229	804-740-5762 tomedmonds61@gmail.com	2021 /2
Melissa Walker Robinson, Esq. Member at Large	Glenn Robinson Cathey Memmer & Skaff PLC Fulton Motor Lofts 400 Salem Ave SW Ste 100 Roanoke, VA 24016	540-767-2200 Fax:767-2220 mrobinson@glenntrob.com	2021 /1

VIRGINIA STATE BAR

Activities Report

2018-2019

Clients' Protection Fund

03-Jan-2019

Member	Address	Contact	Term Expires / Number
Mary Yancey Spencer, Esq. Member at Large	305 Clovelly Road Richmond, VA 23221-0026	myspencer@verizon.net	2019 / 1
Dr. Theodore Smith Lay Member	Fredericksburg District Superintendent PO Box 100 Ladysmith, VA 22501	540-419-5131 rrds@vaumc.org	2019 / 1
Mrs. Vivian R. Byrd Liaison	Virginia State Bar 1111 E Main St Ste 700 Richmond, VA 23219-3565	804-775-0572 Fax:775-0545 byrd@vsb.org	--- / -

VIRGINIA STATE BAR
CLIENTS' PROTECTION FUND BOARD MEETING
September 21, 2018
Minutes

The Clients' Protection Fund Board convened at approximately 10:08 a.m. on September 21, 2018, at the Virginia State Bar Office, Third Floor Conference Room, Bank of America Building, Richmond.

Members of the board present:

Susan B. Tarley, Chair
Adam D. Elfenbein, Vice Chair, who joined the meeting at approximately 10:40 a.m.
Phillip V. Anderson
Sue Baker
Thomas A. Edmonds
Paul G. Gill, who departed the meeting at approximately 1:00 p.m.
Charles F. Hilton
Kenneth B. Murov, who joined the meeting at approximately 12:15 p.m.
Margaret A. Nelson, who departed the meeting at approximately 11:15 a.m.
David B. Oakley, who joined the meeting at approximately 10:15 a.m.
Mary Grace O'Malley, who joined the meeting at approximately 10:40 a.m.
Melissa W. Robinson
Mary Yancey Spencer
Dr. Theodore Smith

Virginia State Bar staff present:

Renu M. Brennan
Jane A. Fletcher
Paulo E. Franco, Jr., who departed the meeting at approximately 10:40 a.m.
Crystal T. Hendrick
Dianne M. Roland
Louann Weakland

I. Minutes

The board unanimously approved the minutes of the May 4, 2018 meeting.

II. Petitions for Reimbursements

The board considered a report on one request for reconsideration by petitioner, by counsel and decided as follows:

<u>Petition #</u>	<u>Petitioner</u>	<u>Atty.</u>	<u>Investigator</u>	<u>Claim Amt.</u>	<u>Decision</u>
18-555-003141	Nathanael Adam Gordon	Atkins	Nelson	\$15,000.00	Pay \$7,245.46

**CLIENTS' PROTECTION FUND BOARD MEETING
(September 21, 2018) Minutes**

The board considered reports on five requests for reconsideration by the CPF attorney and decided as follows:

<u>Petition #</u>	<u>Petitioner</u>	<u>Atty.</u>	<u>Investigator</u>	<u>Claim Amt.</u>	<u>Decision</u>
18-555-003143	Kizzy Michelle Pangle	Collette	Baker	\$3,125.00	Pay \$3,000.00
18-555-003149	Melissa J. Bland Thomas	Collette	Baker	\$4,700.00	Pay \$4,300.00
18-555-003156	Danielle E. Fletcher	Collette	Nelson	\$3,000.00	Pay \$3,000.00
18-555-003157	Margie A. Lilly	Collette	Nelson	\$2,500.00	Pay \$2,500.00
18-555-003159	Jason E. Blye	Collette	Baker	\$4,860.00	Pay \$4,360.00

The board considered a report on one request for reconsideration by a petitioner and decided as follows:

18-555-003134	Gillian James-Pinckney	Bean	Anderson	\$2,345.00	Affirm Denial ¹
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The board heard reports on five petitions carried over from the last meeting (5/4/18) and decided as follows:

<u>Petition #</u>	<u>Petitioner</u>	<u>Atty.</u>	<u>Investigator</u>	<u>Claim Amt.</u>	<u>Decision</u>	<u>Amt. Approved</u>
18-555-003128	Robert C. Lightburn	Atkins	Nelson	\$13,809.78	Deny	
18-555-003144	Jimmy R. Weatherholt	Collette	Baker	\$19,500.00	Pay	\$5,500.00
18-555-003147	Niesha Clark	Collette	Anderson	\$ 2,050.00	Pay	\$1,150.00
18-555-003155	Leonardo P. Alongi	Kennedy	Murov	\$88,274.00	Pay	\$3,400.00 ²
18-555-003158	Leslie A. Eaton	Blanke	Tarley	\$ 5,000.00	Pay	\$2,500.00

The board heard petitions not previously reviewed and decided as follows:

<u>Petition #</u>	<u>Petitioner</u>	<u>Atty.</u>	<u>Investigator</u>	<u>Claim Amt.</u>	<u>Decision</u>	<u>Amt. Approved</u>
18-555-003162	William L. Gaskins	Parrott	Elfenbein	\$45,825.00	Defer	
18-555-003166	Joseph Buchbauer	Collette	Gill	\$ 3,500.00	Pay	\$1,750.00
18-555-003167	Jessica Jake Wheeler	Phillips	Nelson	\$ 2,500.00	Pay ³	\$1,250.00 to Karen & George Jake, petitioner's parents
18-555-003168	Mohammed K. Khateeb	Collette	Gill	\$ 2,000.00	Defer	
18-555-003169	Muriel Risien-Epps	White	Spencer	\$ 750.00	Deny	
18-555-003170	John A. Tatoian	Andrews	Anderson	\$50,000.00	Deny ⁴	
18-555-003171	Donald B. McNeill, Jr.	Ngando	Smith	\$ 2,653.00	Pay	\$2,653.00
18-555-003173	Nicholas Karnaze	Allenbaugh	Oakley	\$ 2,500.00	Pay ⁵	\$2,500.00
18-555-003176	Mary A. Johnson	Barbour	Edmonds	\$ 1,500.00	Pay	\$750.00
19-555-003178	Donna M. Rondinelli	White	Tarley	\$53,250.00	Deny	
19-555-003179	Samantha Williamson	McGarvey	Spencer	\$5,000.00	Defer	
19-555-003180	Steven D. Ratliff	Barbour	Edmonds	\$1,200.00	Pay	\$1,200.00

¹ CPF Board Member Mary Grace O'Malley abstained from voting due to a conflict.

² CPF Board Member Kenneth Murov was only present for this petition; CPF Board Member Paul Gill was not present at this petition.

³ CPF Board Members Melissa Robinson and Phillip Anderson abstained from voting due to conflicts.

⁴ CPF Board Members Adam Elfenbein and Mary Grace O'Malley were not present for this petition.

⁵ CPF Board Member Kenneth Murov abstained from voting because he came late to the discussion.

**CLIENTS' PROTECTION FUND BOARD MEETING
(September 21, 2018) Minutes**

III. Committee and Financial Reports

Finance/Procurement Director Crystal Hendrick gave a general overview of the August 2018 Financial Report, which was accepted by the board.

Deputy Executive Director Renu Brennan reported that enhanced collection is a focus and that she and Client Protection Fund Administrator Vivian Byrd have met and are working with the Division of Debt Collection of the Attorney General's Office to develop a more systematic collection effort for the CPF. She stated that she will provide further updates at the next board meeting.

Assistant Clerk Louann Weakland presented Vivian Byrd's collection report:

- 1) Year-to-date, we received individual restitution totaling \$3,060.00 from four lawyers and debt set-off payments totaling \$853.22 from three lawyers:
 - John Coury Macdonald – revoked 3/23/07 ---- debt set-off
 - Steven Lieberman – revoked 2/20/09 ---- individual restitution
 - (2 payments from) Owaiian Jones – revoked 9/26/08 ---- individual restitution
 - Thomas R. Dyson – revoked 4/30/1997 --- individual restitution
 - Dennis L. Montgomery – revoked 10/31/1996 – debt set-off
 - Michael J. Conroy – revoked 2/20/1998 --- debt set-off
- 2) The board awarded payments to former clients of 14 lawyers last fiscal period (two were deceased). In June notices were sent to 12 of these lawyers encouraging them to pay past due CPF obligations. Jud Fischel paid \$2500, and his obligation is paid in full. Nancy Reed investigated this claim and the Board approved payment 1/25/18.

IV. Board Administrative Matters

The board discussed whether the rule disqualifying employees of respondents from submitting claims precludes clients who are not employed by the respondent during the attorney client relationship, but who subsequently are employed by the respondent, from filing a petition. Chair Susan Tarley is to review and determine whether to refer to the Rules Subcommittee.

Chair Tarley deferred discussion of a consent agenda to the next meeting.

Renu Brennan briefly reported that the work of the assessment committee is complete in that the Supreme Court has set the assessment at \$10 per active member and the statutory assessment has been continued to July 1, 2023.

Donna Sue Baker presented the Public Awareness Report:

- 1) CPF year-end press release issued on 9/7/18 (press release in meeting materials). Posted on social media, bar's homepage as a news item and CPF homepage.

**CLIENTS' PROTECTION FUND BOARD MEETING
(September 21, 2018) Minutes**

- 2) VSB local bar coordinator Paulette Davidson will send out monthly emails to local/specialty bar associations starting in October, which the board can use to increase awareness of CPF. Members discussed whether to present a CPF CLE to the local bars in their respective areas.
- 3) After each meeting, staff will coordinate with the board to discuss cases to include in the annual CPF press release.
- 4) To heighten awareness about our fund with other jurisdictions, Ms. Byrd will send Virginia's report to the ABA.
- 5) The CPF homepage has been updated to reflect the new assessment and the sunset extension.

The finance subcommittee selected Phil Anderson as chair.

V. Other Business

The board unanimously adopted the policy on participation by electronic means for the 2018-2019 board year.

CPF Counsel Jane Fletcher discussed the Virginia Freedom of Information Act (FOIA) and the Public Records Act (PRA) and the attendant obligations on board members. Ms. Fletcher also discussed the updated memo to the board members. The memo to the board members will include the names of assistant bar counsel and investigator who handled the underlying disciplinary matter.

Finally, Ms. Fletcher advised that six petitions have been filed this year, of which three have been assigned and three will be assigned.

Adjournment

The meeting adjourned at approximately 2:20 p.m.

CLIENTS' PROTECTION FUND BOARD
PENDING PETITIONS
Meeting of January 11, 2019

1/3/2019

<u>Petition Number</u>	<u>Petitioner</u>	<u>Attorney Involved</u>	<u>Investigator</u>	<u>Amount</u>	<u>Action</u>
Reconsideration requested by CPF Attorney					
18-555-003176	Mary A. Johnson	Brent Lavelle Barbour	Edmonds	\$ 1,500.00	Pay (09/21/2018)
19-555-003180	Steven D. Ratliff	Brent Lavelle Barbour	Edmonds	\$ 1,200.00	Pay (09/21/2018)
Reconsideration requested by Petitioner					
18-555-003167	Jessica Jake Wheeler	Charles Gregory Phillips	Nelson	\$ 2,500.00	Pay (09/21/2018)
18-555-003170	John A. Tatoian	William Lee Andrews, III	Anderson	\$ 50,000.00	Denied (09/21/2018)
Petitions carried over from meeting of 09/21/2018					
18-555-003162	William L. Gaskins	Christopher DeCoy Parrott	Elfenbein	\$ 45,825.00	Deferred (09/21/2018)
18-555-003168	Mohammed K. Khateeb	Shelly Renee Collette	Gill	\$ 2,000.00	Deferred (09/21/2018)
19-555-003179	Samantha Jane Williamson	John Fredrick McGarvey	Spencer	\$ 5,000.00	Deferred (09/21/2018)
New Petitions					
18-555-003174	Grazyna Bojakowski	Michael Anthony Lormand	Edmonds	\$ 17,500.00	
18-555-003177	Silue Wang	Robert Lyman Isaac Shearer, Jr.	O'Malley	\$ 11,500.00	
19-555-003181	Cynthia Caserta	Charles Gregory Phillips	Nelson	\$ 3,800.00	
19-555-003189	Bryant B. Coleman	Robert Lloyd Deatherage	Robinson	\$ 14,000.00	
19-555-003193	Sandra Kay Hall Skeens	Michael Alan Bishop	Baker	\$ 7,884.00	

CLIENTS' PROTECTION FUND BOARD
PENDING PETITIONS
Meeting of January 11, 2019

1/3/2019

<u>Petition Number</u>	<u>Petitioner</u>	<u>Attorney Involved</u>	<u>Investigator</u>	<u>Amount</u>	<u>Action</u>
Anderson - Reconsideration requested by Petitioner					
18-555-003170	John A. Tatoian	William Lee Andrews, III	Anderson	\$ 50,000.00	Denied (09/21/2018)
Baker - New Petitions					
19-555-003193	Sandra Kay Hall Skeens	Michael Alan Bishop	Baker	\$ 7,884.00	
Edmonds - Reconsideration requested by CPF Attorney					
18-555-003176	Mary A. Johnson	Brent Lavelle Barbour	Edmonds	\$ 1,500.00	Pay (09/21/2018)
19-555-003180	Steven D. Ratliff	Brent Lavelle Barbour	Edmonds	\$ 1,200.00	Pay (09/21/2018)
Edmonds - New Petitions					
18-555-003174	Grazyna Bojakowski	Michael Anthony Lormand	Edmonds	\$ 17,500.00	
Elfenbein - Petitions carried over from meeting of 09/21/2018					
18-555-003162	William L. Gaskins	Christopher DeCoy Parrott	Elfenbein	\$ 45,825.00	Deferred (09/21/2018)
Gill - Petitions carried over from meeting of 09/21/2018					
18-555-003168	Mohammed K. Khateeb	Shelly Renee Collette	Gill	\$ 2,000.00	Deferred (09/21/2018)
Nelson - Reconsideration requested by Petitioner					
18-555-003167	Jessica Jake Wheeler	Charles Gregory Phillips	Nelson	\$ 2,500.00	Pay (09/21/2018)
Nelson - New Petitions					
19-555-003181	Cynthia Caserta	Charles Gregory Phillips	Nelson	\$ 3,800.00	
O'Malley - New Petitions					
18-555-003177	Silue Wang	Robert Lyman Isaac Shearer, Jr.	O'Malley	\$ 11,500.00	
Robinson - New Petitions					

<u>Petition Number</u>	<u>Petitioner</u>	<u>Attorney Involved</u>	<u>Investigator</u>	<u>Amount</u>	<u>Action</u>
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19-555-003189	Bryant B. Coleman	Robert Lloyd Deatherage	Robinson	\$ 14,000.00	
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Spencer - Petitions carried over from meeting of 09/21/2018

19-555-003179	Samantha Jane Williamson	John Fredrick McGarvey	Spencer	\$ 5,000.00	Deferred (09/21/2018)
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Virginia State Bar

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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report

Supplemental Report

Investigating Board Member: Susie Baker

Petition #: 19-555-003193

Petitioner : Sandra Kay Hall Skeens

CPF Attorney: Michael Allen Bishop

CPF Attorney's Status: Deceased

Amount Requested: \$7,884.00

Amount Recommended: \$7,884.00

Action, if any, Petitioner took to recover claimed loss: None

Was sufficient documentation of loss provided? Yes No (explain, if necessary)

If actual, quantifiable loss was established, approximate date loss occurred* July, 2013- Present

Results of Investigation and Recommendation:

Sandra Kay Hall Skeens filed this petition to recover funds owed to her pursuant to a settlement reached after the death of her minor son. On July 22, 2013, while Mrs. Skeens was incarcerated, the Scott County Circuit Court approved a settlement in the wrongful death case of Dovie J. Guy, Administrator of the Estate of Samuel Ryan Finch, Deceased v. Town of Weber City, Virginia. The Order entered by the court stated that checks totaling \$40,000.00 had been delivered to Michael Allen Bishop, counsel for the Plaintiff. The Order further stated that \$13,333.00 was to be distributed to Mr. Bishop for attorney's fees, \$1,156.00 was to be paid to Mr. Bishop for litigation expenses and \$9,743.00 was to be distributed to the decedent's administrator. Remaining proceeds from the settlement were to be distributed to Samuel Finch, father of the decedent, Sandra Finch, mother of the decedent, Cody McMurray, half-brother of the decedent, and Tamara Berry, half-sister of the decedent, in amounts to be determined at a disbursement hearing. That hearing was scheduled by the parties but did not take place before Mr. Bishop died.

* Payments are limited to: \$50,000.00 per petitioner for losses that occurred before July 1, 2015 OR
\$75,000.00 for losses that occurred on or after July 1, 2015

On December 11, 2017, a disbursement hearing took place in the Scott County Circuit Court. The Order entered from that hearing states on "July 22, 2013, \$15,763 dollars was to be distributed to statutory beneficiaries who were incarcerated and or not present before the court. Mike Bishop attorney for the plaintiff was to hold said money in trust. Mr. Bishop died and said money was not found in his trust. . . All parties to the distribution were properly before the court and agreed that Father Samuel Finch was to receive \$7,884 of the proceeds and mother, Sandra K. Hall was to receive \$7,884 of the proceeds."

Mrs. Skeens has confirmed that she has received no payment from Mr. Bishop's estate. It is therefore my recommendation that Mrs. Skeens be paid the amount of \$7,884.00.

Investigating Board Member: Susie Baker
Date of Report: December 27, 2018

VIRGINIA:

IN THE CIRCUIT COURT OF SCOTT COUNTY

DOVIE J. GUY, Administrator of the)
Estate of SAMUEL RYAN LUCAS FINCH,)
Deceased)

Plaintiff)

Case No. CL11-169

v.)

TOWN OF WEBER CITY, VIRGINIA, et al.)
Defendants)

ORDER APPROVING SETTLEMENT

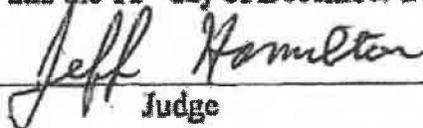
Comes now Father Samuel Finch by counsel, Mother Sandra K. Hall Skeens, half-brother Cody McMurry and half-sister Tamara Berry by counsel brought before the court on:

December 11, 2017 Samuel Finch (father in proper person and by counsel), a statutory beneficiary, mother Sandra K. Hall Skeens (in proper person and by counsel), a statutory beneficiary, Cody McMurray a half-brother, and Tamara Berry a half-sister. The court finds as follows:

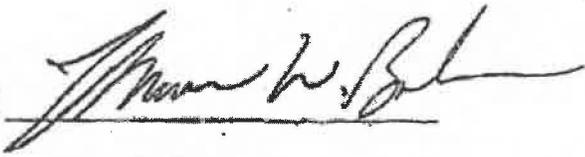
In July 22, 2013 \$15,763 dollars was to be distributed to statutory beneficiaries who were incarcerated and or not present before the court. Mike Bishop attorney for the plaintiff was to hold said money in trust. Mr. Bishop died and said money was not found in trust.

Attorney for Mr. Finch contacted Virginia State Bar about client protection fund. Virginia State Bar informed Mr. Finch's attorney that a distribution hearing had to be heard. All parties to the distribution were properly before the court and agreed by parties that Father Samuel Finch was to receive \$7,884 of the proceeds and mother, Sandra K. Hall was to receive \$7,884 of the proceeds.

Enter this the 11th day of December 2017.



Judge

Agreed 

Thomas W. Baker
Attorney for father Samuel Finch

Agreed 

Jeff Luethke
Attorney for Mother, son, and daughter

Tom Baker has permission
to sign my name to this
Order - 12-20-17




Virginia State Bar

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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report

Supplemental Report

Investigating Board Member: Thomas A. Edmonds

Petition #18-555-003176

Petitioner Mary A. Johnson

CPF Attorney Brent L. Barbour

CPF Attorney's Status Revoked

Amount Requested \$ \$1,500

Amount Recommended* \$ \$750 (Originally)

Action, if any, Petitioner took to recover claimed loss: None

Was sufficient documentation of loss provided? Yes No (explain, if necessary)

If actual, quantifiable loss was established, approximate date loss occurred* **January 2018**

Results of Investigation and Recommendation: This matter began essentially as a she said/he said situation, and it remains largely in that posture. Petitioner and her son, the client on whose behalf she paid Barbour \$1,500 in January 2018, about a month before Barbour was revoked at a Disciplinary Board hearing which he did not bother to attend, contend Barbour did no work on the son's criminal case. Barbour asserts, and reiterates in his request for reconsideration of our prior decision to award petitioner \$750, that he agreed to take the case for a retainer of \$1,500, with the understanding he would bill against that sum at \$200 per hour, and that his total fee for the representation would likely be some \$7,500. He claims he did a number of hours of work on the case, including a jail visit to his client. interviews with witnesses and legal research, and that this work at \$200 per hour was more than sufficient to justify his having earned the \$1,500. He says he discontinued work on the case when no additional

* Payments are limited to: **\$50,000.00** per petitioner for losses that occurred before July 1, 2015 **OR**
\$75,000.00 for losses that occurred on or after July 1, 2015

money was paid.

There was no written fee agreement, and there is no evidence, other than Barbour's word, that he did anything on the case, other than spend one hour meeting with his client at the jail where he was incarcerated. He never took any steps to have himself substituted as attorney of record in the case in lieu of the assistant public defender who had been appointed at the client's initial appearance; he provided no results of his interviews with witnesses or his research to the assistant public defender, who remained attorney of record; and the client learned of Barbour's revocation only when he failed to appear in court with him for trial and he was informed of that fact by the court.

Barbour complains about our 50% reimbursement policy in a situation like this where it appears some work was done by the lawyer on the client's case, but the representation was not completed. Actually, the policy works very much in his favor in this case, as under our previous approach it would have been necessary for the board to attempt to value what the lawyer did, determine what benefit the client received from the work, and reduce the award only by that amount. Here, that would have probably resulted in almost the full amount claimed being awarded to the client's mother, who paid the retainer, in light of the limited work done and the fact no results of that work were provided to the client or his attorney of record. I would not object if the board decided upon reconsideration to award the full \$1,500, on the basis that the work done was of no significant value to the client..

Investigating Board Member: Thomas A. Edmonds

Date: November 12, 2018

* Payments are limited to: **\$50,000.00** per petitioner for losses that occurred before July 1, 2015 **OR**
\$75,000.00 for losses that occurred on or after July 1, 2015



Virginia State Bar

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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report X Supplemental Report

Investigating Board Member: Thomas A. Edmonds

Petition # 18-555-003180

Petitioner Steven Ratliff

CPF Attorney Brent L. Barbour

CPF Attorney's Status Revoked

Amount Requested \$1,200

Amount Recommended* \$ 1,200

Action, if any, Petitioner took to recover claimed loss: None

Was sufficient documentation of loss provided? X Yes No (explain, if necessary)

If actual, quantifiable loss was established, approximate date loss occurred* **January-April 2018**

Results of Investigation and Recommendation: This is another case in which Barbour took a retainer for representation in a criminal case. Nothing has changed since my original report, other than Barbour requests reconsideration simply on the basis of his assurances that he did more than enough work to earn the retainer. He agreed to take the retainer, bill against it at the rate of \$200 per hour, and ultimately collect a fee of much more than that. In this case, a portion of the \$1,200 was collected after Barbour had been revoked and knew he could not complete the representation. He says he had already earned more than that prior to being revoked.

Here again, petitioner learned of Barbour's revocation only when he failed to appear with him at a preliminary hearing as he had expected. Barbour never entered any kind of appearance in the matter to indicate he was petitioner's lawyer. Another lawyer was appointed at the hearing, and that lawyer never heard anything from Barbour about any work done on

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\$75,000.00 for losses that occurred on or after July 1, 2015

the case or received anything of value prepared by Barbour in the matter. Since there does not appear to have been any work of significance or benefit to petitioner, I recommend we reaffirm our prior decision to award the full amount claimed to petitioner.

Investigating Board Member: Thomas A. Edmonds

Date of Report: November 12, 2018

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\$75,000.00 for losses that occurred on or after July 1, 2015

Revised July 2015



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report

Supplemental Report

Investigating Board Member: Thomas A. Edmonds

Petition # 18-555-003174

Petitioner Grazyna Bojakowski

CPF Attorney Michael Anthony Lormand

CPF Attorney's Status Revoked

Amount Requested \$ 31,500

Amount Recommended* \$ 17,500

Action, if any, Petitioner took to recover claimed loss: She and her new attorney have made demands on Lormand for the money, to no avail; he is being prosecuted for his misappropriation and has a pro bono lawyer

Was sufficient documentation of loss provided? Yes No (explain, if necessary)

If actual, quantifiable loss was established, approximate date loss occurred* March-July, 2017

Results of Investigation and Recommendation: Petitioner hired Lormand to collect spousal support arrearages owed to her by her ex-husband, and to compel him to resume his payments to her. Some money was collected by Lormand on her behalf in early 2017 and remitted to her. Subsequently, additional payments were made by the ex-husband in the spring and summer of 2017. These checks sent to Lormand were made out to petitioner, but Lormand did not notify her about them, forged her endorsement, deposited them in his operating account and used some of the proceeds for himself. He did not even have a trust account for deposit of client funds.

Petitioner's original claim of \$31,500 included one \$14,000 payment made to Lormand, but all agree that check was returned to Lormand without being paid by the drawer's bank. Thus, Lormand never got the benefit of that

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\$75,000.00 for losses that occurred on or after July 1, 2015

payment, and petitioner's new attorney and the state bar investigator who worked on the disciplinary case against Lormand agree the correct amount of the loss at the hands of Lormand is \$17,500. The loss is well documented, and I recommend payment of \$17,500.

Lormand is being prosecuted for his misappropriation of these funds. He is represented by one of his law school classmates on a pro bono basis and seems to have no funds. Earlier this year it was thought that he might have access to funds through others with which to make restitution to petitioner as part of the disposition of the criminal charges against him, but that has not happened so far. Should that happen before we make this payment to petitioner from the CPF, we can withhold the payment to her; if it does not, then the CPF will succeed to her claim against Lormand and can assert that should his financial situation change or in the event he ever seeks reinstatement of his license.

Investigating Board Member: Thomas A. Edmonds
Date of Report: November 19, 2018

* Payments are limited to: **\$50,000.00** per petitioner for losses that occurred before July 1, 2015 **OR**
\$75,000.00 for losses that occurred on or after July 1, 2015

Client Protection Fund Board Investigating Board Member's Report

Petitioner: Mohammed Khateeb¹

Responden/Docket No.: Shelly Renee Collette / CPF # 18-555-003168

Client Protection Fund Attorney: Paul G. Gill

Status of Respondent: License revoked by Disciplinary Board order entered March 23, 2018

Amount Requested: \$2,000

Amount Recommended: Assuming a petitioner's estate is a proper payee, full payment

Results of investigation:

The following narrative stems primarily from petitioner's written petition, court records, and my speaking and emailing with petitioner's daughter, Deena Khateeb. I emailed respondent at the only two emails the Bar has used for her, inviting her to contact me. She has not responded.

Petitioner retained respondent on March 29, 2016. That is consistent with the written allegations of the petition, a copy of the retainer agreement appearing to bear Ms. Collette's signature (familiar to this reviewer from other petitions involving her), a receipt for the \$2,000 retainer, and input of the daughter who helped file the complaint.

The retainer called for representation in a "divorce action in Fairfax County Circuit Court." Through a work colleague in northern Virginia, I verified that no such action was ever filed by Ms. Collette or the petitioner, or anyone else acting on petitioner's behalf, in that court.

What ultimately happened, according to court records, is this. Petitioner's wife engaged a lawyer in Arlington (who also had offices in Norfolk and Virginia Beach) to obtain a divorce. Her lawyer filed a complaint for divorce in Norfolk Circuit Court on January 6, 2017. A commissioner's hearing and filing of exhibits (e.g., affidavits of plaintiff and witness to separation over 6 months and no children, etc.) on March 22, 2017, yielded a divorce decree that same day. Petitioner signed the decree on his own behalf as "Seen and Agreed." The decree refers to a separate Separation and Property Settlement Agreement dated November 21, 2016.

¹ Mr. Khateeb died the month after he filed this petition, according to his daughter, Deena Khateeb, who helped him file the petition and was listed as a contact for it. After conferring with Jane Fletcher, I asked Ms. Khateeb to provide me with some paperwork verifying her status as the personal representative of her father's estate. As of the writing of this report, I do not yet have that information.

According to his petition, Mr. Khateeb tried several times to contact Ms. Collette after retaining her, with no meaningful response. The petition does aver that petitioner discovered in the fall of 2016, that Collette had not filed a complaint for divorce.

The daughter verified that her father was frustrated by Ms. Collette's non-responsiveness. She also verified that he had emailed Collette repeatedly, without any response from her or someone working for her. Petitioner forwarded some of them to his daughter. These emails included one on May 15, 2017, expressly seeking a refund of his retainer. It was directed to Collette at an email she regularly used, collettelawoffice@gmail.com. It read in full as noted below:

Shelly,

This is Mohammed Khateeb. I hired you on March 23, 2016, for uncontested divorce. I gave you \$2,000 as a retainer fee. I have never heard from you since then. I repeatedly sent you dozens of emails and still never heard from you. I hired another lawyer and I was able to obtain my final divorce through him.²

I'm kindly requesting a refund for my retainer fee. Please reply to this email. I tried to reach you but no success. Therefore, please process my refund and let me know so I can provide you with my address so you can mail it to me.

Looking forward to hearing from you.

Thank you and I appreciate your effort and your quick response in this matter.

Sincerely,
Mohammed Khateeb

Recommended Disposition

The information is sparse, but I believe it sufficient to establish that Ms. Collette did not provide any material service for the uncontested divorce for which she was retained. Several months later, the petitioner's wife hired counsel and secured the divorce within about two months of filing. Neither email traffic nor court records reflect Collette filing anything in Fairfax or Norfolk, or alleging she had done anything to advance the divorce. This board member has reviewed petitions against Collette before in which she did not respond to inquiries about the claims in the petition. This is the first involving Collette he has reviewed in which there was no evidence from court records, or from bills/correspondence/emails between petitioner and respondent, to indicate that Collette did any work at all to earn her fee, or at least submitted bills asserting that she had.

If the Board concurs, then the remaining question is how to make out the check. I would defer to those with more relevant experience dealing with estates. I would think it should be made out to

² To the extent the petitioner's indicating he hired another lawyer is relevant to the claim against Collette, I believe the claim likely just reflects the wife's retaining counsel to go forward with the divorce. The divorce decree in Norfolk does not identify any counsel for Mr. Khateeb, nor does the on-line case information system for the divorce action.

the Estate of Mr. Khateeb, and sent to the petitioner's daughter, after she provides evidence of her official status as personal representative of her father's estate.

PGG, Jan. 2, 2019

#



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report

Supplemental Report

Investigating Board Member: Margaret A. Nelson

Petitioner Jessica Jake Wheeler Petition # 18-555-00316705

CPF Attorney Charles Gregory Phillips

Status of Attorney License suspended for ten months, with terms, effective June 1, 2018

Amt. Requested \$ 2,500.00 Amt. Recommended \$ 1,250.00* to Karen & George Jake, parents *

Action, taken by Petitioner to recover claimed loss: Yes. Complaint filed with Virginia State Bar

was one of the cases that led to Lawyer's ten-month suspension with terms for his law license.

Was sufficient documentation of loss provided? Yes NO (explain, if necessary) _____

If actual, quantifiable loss was established, approximate date loss occurred August 2016

Results of Investigation and Recommendation: Petitioner appealed this decision and asked for reconsideration that the matter should be fully refunded. She felt strongly about this and stated in her letter that "giving [attorney] a dime of my parents money is only rewarding and enabling." "I would like to know why the Clients' Protection Fund thinks Mr. Phillips is inclined to over \$1,000 when he has put me through hell with investigations, interviews and two years of fighting. It's absolutely ridiculous this fund is set up for clients but in turn its still cutting the suspended attorney a break, when that is the last thing he needs."

A recap of the alleged facts of the matter, which this board discussed at length in September 2018 is as follows. Petitioner retained Attorney services by "retainer agreement" or legal paperwork which she says she signed in March 2016. No exact date known but her parents provided the required \$2,500.00 retainer by check on February 5, 2016, which she called a "flat fee" for a divorce and custody case. A check from her parents to Lawyer was tendered and deposited into his operating account immediately. The husband's lawyer initiated the divorce and found no paperwork filed by Lawyer.

There are no invoices/documents that indicate how much time was spent for her case. In a telephone call with me, Petitioner stated to me that she met with Attorney at his office three times: 1) the initial interview; 2) in April prior to the "separation agreement meeting at the courthouse; and 3) in April prior to a hearing for a Protective Order against her taken by Husband. Petitioner "assumed" the flat fee took care of the protective order and all of its incidents although she says there was no discussion with him about that.

The Lawyer attended two hearings and was present at the courthouse for dialogue for more than a 1

* Payments are limited to: \$50,000.00 per petitioner for losses that occurred before July 1, 2015 OR \$75,000.00 for losses that occurred on or after July 1, 2015

½ hours with the husband and his attorney to “iron out” the Separation Agreement in April. The Petitioner was not pleased with the Attorney during these events but she did not discuss firing him until before the protective order hearing. There is no documentation from the Lawyer for these. And, although the facts reveal there was a problem between them, Lawyer represented Petitioner at the Protective Order hearing and was before the judge with the husband and the other attorney. Petitioner said to me that she was told by Lawyer to “say nothing” at the hearing. Allegedly after that hearing, Lawyer asked her to sign a handwritten note stating that she wanted to withdraw her VSB bar complaint against him and to get him to continue on as her attorney. She signed it and it is attached to this paperwork.

In October, the Petitioner retained another attorney but the couple chose not to divorce. The Petitioner said they reconciled because, as her new attorney told her, she “would do better to stay married and keep her husband’s GI benefits for her health and advanced educational costs than to be divorced and lose them.”

She is now going to college and using the GI benefits from her husband. When speaking with her, it was clear to me that she and the husband had reconciled. During one of my conversations with her, it was obvious that he was in the room with her and, at times, he rendered answers to some of my inquiries about time and events.

Lacking a fee agreement, or any indication of time spent, or any information about Lawyer’s hourly rate or flat fee engagement, it is difficult to assess what is earned or owed. However, by the Petitioner’s own words, it appears that at a minimum the Lawyer attended and participated in two J & D Court hearings with the Petitioner: There seem to have been two court hearings; three personal office meetings; and; a 1½ hour conference meeting at the courthouse for the Separation Agreement.

Given that more than an insignificant amount of time was expended on her behalf, despite the Plaintiff’s feelings on the matter, my recommendation remains the same as before that the lawyer earned half of the fee for these matters as was told to me by the Plaintiff herself. I suggest that half of the retainer fee be given to Petitioner’s parents who provided the money by check to pay for her legal services.

November 29, 2018

Date



Signature of Board Member



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report **Supplemental Report**

Investigating Board Member: Margaret A. Nelson

Petitioner Cynthia Caserta Petition # 19-555-003181

CPF Attorney Charles Gregory Phillips

Status of Attorney License suspended for ten months, with terms, effective June 1, 2018 trial

Amt. Requested \$ 3,800.00 Amt. Recommended \$ 2,914.00

Action, taken by Petitioner to recover claimed loss: Yes. Complaint filed with Virginia State Bar
was one of the cases that led to Lawyer's ten-month suspension with terms for his law license.

Was sufficient documentation of loss provided? **Yes** **NO** (explain, if necessary) _____

If actual, quantifiable loss was established, approximate date loss occurred February 2016

Results of Investigation and Recommendation: Petitioner knew Attorney Phillips from a prior representation which, according to the Petitioner, went very amiably. In December 2014 she retained Attorney by \$800 check by what seems to have been an advance "Fee Agreement" in writing for what she thought was a 'No-Fault Divorce" which she signed. The agreement states that:

"in addition to the hourly fee, I will pay a retainer fee of \$800 which, when paid, immediately becomes a fee which had been earned by my attorney, in consideration of my attorney reserving and counting time to be available in representing me, thereby precluding the acceptance of other clients in other employment and in consideration of my attorney being precluded from accepting employment of adversary or conflicting matters."

Investigation revealed that during the winter of 2015, Attorney asked for and received itemized information from Petitioner concerning the shared and individual property in the marriage. Facts bear out that Attorney prepared a Post-Nuptial Agreement as requested, shared it with her husband's lawyer, Tom Roe and the two Attorneys traded phone calls over a few weeks as they negotiated the possible terms. Attorney Roe sent back an amended agreement and a check to settle the matter. Meanwhile, the facts also bear out that both lawyers knew that the Petitioner and her husband continued to have "dates" over the winter and early spring months and they seemed to be trying to get on better terms with each other. Facts bear out that both attorneys noted that during these weeks, neither of them would hear from their respective clients and neither tried to interfere with the potential for reconciliation.

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However, facts bear out that after the husband was charged with drug possession after one occasion with the Petitioner and later the Petitioner obtained a Preliminary Protective Order against him on a different occasion, the possibility of reconciliation was nixed.

Further, the Petitioner saw the very small settlement check sent to her attorney by her husband's attorney as a bad faith attempt to negotiate the property settlement. She told me that both Attorney Phillips and she agreed that there was no chance for a negotiated settlement or immediate divorce by that point.

On April 10, 2015 Attorney requested and Petitioner tendered a check for \$3,000 to begin a contested divorce proceeding. A Complaint was filed May 18, 2015 with filing fee of \$86.00. (Service not perfected until May 12, 2016 – months after Glenn, Robinson and Cathey represented Petitioner.)

The matter began to break down immediately during the spring months from April through the summer of 2015 as Petitioner indicated that Attorney began to act erratically and began to talk about inappropriate personal things when they had contact and he did not discuss her case when she saw him. Then, Attorney failed to show at a hearing on the Petitioner's Protective Order against her husband on July 2, 2015. Facts bear out that the Court called to Attorney Phillips office three times on July 2, 2015 to see if he were on his way. Ultimately, Petitioner proceeded on her own in the hearing and was not successful. Attorney Tom Roe who represented her husband confirmed these events. Petitioner began to call repeatedly to the office and found that a different, new staff member answered the phone each time she called. She never was able to speak with Attorney Phillips and finally wrote and left messages that she wanted to retain another attorney. She did not receive the file or a call back.

It appears that nothing of substance was done from the time that Attorney filed the Complaint on May 18, 2015.

Attorney presented an itemized bill for legal services that showed work that allegedly began in February 2014 (ten months before she retained him and continued to December 2016 – ten months after Attorney had been instructed by telephone and by multiple letters that Petitioner had retained Victor Skaff to handle Petitioner's divorce matter.) Petitioner disputes the bill almost in its entirety as fabricated since she alleged that she never received any itemization for more than two years, she denies the alleged meetings and telephone contacts with Attorney and noted there are six entries with the wrong years posted (2014 long before she retained him).

Petitioner retained Victor Skaff with Glenn, Robinson and Cathey in February 2016 and he attempted repeatedly to obtain the file and any information about Petitioner from Attorney Phillips over several months without success.

I suggest that the entire \$800 tendered in December 2015 was an earned fee and that the \$3,000 amount less the court filing fee, \$86, should be returned to the Petitioner since less than substantial work was done on her behalf after the Attorney was retained on April 10, 2015.

November 29, 2018

Date


Signature of Board Member



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

XX Initial Report

Supplemental Report

Add to Consent Agenda

Investigating Board Member: Melissa W. Robinson

Petition # 19-555-003189

Petitioner: Bryant B. Coleman

CPF Attorney: Robert Lloyd Deatherage

CPF Attorney's Status: Died 07/12/2018

Amount Requested \$14,000.00

Amount Recommended* \$0.00

Action, if any, Petitioner took to recover claimed loss: None.

Was sufficient documentation of loss provided? **XX** Yes No (explain, if necessary)

If actual, quantifiable loss was established, approximate date loss occurred*

Results of Investigation and Recommendation:

In March of 2018, Petitioner, a West Virginia resident, retained Mr. Deatherage (1) to appear at a hearing on a show cause motion filed against him in the Henry County J&D Court, (2) to effectuate modification of an existing West Virginia custody order, and (3) to communicate with his ex-wife regarding summer vacations he desired to take with his children. Petitioner paid Mr. Deatherage \$1,200 "to get started on this." According to Mr. Coleman, Mr. Deatherage then filed a show cause on Mr. Coleman's behalf, and did appear at the hearing in June of 2018, although he appeared to Mr. Coleman to be impaired during the course of the hearing and afterwards in discussions with opposing counsel. Mr. Coleman also indicated that despite Mr. Deatherage's representation that he had confirmed the summer vacation schedule with opposing counsel, this did not occur and he never got vacations with his children during the summer of 2018. On the eve of one of the two trips planned for the summer (with reservations and plane tickets already in place), Mr. Coleman learned through his wife that Mr. Deatherage had died. He was then presented by opposing counsel with an alleged letter outlining the vacation schedule, but the dates were very different than the dates he had seen in an earlier letter prepared by Mr. Deatherage. My suspicion is that Mr.

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Coleman's true issue is with opposing counsel as he believes somehow the original letter pertaining to agreed dates was altered. During this portion of the interview, he became very emotional as he was attempting to explain the loss of the time with his children.

With respect to his claimed damages, Mr. Coleman explained that he is claiming the expenses associated with his missed vacations, as well as the attorney fees which he has incurred in hiring new counsel to handle his case.

Mr. Deatherage's file materials pertaining to Mr. Coleman's case were released to me by Circuit Court Judge Williams for review. As anticipated, this documentation confirms that Mr. Deatherage did file pleadings on behalf of Mr. Coleman, did attend the June hearing and communicate with opposing counsel on several issues, including proposed dates for Mr. Coleman's summer vacations with his children. The file demonstrates significant work undertaken by Mr. Deatherage on behalf of Mr. Coleman which would very likely have exhausted the first \$1,200.00 which he had been paid by Mr. Coleman. The Clerk of the J&D Court also confirmed that Mr. Deatherage was present at the June hearing and she recalled that it was lengthy in nature.

I recommend no payment because I do not believe Mr. Deatherage's actions meet the definition of dishonest conduct. Moreover, the \$1,200.00 initial fee paid to him by Mr. Coleman was earned, and the additional losses sought by Petitioner are collateral sources allegedly arising from Mr. Deatherage's inadequate, insufficient or negligent services. Accordingly, despite the unfortunate circumstances for Mr. Coleman, I recommend that we deny the petition.

Investigating Board Member: _____


Melissa W. Robinson

Date of Report: December 27, 2018

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\$75,000.00 for losses that occurred on or after July 1, 2015

Revised July 2015



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Petition # 19-555-003179
Petitioner Samantha Jane Williamson
CPF Attorney John F. McGarvey
Attorney's Status Indefinite suspension February 17, 2017

Amount Requested: \$5000

Amount Recommended: 0

Action, if any, petitioner took to recover claimed loss: Per Mrs. Williamson, she tried to call Mr. McGarvey's office, but there was no answer.

Was sufficient documentation of loss provided? No documentation of loss was provided.

If actual, quantifiable loss was established, approximate date loss occurred: Quantifiable loss was not established.

Results of Investigation and Recommendation:

On August 24, 2015, Samantha Williamson was convicted in the Nottoway Circuit Court of one count of embezzlement from her employer, the Herb Cottage Restaurant. On September 22, 2015, she was sentenced to ten years with all but one month suspended, placed on supervised probation, and ordered to pay restitution of \$3300 and court costs. She was represented at trial by a court appointed attorney, Preston Williams.

Mrs. Williamson retained John F. McGarvey to represent her on appeal. On September 25, 2015, he filed a motion for substitution of counsel, a motion for an appeal bond, and a second notice of appeal. His motion to be substituted as counsel was granted on September 28, 2015. On the same day, Mrs. Williamson was granted a \$1000 unsecured appeal bond and released from incarceration, having served seven days of her one-month sentence. The Court of Appeals dismissed the case on February 1, 2016, because the petition for appeal had not been filed. In early March, Mr. McGarvey filed a petition for appeal, an affidavit for delayed appeal, and a motion for delayed appeal. The Court of Appeals granted the delayed appeal on March 30, 2016. McGarvey filed the petition for appeal on April 19, 2016, and an amended motion for appeal on August 8, 2016. The Court of Appeals denied the petition for appeal on December 2, 2016. On January 17, 2017, Mr. McGarvey filed a motion and affidavit for delayed appeal in the Supreme Court. On April 6, 2017, Paul D. Georgiadis guardian ad litem for Mr. McGarvey filed Mr. McGarvey's declaration in support of the motion for delayed appeal. On July 3, 2018, the Circuit Court of Nottoway County appointed Calvin S. Spencer to represent Mrs. Williamson in the appeal, which is pending in the Supreme Court.

According to Mrs. Williamson John McGarvey agreed to represent her in the “appeal and re-trial” for \$6500. She says that \$5000 was paid on her behalf to McGarvey by her brother (\$3500), sister (\$500), and family friend (\$1000). However, neither she nor they have any documentation, details, or other evidence to support the payments. They do not know the dates, amounts, or number payments.

Conclusion: Mrs. Williamson’s claim is not quantifiable and not supported by documentation. It, therefore, is not a reimbursable loss defined by Paragraph I, E.1 of the Rules of Procedure of the Clients’ Protection Fund, and should be denied. See also Paragraph III, C 3 of the Rules of Procedure of the Clients’ Protection Fund.

Furthermore, Mr. McGarvey did a significant amount of work on the appeal. Granted some of the some of work was necessitated by his mistakes and delays. However, the mistakes and delays would be in the nature of malpractice and neglect not dishonest conduct. See Paragraph I, G.3 of the Rules of Procedure of the Clients’ Protection Fund.

Investigating Board Member: Mary Yancey Spencer



Virginia State Bar

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MEMORANDUM

TO: Clients' Protection Fund Board

FROM: Crystal Hendrick

DATE: January 4, 2018

SUBJECT: November 2018 Financial Report

The balance in the fund as of November 30, 2018 is approximately \$10.1 million. Total revenue collected as of November 30 is approximately \$404,500. Of that amount, \$325,000 is from the assessment collected from all active attorneys, approximately \$70,000 is from interest on investments and approximately \$9,500 is from debt set-off and individual restitution.

The schedule of investments reflects the long-term investments held by the fund as of November 30. Long term investments total approximately \$9.9 million and the average yield is 1.92%.

The CPF Summary as of October 31, 2018 is attached which shows the financial snapshot of the fund since inception.

Please contact me at any time by telephone, (804) 775-0523 or e-mail hendrick@vsb.org if you have questions concerning the financial data.

**VIRGINIA STATE BAR
 CLIENTS' PROTECTION FUND
 CASH BALANCE
 AS OF NOVEMBER 30, 2018**

Cash Balance as of July 1, 2018	\$	9,765,666.08
Year-to-Date Revenue through November 30, 2018		404,561.23
Year-to-Date Expenses through November 30, 2018		<u>(44,098.46)</u>
Cash Balance as of November 30, 2018	\$	<u>10,126,128.85</u>
Liability for claims approved but not paid:		<u>3,200.00</u>
November 30, 2018 Available Cash Balance :	\$	<u>10,122,928.85</u>

Funds Invested/Maintained as Follows:

BB&T Business Checking Account		226,128.85
Federal Home Loan Bank (Face Value \$1,950,000)		1,950,000.00
Federal Home Loan Mortgage Corp. (Face Value \$1,200,000)		1,200,000.00
Federal National Mortgage Association (Face Value \$3,200,000)		3,200,000.00
Federal Farm Credit Bank (Face Value \$3,550,000)		<u>3,550,000.00</u>
Total Cash and Investments	\$	<u>10,126,128.85</u>

**VIRGINIA STATE BAR
 CLIENTS' PROTECTION FUND
 MONTHLY STATEMENT OF REVENUE & EXPENSES
 FOR NOVEMBER 2018**

	BALANCE 11/1/2018	NOV 2018 ACTIVITY	BALANCE 11/30/2018
REVENUE			
INTEREST:			
Investment Interest	\$ 55,403.59	\$ 14,242.50	\$ 69,646.09
REIMBURSEMENT FROM ATTORNEYS:			
AG's Collections	400.00	400.00	800.00
Debt Set-Off Receipts	5,140.14	0.00	5,140.14
Individual Restitution	3,420.00	380.00	3,800.00
TRANSFERS:			
CPF Assessment	324,290.00	885.00	325,175.00
Total Revenue:	\$ 388,653.73	\$ 15,907.50	\$ 404,561.23
EXPENSES			
Bank Service Charges	-	0.00	0.00
Attorney General's Fees	120.00	120.00	240.00
CPF Board Expenses - Oper. Acct. Reim.	-	0.00	0.00
Payments to Clients	43,858.46	0.00	43,858.46
Total Expenses:	\$ 43,978.46	\$ 120.00	\$ 44,098.46
Total Revenue Over/(Under) Expenses	\$ 344,675.27	\$ 15,787.50	\$ 360,462.77

**SCHEDULE OF INVESTMENTS
AS OF NOVEMBER 30, 2018**

MATURITY DATE	INVESTMENT	TERM	ISSUE DATE	COUPON RATE	CARRYING AMOUNT
12/26/2018	Federal National Mortgage Assn	6 years	12/26/2012	1.050%	225,000.00
5/23/2019	Federal Home Loan Mtg Corp	2.75 years	8/23/2016	1.200%	200,000.00
6/28/2019	Federal National Mortgage Assn	3 years	6/28/2016	1.200%	300,000.00
9/16/2019	Federal National Mortgage Assn	3.5 years	3/16/2016	1.375%	500,000.00
9/25/2019	Federal Home Loan Bank	4 years	9/25/2015	1.500%	200,000.00
10/28/2019	Federal National Mortgage Assn	3.5 years	4/28/2016	1.350%	200,000.00
11/22/2019	Federal National Mortgage Assn	3 years	8/22/2016	1.200%	525,000.00
12/19/2019	Federal Farm Credit Bank	7 years	12/19/2012	1.440%	300,000.00
2/21/2020	Federal Home Loan Mtg Corp	4 years	8/18/2016	1.320%	300,000.00
3/27/2020	Federal Home Loan Bank	9.5 years	9/27/2010	3.000%	100,000.00
7/13/2020	Federal Farm Credit Bank	4 years	7/13/2016	1.290%	700,000.00
9/25/2020	Federal Home Loan Bank	5 years	9/25/2015	1.740%	200,000.00
10/9/2020	Federal National Mortgage Assn	8 years	10/9/2012	1.625%	175,000.00
12/30/2020	Federal National Mortgage Assn	4.5 years	6/30/2016	1.500%	325,000.00
1/12/2021	Federal Farm Credit Bank	4.5 years	7/12/2016	1.420%	500,000.00
9/30/2021	Federal Home Loan Bank	5 years	9/30/2016	1.625%	550,000.00
10/25/2021	Federal National Mortgage Assn	5 years	10/25/2016	1.550%	200,000.00
11/23/2021	Federal Farm Credit Bank	5 years	11/23/2016	1.950%	350,000.00
2/24/2022	Federal National Mortgage Assn	6 years	8/24/2016	1.500%	750,000.00
4/19/2022	Federal Farm Credit Bank	6 years	4/19/2016	1.920%	200,000.00
9/12/2022	Federal Farm Credit Bank	5 years	9/12/2017	2.000%	200,000.00
11/25/2022	Federal Home Loan Bank	6 years	11/25/2016	2.160%	600,000.00
6/28/2023	Federal Home Loan Mtg Corp	4.92 years	8/1/2018	3.125%	700,000.00
8/28/2023	Federal Farm Credit Bank	5 years	8/31/2018	3.170%	100,000.00
9/27/2023	Federal Home Loan Bank	4.9 years	10/31/2018	3.375%	300,000.00
4/17/2025	Federal Farm Credit Bank	7 years	4/17/2018	3.480%	500,000.00
12/8/2025	Federal Farm Credit Bank	9 years	12/8/2016	2.980%	200,000.00
3/26/2026	Federal Farm Credit Bank	9.75 years	8/1/2017	2.840%	500,000.00
Total Investments - Principal					9,900,000.00

Average Coupon Rate 1.92%

Virginia State Bar
Clients' Protection Fund
Financial Summary

Fiscal Year	Fund	Contributions	CPF	Interest	Other	Petitions Paid:		Fund
	Balance-July 1	From Bar	Assessment	Earned on	Deposits &	Number	Amount	Balance-June 30
		Operating Budget		Investments	Charges			
1976 -1996	0	2,677,022	0	864,048	193,885	409	1,537,620	2,197,335
1997	2,197,335	200,000	0	147,174	10,873	17	102,539	2,452,843
1998	2,452,843	200,000	0	160,299	36,137	41	135,122	2,714,157
1999	2,714,157	0	0	149,555	18,342	46	179,382	2,702,672
2000	2,702,672	0	0	147,239	-20,909	26	72,884	2,756,119
2001	2,756,119	0	0	146,568	46,042	54	132,099	2,816,630
2002	2,816,630	0	0	139,203	9,566	31	61,458	2,903,941
*2003	2,903,547	0	0	111,218	17,379	60	244,893	2,787,251
2004	2,787,251	500,000	0	142,255	32,907	72	227,074	3,235,339
2005	3,235,339	250,000	0	125,848	16,191	80	280,956	3,346,421
2006	3,346,421	0	0	135,464	17,244	47	161,838	3,337,291
2007	3,337,291	0	0	144,532	24,641	25	99,877	3,406,588
2008	3,406,588	0	672,375	168,011	20,528	18	202,899	4,064,603
2009	4,064,603	0	687,525	202,134	17,688	16	177,556	4,794,393
2010	4,794,393	0	703,395	153,016	27,624	218	900,560	4,777,868
**2011	4,777,868	0	721,050	152,556	17,101	165	228,140	5,440,435
2012	5,440,435	100,000	742,225	192,471	55,365	52	648,902	5,881,594
2013	5,881,594	0	755,850	126,798	13,542	34	325,078	6,452,707
2014	6,452,707	0	770,275	101,935	-14,780	57	353,540	6,956,597
2015	6,956,597	0	789,270	103,189	8,351	59	260,412	7,596,994
2016	7,596,994	0	800,025	108,509	15,986	43	212,288	8,309,226
2017	8,309,226	0	805,600	110,900	29,386	50	343,428	8,911,684
2018	8,911,684	0	813,060	138,161	5,891	28	103,130	9,765,666
10/31/2018	9,765,666	0	324,290	55,403	8,840	13	43,858	10,110,341
Grand Total		3,927,022	8,584,940	4,026,486	607,820	1,661	7,035,533	

* Beginning fund balance for 2003 changed from the ending balance in 2002 due to a change in the method of accounting for investments from an historical cost basis to an amortized cost basis.

** Petitions Paid is net 3 checks totalling \$3,503.56 written in FY 2010 and voided in FY 2011.

Virginia State Bar Clients' Protection Fund Public Awareness Campaign

Efforts to Increase Awareness and Educate the Public – 2016 thru 2018

- In 2016, updated CPF Rules of Procedure.
- Updated website and added meeting dates. Link: <http://www.vsb.org/site/public/clients-protection-fund>
- Use Facebook as an easy and economical way to reach the public.
- Supreme Court of Virginia posted CPF link on their citizens and legal community webpage.
- CPF link added to VSB Professional Regulation Inquiry page. <http://www.vsb.org/site/regulation/inquiry>
- CPF language added to the Professional Regulation form letters to complainants.
- Increased publicity and articles in the *Virginia Lawyer* and *The Connection Newsletter*, published by the VSB Conference of Local and Specialty Bar Associations.
- Requested that local specialty bar associations add CPF link to their website.
- After each of the three yearly board meetings:
 - Post a news item on the awards granted during the period. Also noted on Facebook, Twitter, and CPF homepage.
 - E-mail claims report to other jurisdictions. This will also help avoid double-dipping.
 - Publish in *Virginia Lawyer*.
- Issue a press release at year end to news outlets referencing total amount reimbursed; we will include in our magazine, bar website, Facebook, Twitter and CPF homepage.
- Revised the Petition for Reimbursement Form. We can also now track how claimants learn about the fund.
- Each fiscal year, prepare CPF talking points for the VSB President to speak briefly about the fund at major events throughout the year.
- Distributed CPF info cards to the Virginia courts, libraries, law schools, law libraries, state and federal public defender offices and all legal aid programs.
- CPF Board Members were encouraged to visit and spread a positive message about the fund to local/specialty bar associations.
- Contacted Selina Thomas at ABA, for insight into other jurisdictions' efforts.
- Each fiscal year, the CPF Administrator attends various VSB programs to distribute literature and answer questions pertaining to the fund.
- The Supreme Court of Virginia reduced the required annual payment to the Clients' Protection Fund from \$25 to \$10. Also, effective July 1, 2018, the Supreme Court's authority to assess members an annual fee of up to \$25.00 was extended from July 1, 2020, to July 1, 2023, by the Governor on March 23, 2018.
- CPF link added to 3 additional areas on VSB website: Disciplinary System Actions pages. <http://www.vsb.org/site/regulation/disciplinary-system-actions> and <http://www.vsb.org/disciplinary.html>; Attorney Records Search. <http://www.vsb.org/attorney/attSearch.asp>.
- CPF stories written by staff and included with claims report for distribution.
- ABA distribute claims report/stories to other CPF jurisdictions.
- August 2020 *Virginia Lawyer Magazine* will feature CPF.

Virginia State Bar Clients' Protection Fund Board Pays \$43,858.46 to Former Clients

The Virginia State Bar Clients' Protection Fund Board paid \$43,858.46 in reimbursement to former clients of six Virginia attorneys at its most recent meeting on September 21, 2018.

Docket Number	Lawyer's Name	City of Record	Amount Paid	Type of Case
18-555-003141	Danny Michael Atkins, Deceased	Charlottesville, VA	\$7,245.46	Unearned fees/Family Law
18-555-003143	Shelly Renee Collette	Winchester, VA	\$3,000.00	Unearned fees/Civil Law
18-555-003144	Shelly Renee Collette	Winchester, VA	\$5,500.00	Unearned fees/Criminal Law
18-555-003147	Shelly Renee Collette	Winchester, VA	\$1,150.00	Unearned fees/Criminal Law
18-555-003149	Shelly Renee Collette	Winchester, VA	\$4,300.00	Unearned fees/Criminal Law
18-555-003155	Karen M. Kennedy	Fredericksburg, VA	\$3,400.00	Unearned fees/Consumer Law
18-555-003156	Shelly Renee Collette	Winchester, VA	\$3,000.00	Unearned fees/Criminal Law
18-555-003157	Shelly Renee Collette	Winchester, VA	\$2,500.00	Unearned fees/Family Law
18-555-003158	Karl Galen Blanke	Corona, CA (formerly Burke, VA)	\$2,500.00	Unearned fees/Real Estate
18-555-003159	Shelly Renee Collette	Winchester, VA	\$4,360.00	Unearned fees/Family Law
18-555-003166	Shelly Renee Collette	Winchester, VA	\$1,750.00	Unearned fees/Family Law
18-555-003171	Jean J. D. Ngando Ekwalla	Woodbridge, VA	\$2,653.00	Unearned fees/Civil Law
18-555-003173	Mark Howard Allenbaugh	Cleveland, OH	\$2,500.00	Unearned fees/Patents, Trademark & Copyrights

The [Clients' Protection Fund](#) was created by the Supreme Court of Virginia in 1976 to reimburse persons who suffer a quantifiable financial loss because of dishonest conduct by a Virginia lawyer whose law license has been suspended or revoked for [disciplinary reasons](#), or who has died and did not properly maintain client funds. The fund is not taxpayer funded but is supported by Virginia lawyers who pay an annual fee of *up to* \$25. The Supreme Court of Virginia has set the current annual fee at \$10 per Virginia lawyer with an active license status. Payments from the Clients' Protection Fund are discretionary and are not a matter of right.

If you have any questions, you may contact Vivian R. Byrd, administrator to Clients' Protection Fund by [email](#) at (804) 775-0572.

POLICY ON PARTICIPATION
PURSUANT TO VA CODE § 2.2-3708.2

It is the policy of the Virginia State Bar that individual members may participate in meetings of all public bodies of the Virginia State Bar, as defined by Virginia Code § 2.2-3701, by electronic means as permitted by § 2.2-3708.2. This policy shall apply to the entire membership of the public body and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

Whenever an individual member wishes to participate from a remote location, the law requires a quorum of the public body to be physically assembled at the primary or central meeting location, and there must be arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

When such individual participation is due to a temporary or permanent disability or other medical condition, or due to a personal matter, such participation is limited by law to two meetings of the public body per member each calendar year.

Individual participation from a remote location under this policy shall be approved or disapproved by vote of the members present at the central or primary meeting location. If a member's participation from a remote location is disapproved because such participation would violate this policy, such disapproval shall be recorded in the minutes with specificity.

This policy applies to all public bodies of the Virginia State Bar.

This policy was adopted by the Virginia State Bar Council at its meeting on October 26, 2018.

CPF POLICY ON MEETINGS OUTSIDE REGULARLY SCHEDULED MEETINGS

Pursuant to the CPF Rules, including but not limited to Paragraph 6 below, the CPF Board agrees that as necessary to perform its duties and timely process claims, the Board may meet between regularly scheduled meetings upon call of the Chair or two or more members of the Board.

PARAGRAPH 6 BOARD MEETINGS

The Board shall meet at least one time during each fiscal year and as frequently as necessary to conduct the business of the Fund and to timely process claims upon call of the Chair or two or more members of the Board. Written minutes of each meeting shall be prepared and maintained as required by law and Library of Virginia guidance.

Dated:

___ Approved by the CPF Board on _____.

VIRGINIA STATE BAR

CLIENTS' PROTECTION FUND REIMBURSEMENT POLICY

It is the policy of the Virginia State Bar Clients' Protection Fund to reimburse the operating account of the Virginia State Bar for expenses incurred by the Board.

This policy was adopted by the Clients' Protection Fund Board at its meeting on _____.

Dear Vivian Byrd and the Client's Protection Fund Board:

My name is Jason Blye and your board recently presided over my claim against Shelly Collette and her firm. I wanted to take this moment to express my gratitude to you and your board for your consideration in this matter. After the outcome of my case, I had become so discouraged and felt that all hope was lost. I had never felt so cheated in my life and the thoughts of having let my daughter down were overwhelming at times. I refused to accept the fact that there was nothing else I could do and contacted several resources which lead me to your program. My daughter and I can't begin to tell you how grateful we are for your decision. It is because of you and your board that I will have the financial ability to get back into court and get the outcome that we deserve. This program is a true blessing and I hope that you and your board realize that your efforts are greatly appreciated.

Sincerely,

Jason Blye

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VIRGINIA STATE BAR



Virginia State Bar

1111 East Main Street, Suite 700
Richmond, Virginia 23219-0026
Telephone (804) 775-0500
Fax (804) 775-0501 TDD (804) 775-0502

CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report Supplemental Report

Investigating Board Member: **Phillip V. Anderson**

Petition #: **18-555-003170**

Petitioner: **John A. Tatoian Appeal**

CPF Attorney: **William Lee Andrews**

CPF Attorney's Status: **Suspended for a period of 14 months effective 2/16/18 by Order of the Disciplinary Board 3/13/18**

Amount Requested: **\$306,870 by Original Petition** Amount Recommended **\$0**

Appeal notes that his net loss is \$81,202.12. Either way, petition is subject to \$50,000 cap for losses occurring prior to 7/1/15

Action, if any, Petitioner took to recover claimed loss: **Three separate lawsuits**

Was sufficient documentation of loss provided? Yes No (explain, if necessary)

If actual, quantifiable loss was established, approximate date loss occurred*

Results of Investigation and Recommendation:

The following in italics is the background and facts included in the original report filed in September, 2018, which will be necessary to consider the appeal. The new material addressing the appeal begins on page 3.

Petitioner is John Tatoian, ("Tatoian") a Connecticut attorney not licensed to practice law in the

* Payments are limited to: **\$50,000.00** per petitioner for losses that occurred before July 1, 2015 OR

Commonwealth of Virginia. Respondent is William Lee Andrews, III a Roanoke solo practitioner who practices out of his home and self-describes as an “expert” in arcane, international tax and finance issues. Tatoian’s losses arise from a series of business agreements and a failed business transaction involving different parties. A basic understanding of these underlying transactions is necessary to consider the Petition.

In 2012, Global Financing Solutions, LLC (“Global”), Edward Glazebrook (“Glazebrook”) and Anthony M. Junge (“Junge”) approached Tatoian with a business proposition. Prior to approaching Tatoian, Global had entered into a joint venture agreement (“JVA”) with Myra Heeg and/or Reliance Investment Group, LLC (“Reliance”). The JVA, negotiated on or about November 29, 2012 and memorialized in an agreement on December 6, 2012, was for purposes of engaging in financial instrument monetization transactions on bank instruments issued by financial institutions that would yield profits at a very high rate of return. The group needed money to finance these transactions. Glazebrook and Junge approached Tatoian about loaning them \$325,000 to fund this transaction. In return Tatoian was to receive \$850,000 and 10% of the gross proceeds of the underlying investment. Tatoian entered into the Loan Agreement with the expectation that he would receive a very significant return on the loan principal of \$325,000.

On December 2, 2012, Glazebrook and Global executed a Promissory Note in favor of Tatoian whereby \$325,000 was loaned to Glazebrook and Junge on a short term basis so that Global and Reliance could obtain monetized financial instruments. Glazebrook directed Tatoian to wire the funds to the account of Richard A. Schulenberg (“Schulenberg”), a Beverly Hills, California lawyer, who had agreed to be the initial escrow agent. Tatoian had never met nor did he know Schulenberg before this transaction. Tatoian wired the sum of \$325,000 to Schulenberg. Interestingly enough, Tatoian had never met Glazebrook, Junge, Heeg, Schulenberg or Andrews in person.

For reasons not entirely clear, Schulenberg backed out of the transaction. On December 13, 2012, Heeg / Reliance approached Andrews about representing Reliance with regard to the Escrow Agreement that Reliance and Global had with Schulenberg. There was no communication between Andrews and Tatoian before Andrews agreed to act as escrow agent. On December 15, 2012 Reliance entered into a Mutual Rescission with Schulenberg.

A new Escrow Agreement was executed on December 16, 2012 (“Escrow Agreement”) between CARCO LLC, Williams Andrews, Esquire, and Reliance Investment Group, LLC. Tatoian was not a party to the agreement. Andrews is designated to serve as the “paymaster” for a transaction between Reliance and Carco. Andrews signed the escrow agreement as, Williams Lee Andrews, Esq. Chairman of Virginia Worldwide Group LLC (VWG). VWG was not a party to the agreement. This occurred on December 17, 2012.

Also on December 17, 2012, Schulenberg, after deducting his fee of \$19,870, wired the balance of the \$325,000 that Glazebrook and Junge had borrowed from Tatoian, or \$306,870 (“Funds”), to an account in the name of VWG at Wells Fargo Bank. Andrews was the sole member of VWG.

On December 18, 2012, Andrews, allegedly without authority and contrary to the terms of the JVA and Escrow Agreement, caused to be disbursed from the VWG account the following amounts (the

“Disbursements”):

- \$4,000 to Black Ink (Respondent’s company)
- \$55,000 to a company called Affinity Capital Holdings, LLC (“Affinity”), an Illinois limited liability company that had already been administratively dissolved by the Illinois Secretary of State
- \$55,000 to an individual named Kristie Eichenberg (“Eichenberg”)
- \$170,000 to Barnes Corporation, a Michigan Corporation (“Barnes”)

Petitioner claims that none of these disbursements were authorized and were not in compliance with either the escrow agreement or the JVA. Petitioner was never repaid the loan by the borrowers and never received the expected benefit from the highly anticipated high yield investment. In addition to filing three federal lawsuits in three different federal courts in three different states against various different parties, including Andrews, Petitioner filed a bar complaint against Andrews. The matter was heard by the Virginia Disciplinary Board on February 16, 2018 and an Order of Suspension for 14 months effective February 16, 2018 was entered on March 13, 2018. While the Board specifically found that Andrews was acting as an attorney for Carco, there was no finding that he ever represented or acted as an attorney for Petitioner.

Supplemental Report Regarding Appeal

Petitioner’s claim was denied by unanimous vote of the Board at our September meeting. The denial letter of September 27, 2018, attached to the appeal, lists the basis for the denial as:

1. The transaction that gave rise to the Tatoian’s claim was in the nature of an investment which is excluded from the class of reimbursable claims;
2. The Board found that the funds Andrews received were not from Tatoian but other persons with whom Tatoian had invested the funds and not Andrews and that no attorney-client relationship or fiduciary relationship existed between Andrews and Tatoian.

Petitioner has timely noted an appeal to the Board’s decision.

Tatoian’s appeal, with exhibits, is attached to this supplemental report; however, the essence of the appeal is as follows:

1. **Investment Exclusion is inapplicable.** Petitioner’s position is that Rules only exclude losses in the nature of investments if the funds are actually invested **with the lawyer**. Since these funds, even though of the nature of an investment, were not invested with Andrews but entrusted to him, through intermediaries, as a fiduciary, the exclusion does not apply.

2. The losses did arise as a result of a fiduciary relationship.

- a. **Andrews had a fiduciary relationship with Tatoian by virtue of an assignment.** Petitioner claims that Andrews had a fiduciary relationship with Junge, Glazebrook, and Global Financing Solutions, LLC, joint venturers with Reliance Group LLC, and that Junge, Glazebrook, and Global Financing Solutions, LLC assigned all rights against Andrews to Tatoian. As their assignee, Tatoian stands in the shoes of Junge, Glazebrook, and Global Financing Solutions, LLC regarding Andrews and his fiduciary relationship with them. Since Andrews was a fiduciary to Junge, Glazebrook, and Global Financing Solutions, LLC, he, by virtue of the assignment Andrews owed those same duties to Tatoian.
- b. **Tatoian and Andrews had a fiduciary relationship because Tatoian was treated as though one existed.** Tatoian was identified to Andrews as the source of the escrowed funds from the very beginning even though Tatoian was not a signatory to the escrow agreement. Moreover, Tatoian made demand on Andrews for information and Andrews responded. Although the information was false and misleading, Andrews would have had no basis for revealing information to Tatoian in the absence of a fiduciary relationship.
- c. **A fiduciary relationship existed between Tatoian and Andrews because the VSB Disciplinary Board so held.** The Board, in its Order of Suspension dated March 13, 2018, found Andrews in violation of Rules of Professional Responsibility 1.15(b)(4). Specifically the Board found that:
 - i. “Respondent’s transfer of much of the Funds to parties unrelated to the JVA (joint venture agreement), and his failure to promptly deliver them to the Complainant (Tatoian) upon his request constitute a violation of Rule 1.15(b)(4).”
 - ii. Since the Board found Andrews guilty of violation of Rule 1.15(b)(4), which would only apply to an attorney acting as a fiduciary, he must have been Tatoian’s fiduciary. To find otherwise would result in inconsistent results.

Discussion

Investment Exclusion is inapplicable

The Guidelines do provide that the following types of losses are excluded as reimbursable losses:

- (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.....

The funds in Andrews' possession were certainly investment funds initially when wired from Tatoian to Schulenberg. Tatoian loaned \$325,000 to Glazebrook and Junge pursuant to a Note of December 2, 2012 in anticipation of a hefty return. The investment was **NOT** with Andrews directly or another attorney.

Petitioner's position is that since the investment was not with Andrews in his capacity as a lawyer, the exclusion does not apply.

Does the exclusion apply to any funds in the nature of investments or just those investments that are made with a lawyer? If the former, the exclusion applies. If the latter, it likely does not.

Giving the exclusion a strict construction as is usually the case with exclusions, the Petitioner's point with regard to the exclusion is likely correct.

Did the loss resulting from Andrews' dishonest conduct arise out of and by reason of a fiduciary relationship?

Under CPF Rules of Procedure, reimbursable losses are limited to among other things:

- (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.

Petitioner does not contend that there was a lawyer-client relationship between Andrews and Petitioner. No entity has so held. Petitioner does contend, however, that the losses arose out of a fiduciary relationship.

Although not a point raised by Petitioner, there does appear to be an interesting question regarding Rule interpretation. Does the existence of the fiduciary relationship **have** to be between the Claimant and the Respondent or is it sufficient that that loss simply arises from a fiduciary relationship?

Petitioner has taken the position that it is the former since he makes arguments that he was in a fiduciary relationship with Andrews. For purposes of this appeal, we will accept his

* Payments are limited to: \$50,000.00 per petitioner for losses that occurred before July 1, 2015 **OR**

interpretation of the Rule.

Were Andrews and Petitioner in a fiduciary relationship?

The case law hold that “there is a fiduciary relationship ‘when special confidence has been reposed in one who in equity and good conscience is bound to act in good faith and with due regard for the interests of the one reposing the confidence.’” *Allen Realty Corp. v. Holbert* 227 Va. 441, 446 (1984). The Court also noted that “the existence of a fiduciary relationship is a question of fact.” *Id.* at 447

Undisputed facts:

1. The escrow agreement by which Andrews received the funds was NOT signed by Tatioan (assignee);
2. The escrow agreement by which Andrews received the funds was NOT signed by Junge, Glazebrook, and Global Financing Solutions, LLC (assignors);
3. The escrow agreement by which Andrews received the funds was signed by CARCO LLC and Reliance Investment Group, LLC;
4. Global had entered into a joint venture agreement (“JVA”) with Reliance Investment Group, LLC (“Reliance”) unclear whether Junge and Glazebrook were also signatories to the JVA;
5. The escrow agreement by which Andrews received the funds was signed by Andrews as Chairman of Virginia Worldwide Group LLC (VWG);
6. The funds were transferred from Schulenberg to an account in the name of VWG at Wells Fargo Bank. Andrews was the sole member of VWG;
7. The VSB Disciplinary Board did find Tatioan made inquiry, periodically, of Andrews regarding the funds. Andrews never provided any information accounting for the money nor did he return the funds to Tatioan.
8. The VSB Disciplinary Board also found that as a consequence Andrews was in violation of Rules of Professional Responsibility 1.15(4)(b) in that he failed to promptly deliver funds to Tatioan upon his request.
9. Petitioner filed suit on September 9, 2014 in United States District Court for the Western District of Virginia Roanoke Division against Andrews, VWG, among others seeking funds misappropriated by Andrews. It was not alleged that Andrews was acting as Tatioan’s lawyer nor was it alleged that Andrews was acting as Tatioan’s fiduciary.

10. The case was tried in November 2016, and the jury returned a verdict in favor of Petitioner in the amount of \$20,870 against VWG and **NOT** against Andrews. Petitioner filed a motion pursuant to Federal Rules of Civil Procedure 59 (e) to amend the judgment to have the award held against Andrews personally arguing that VWG was essentially the alter ego of Andrews and that the corporate veil should be pierced. USDC Judge Glen E. Conrad denied the motion and did not pierce the corporate veil.

The Board held in September that there was not a fiduciary relationship, and that this was not a reimbursable loss. Has he presented sufficient basis to establish the existence of such a relationship.

I do not find his first two arguments very compelling. I am somewhat conflicted over the holding by the Disciplinary Board. Is the fact that they found Andrews to be in violation of Rule 1.15(b)(4) sufficient to conclude that he was in a fiduciary relationship? Is this Board bound by that finding? What precedent does such a finding make on future claims when people not in an attorney client relationship and not signatories to an escrow agreement who never had a communication with the Trustee prior to dispersing the funds can make claims?

Additional consideration.

The CPF guidelines also provide as follows:

Because the Fund is intended to be a remedy of last resort, and the Petitioner must first pursue other sources of recovery, the following shall be excluded from Reimbursable Losses:

- b. Losses that may be covered from any source, such as through litigation, mediation or enforcement of a judgment by the Petitioner.

Rules of Procedure of the Client Protection Fund of the Virginia State Bar
I.F.8

In this matter, Petitioner not only had the opportunity to seek reimbursement directly from Andrews but did so in the action filed in the USDC for Western District of Virginia. Interestingly, he did not seek recovery on the theory of the breach of fiduciary duty. He did not allege that Andrews was his lawyer nor did he allege that Andrews was his fiduciary. For whatever reason, they chose to pursue other avenues of recovery. Does this implicate this exclusion? Does the exclusion apply if suit was filed but was not meritorious? Does the exclusion apply to all losses that **may have** been recoverable regardless of whether successfully pursued or not?

Conclusion

I think the investment exclusion is probably not applicable to these circumstances.

I think that an argument can be made that Andrews was acting in a fiduciary capacity with the funds; however, I am not certain that it was clear that he was acting as Tatoian's fiduciary. Even though the Disciplinary Board found that he was in violation of Rule 1.15(b)(4) and referenced that he did not return the funds to Tatoian, he was clearly acting as someone's fiduciary and was in violation of the Rule. I agree that this point is open to debate.

With regard to whether, the litigation exclusion applies, I think it is interesting that he pursued litigation against Andrews and had a chance to proceed on a theory, i.e. that Andrews was his fiduciary, that forms the basis for his claim here. For whatever reason, he chose not to do so. Should he be allowed to pursue a claim against the Fund on the basis of a fiduciary relationship, when he did not seek to recover from Andrews in litigation on that basis? Moreover, the jury found Andrews not liable personally to Tatoian.

Investigating Board Member: **Phillip V. Anderson**



Date of Report: 1/9/2019



COATES & DAVENPORT

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THOMAS F. COATES, III, ESQUIRE
DD NO.: (804) 200-7226
E-MAIL: tcoates@coateslaw.com

October 19, 2018

By Email at: cpf@vsb.org
& Hand-Delivery to:

Clients' Protection Fund Board
c/o Vivian R. Byrd, Administrator
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026

RE: CPF Docket #18-555-003170
Attorney: William Lee Andrews, III
My Client/Petitioner: John A. Tatoian

RECEIVED
OCT 19 2018
VIRGINIA STATE BAR

Dear Board Members:

I am writing on behalf of my client, John A. Tatoian ("Mr. Tatoian"), whose Petition for Reimbursement from the CPF Fund was reviewed by the Board on September 21, 2018, and denied. I am making this request for reconsideration of Mr. Tatoian's reimbursement Petition as I believe that the reasons cited for the denial in the Board's September 27, 2018 denial letter, copy attached, are ill-founded and erroneous. My reasons for such contention are as follows:

I. Rule I.F.4 does not exclude Mr. Tatoian's loss or render it non-reimbursable.

Mr. Tatoian's loss clearly fits all the qualifying criteria set forth in Rule I.E., which defines "reimbursable losses." Mr. Tatoian's was an actual, quantifiable loss of money, supported by documentation, which resulted from the dishonest conduct of William L. Andrews, III ("Mr. Andrews") while serving in a fiduciary capacity, and Mr. Andrews was suspended from the practice of law as a result of such dishonesty and misconduct. The decision of the Board to deny Mr. Tatoian's claim, as articulated in the September 27, 2018 letter of Jane A. Fletcher, Esquire, CPF Counsel, states that:

The Board was of the opinion that the transaction that gave rise to Mr. Tatoian's claim was in the nature of an investment, which the rules governing the administration of the Clients' Protection Fund excludes [sic] from the class of reimbursable claims. See Rule I.F.4.

A copy of said letter is attached. This appears to be a misinterpretation and misconstruction of Rule I.F.4, which in pertinent part excludes "losses occasioned by...an investment transaction with the Lawyer, unless it arose out of and in the course of...[a] fiduciary relationship and, which, but for the . . . fiduciary relationship . . ., could not have occurred." See Rule I.F.4. (Emphasis added.) In plain English, the Rule does not exclude losses simply because the funds lost were in the nature of an investment or were to be used for investment purposes, but rather losses which involve an investment transaction with the Lawyer himself (*i.e.*, Mr. Andrews), which Mr. Tatoian's loss clearly did not involve.

Moreover, the Rule I.F.4 exclusion appears not to apply even if there is an investment transaction with the Lawyer (which there is not here), if the loss is occasioned by the Lawyer's dishonesty when serving as a fiduciary, as Mr. Andrews was doing in this case. And, obviously, Mr. Andrews' dishonesty, *i.e.*, his embezzlement and theft of Mr. Tatoian's funds, could not have occurred but for the fact that Mr. Andrews was serving in a fiduciary capacity with respect to the funds of Mr. Tatoian's which he embezzled. Indeed, Mr. Andrews' sole capacity with respect to said funds was to hold them in escrow as a fiduciary and disburse them as directed, that being the sole reason the funds were entrusted to Mr. Andrews in the first place. His official title and role with respect to the funds of Mr. Tatoian escrowed with him was "Trustee," not "Paymaster." There was no investment transaction of any kind involving Mr. Andrews himself, either in his personal capacity or in his professional capacity as a lawyer and fiduciary. Mr. Andrews' role was purely that of a professional fiduciary, and his selection to serve in the capacity of a fiduciary as "Trustee" for Mr. Tatoian's funds was predicated upon the fact that he was a licensed Virginia lawyer and thereby deemed to be a professional whose honesty and credentials to serve as a fiduciary were above reproach.

There are limitless instances in which lawyers serve as escrow agents/fiduciaries with respect to funds being held for investments by those who entrust such funds to the lawyer. Arguably, the great majority of escrow funds are held by lawyers in that very manner and are of that same nature. This would include substantially all funds which pass through lawyers' escrow accounts in conjunction with real estate transactions of every description, both residential and commercial. Even in residential real estate transactions where individuals are purchasing or refinancing a personal residence, the funds entrusted to a lawyer to handle the closing on that transaction are by their nature investment funds. However, they are not an investment with the lawyer escrowing the funds. He or she is serving as a lawyer and fiduciary with whom those funds are being entrusted, not as a lawyer with whom or in whom those funds are being invested. The same principle would hold true for lawyers serving as executors of estates or as trustees of trusts, both involving illustrations of lawyers serving as fiduciaries in situations where the funds involved may be held for investment, but they are not investments in or with the lawyer and therefore would not be subject to being excluded from "reimbursable losses" under the provisions of Rule I.F.4.

In summary, the Board appears to have erroneously applied an overly broad and virtually all encompassing interpretation to the very limited and closely circumscribed exclusion actually set forth in the plain language of the Rule as a basis for denying Mr. Tatoian's claim. With all due respect for the Board, it appears such interpretation is both erroneous and unjustifiable, as

the qualifying criteria for such exclusion as provided in Rule I.F.4 clearly do not apply with respect to the funds of Mr. Tatoian which were entrusted to Mr. Andrews as "Trustee" and subsequently embezzled by Mr. Andrews.

II. Mr. Tatoian, both as assignee of Anthony M. Junge, Edward L. Glazebrook and Global Financing Solutions, LLC and individually, is duly qualified and has proper standing to be awarded reimbursement under CPF Rules.

The second prong of the Board's decision to deny Mr. Tatoian's reimbursement Petition, as set forth in the attached letter of Ms. Fletcher, CPF Counsel, is stated as follows:

The Board's investigation showed that before Mr. Andrews received the money Mr. Tatoian invested with persons other than Mr. Andrews, there was no attorney-client or fiduciary relationship between Mr. Tatoian and Mr. Andrews.

This statement fails to take into account that Mr. Andrews did have a direct fiduciary relationship with Anthony M. Junge ("Junge"), Edward L. Glazebrook ("Glazebrook") and Global Financing Solutions, LLC ("Global"), joint venturers with Reliance Investment Group, LLC, through whom Mr. Andrews was hired to serve as an escrow agent and fiduciary with respect to Mr. Tatoian's funds, and that each of them assigned all their claims against Mr. Andrews and others to Mr. Tatoian. Said assignment was entered on August 27, 2015 between Mr. Tatoian and said assignors, Junge, Glazebrook and Global, and was attached and designated as Attachment to Question #1 of Mr. Tatoian's Petition. Another copy of said assignment also was provided to CPF Board Member Phillip V. Anderson, Esquire, in response to his inquiry to Mr. Tatoian's undersigned counsel, on September 17, 2018, along with other documents and information Mr. Anderson requested.

Mr. Tatoian, identified himself by name in the Petition as follows: "John A. Tatoian, Esquire, as Assignee of Global Financing Solutions, LLC; Edward Glazebrook; and Anthony Junge; and John A. Tatoian, Esquire, in his individual capacity." As their assignee, Mr. Tatoian stands in the shoes of Junge, Glazebrook and Global in respect to Mr. Andrews and the fiduciary relationship between Mr. Andrews and them. As such, Mr. Tatoian has proper standing to pursue the claim for reimbursement under the CPF Rules. Accordingly, since Mr. Tatoian has proper standing as their assignee, his reimbursement Petition and claim should not be denied on the erroneous ground that Mr. Tatoian does not have proper standing under the CPF Rules for a reimbursement award in his favor.

It also is inaccurate and incorrect to find that Mr. Andrews did not have a direct fiduciary relationship with Mr. Tatoian himself, even though Mr. Tatoian was not a named party to the Escrow Agreement. Upon information and belief, Mr. Tatoian was identified to Mr. Andrews from the commencement of his engagement as the source of the escrow funds with respect to which Mr. Andrews was to act as Trustee, even though Mr. Tatoian was not individually named as a party to the Escrow Agreement. The Findings of Fact set forth in both the Subcommittee Determination and in the Order of Suspension show that Mr. Tatoian made numerous demands for information upon Mr. Andrews while Mr. Andrews was serving as Trustee and fiduciary with

respect to Mr. Tatoian's funds.¹ The Findings also show that Mr. Andrews communicated on a number of occasions with Mr. Tatoian, in all instances giving Mr. Tatoian willfully false and misleading information about the true status of his funds, obviously in an effort to conceal his embezzlement from Mr. Tatoian. If Mr. Andrews had not had a fiduciary relationship with Mr. Tatoian himself, Mr. Andrews would have had no reason and no right to communicate with Mr. Tatoian. Indeed, Mr. Andrews would have been prohibited from making any disclosures to Mr. Tatoian about the funds if he did not have a fiduciary relationship with Mr. Tatoian, and the fact that Mr. Andrews may not have had a fiduciary relationship specifically with Mr. Tatoian before he received Mr. Tatoian's money to hold as Trustee under the Escrow Agreement is of no moment in this consideration.

Furthermore, the denial of a fiduciary relationship with Mr. Tatoian ignores the rulings of the VSB Disciplinary Board against Mr. Andrews, as articulated in the Order of Suspension. The Disciplinary Board held that Mr. Andrews violated "numerous provisions" of Rule 1.15 of the Rules of Professional Conduct (see Order of Suspension, page 6, line 14), as well as Rules 8.1(a) and 8.4(c) of the Rules of Professional Conduct. Rule 1.15 pertains generally to the safekeeping and proper handling of property and funds belonging to clients and others. The Disciplinary Board found that Mr. Andrews disbursed Mr. Tatoian's funds without Mr. Tatoian's permission or authority and in violation of the terms of the Escrow Agreement, and stated further: "In sum, Respondent's [Mr. Andrews'] transfer of much of the Funds to parties unrelated to the JVA, and his failure to promptly deliver them to the Complainant [Mr. Tatoian] upon his request constitute a violation of Rule 1.15(b)(4). See Order of Suspension, page 7, lines 15-17.

Rule 1.15(b)(4) of the Rules of Professional Conduct requires a lawyer to promptly pay to a client or another as requested the funds in possession of the lawyer that such person is entitled to receive. This rule effectively defines or describes the fundamental elements of a fiduciary relationship, at least as it applies to lawyers. Ergo, Mr. Andrews' violation of Rule 1.15(b)(4) could not have been found by the Disciplinary Board if Mr. Andrews did not have a fiduciary relationship to Mr. Tatoian. It thus would be unfair and inequitable for the CPF Board to apply a definition to the term "fiduciary relationship" which is materially different from or at odds with the holdings of the Disciplinary Board against Mr. Andrews and the plain meaning of Rule 1.15(b)(4).

This is why Mr. Tatoian filed his Petition both as assignee of Junge, Glazebrook and Global, and individually. Since it was known at all relevant times by all involved, including Mr. Andrews, that the funds entrusted to be held by Mr. Andrews in a fiduciary capacity as "Trustee" belonged to Mr. Tatoian, and since there were numerous back and forth communications between Mr. Andrews and Mr. Tatoian about the status of Mr. Tatoian's funds which had been entrusted to Mr. Andrews to hold in escrow, it is clear that Mr. Andrews did in fact have a fiduciary relationship with Mr. Tatoian personally and individually, in addition and ancillary to his official status as Trustee of those funds under the Escrow Agreement.

¹ These communications began at least as early as February 2, 2013, some six weeks after Mr. Tatoian's funds were placed in escrow with Mr. Andrews. The Order of Suspension recites Mr. Tatoian's inquiries to Mr. Andrews about the whereabouts of his \$306,870 began in January of 2014 (see Order of Suspension, page 7, line 10), but such date is believed to be a typographical or clerical error, as the written record of the communications between Mr. Tatoian and Mr. Andrews submitted as exhibits by Bar counsel in the disciplinary proceeding against Mr. Andrews confirms those communications commenced at least as early as February 2, 2013 and continued thereafter.

For all of the foregoing reasons, Mr. Tatoian should not be denied the reimbursement to which he is entitled on the ground of lack of standing under the CPF Rules, and the Board should reconsider and reverse this portion of its denial decision as well.

III. The Board's use of the term "paymaster" to describe Mr. Andrews' services in this matter does not alter the plain fact that Mr. Andrews was engaged to serve as a fiduciary with respect to Mr. Tatoian's funds.

Mr. Andrews was hired per an "Escrow Agreement" to serve and function as "Trustee" with respect to Mr. Tatoian's funds. The term "paymaster" is one Mr. Andrews advanced in an unsuccessful effort to persuade the Bar that his service in this matter involved neither the practice of law nor acting as a fiduciary. Both the Subcommittee Determination and the Order of Suspension, attached to Mr. Tatoian's Petition in Response to Questions #8, #10 and #14 c, addressed and soundly rejected Mr. Andrews' claim that his conduct did not involve the practice of law or his use of his status and standing as a lawyer to serve as a fiduciary. Having been designated as "Trustee" in the Escrow Agreement through which he was engaged, and having been identified and described in that Agreement as "an attorney licensed to practice law by the Commonwealth of Virginia," it is beyond debate that Mr. Andrews was functioning both as a lawyer and as a fiduciary in the matters that led to his embezzlement of Mr. Tatoian's funds. The Board did not expressly state that its use of the term "paymaster," instead of fiduciary, in its denial letter was intended to diminish the legal significance of Mr. Andrews' role as a fiduciary in this matter. Nevertheless, the Board's use of such term is troubling, in that its sole source is Mr. Andrews himself, having advocated the use of such term as part and parcel of his disingenuous efforts to obfuscate the import and avoid the consequences of his numerous willful and egregious breaches of professional responsibility in this matter. As is obvious from the documents, Mr. Andrews served as a "Trustee" and fiduciary, not as a "Paymaster," whatever that term may mean, and there can be little doubt that his numerous acts of dishonesty and skullduggery in respect to his role as "Trustee" and fiduciary in this matter are a proper basis for recovery under the CPF Rules and should entitle Mr. Tatoian to the reimbursement he seeks.

IV. Comments on Mr. Andrews' Opposition to Mr. Tatoian's Petition for Reimbursement.

While preparing this request for reconsideration, the undersigned counsel learned for the first time that Mr. Andrews, by his counsel, Timothy J. Battle, Esquire ("Mr. Battle"), had prepared and filed a response to Mr. Tatoian's Petition styled "Respondent William Lee Andrews, III's Opposition to John Tatoian's Petition for Reimbursement" ("Mr. Andrews' Opposition" or "the Opposition"). Having just learned of the existence of this response by inquiry to counsel for the Board, and having requested a copy be forwarded, Mr. Tatoian and his undersigned counsel first became aware of and received a copy of Mr. Andrews' Opposition on Wednesday, October 17, 2018. Notably, the Opposition was filed or forwarded to the CPF Administrator, Vivian R. Byrd, to Assistant Bar Counsel, Paolo E. Franco, Jr., Esquire, and to the Clerk of the Virginia State Bar, DaVida M. Davis, on June 5, 2018, as shown on the Certificate Mr. Battle attached to the foot of the Opposition, but neither Mr. Tatoian nor his undersigned counsel, both of whose names and addresses were provided in the Petition, were

sent a copy by Mr. Battle, and we were therefore unaware of this submission until specific inquiry was made on October 17, 2018. The comments which follow would have been made prior the CPF Board's initial review and consideration of Mr. Tatoian's Petition for Reimbursement if we had been copied by Mr. Battle when the submission was made on behalf of Mr. Andrews, or if we had otherwise become aware of it prior to the Board's initial review on September 21, 2018.

On page 2 of the Opposition, Mr. Battle makes the following statements in reference to testimony Mr. Tatoian gave at the Bar disciplinary hearing against Mr. Andrews on February 16, 2018:

Mr. Marks asked many questions, including a very direct question about how much money Mr. Tatoian had already recovered from other people. Mr. Tatoian stated under oath that he has already collected the principal from other parties. His claim as of February 16, 2018 was only for interest and attorney's fees.

See Mr. Andrews' Opposition, page 2, lines 9 through 12. Mr. Battle's assertions materially mischaracterize and misrepresent both the general and the specific terms of Mr. Tatoian's testimony at the disciplinary hearing, as is demonstrated by those portions of the transcript of Mr. Tatoian's testimony which Mr. Battle attached to the Opposition. Mr. Tatoian testified that he had recovered, in gross, the sum of \$285,000, that being \$21,870 less than the \$306,870 of his money which had been transferred to Mr. Andrews to hold as Trustee under the Escrow Agreement. Mr. Tatoian was not asked how much it had cost him in attorneys' fees and out-of-pocket expenses to recover the gross sum of \$285,000, but a detailed breakdown of those costs was provided to CPF Board Member Phillip V. Anderson, Esquire, in response to his inquiry to the undersigned prior to the Board's initial consideration of the Petition on September 21, 2018. That rendition of the expenses Mr. Tatoian had incurred to effect the gross recovery of \$285,000 showed Mr. Tatoian had expended attorneys' fees and costs totaling \$59,322.12 and had effected a net recovery, after deducting said \$59,322.12 from the \$285,000 gross sum recovered, of \$225,667.88. As a result, Mr. Tatoian's net out-of-pocket loss caused by Mr. Andrews' acts of dishonesty and misconduct remains at \$81,202.12. This information was provided on Monday, September 17, 2018 to Mr. Anderson as a member of the CPF Board in the form of an Affidavit from Mr. Tatoian, along with several supporting documents, and a copy of said Affidavit is enclosed herewith.

The transcript of Mr. Tatoian's testimony, which includes his colloquy with Mr. Marks of the Bar Disciplinary Board about how much he had recovered, is devoid of any testimony from Mr. Tatoian to the effect that "he has already collected the principal from other parties," as asserted by Mr. Battle. Mr. Tatoian's testimony also is devoid of any indication that "his claim as of February 6, 2018 was only for interest and attorneys' fees," as Mr. Battle further asserts. A review of Mr. Tatoian's actual testimony shows conclusively that Mr. Battle's characterization of it and representations about what Mr. Tatoian said are factually inaccurate, untrue and spurious at best. Indeed, the claims Mr. Battle makes about Mr. Tatoian's testimony are not even remotely inferred or suggested by the actual testimony itself.

Before closing, it should be noted as well that Mr. Battle's characterization of a statement made by Mr. Tatoian in his Petition that, "[a]s assignee of Global Financing Solutions, LLC, et. al., I have received no monies," as a "false statement" is plainly wrong. Mr. Tatoian's statement that he has received no monies as assignee of Junge, Glazebrook and Global is completely true, and not at all inconsistent with or contradicted by Mr. Tatoian's testimony before the Bar Disciplinary Board or any other information he has provided or submitted herein. The gross and net sums which Mr. Tatoian has recovered to date were recovered solely on an individual basis by him, not in his capacity as an assignee of Junge, Glazebrook and Global.

Contrary to what Mr. Battle suggests or claims in the Opposition, Mr. Tatoian has never at any time, either in his testimony or in any other communications regarding this matter, understated, misstated, misled or otherwise undertaken to mislead or misrepresent in any way each and all sums he has recovered of the \$306,870 in actual losses he suffered due to the numerous acts of misconduct and dishonesty of Mr. Andrews. As a result of those losses, and the expenses Mr. Tatoian has reasonably and necessarily incurred to effect the partial recoveries he has made, Mr. Tatoian's net out-of-pocket loss still stands at \$81,202.12, well beyond the upper limit he could be reimbursed by the CPF.

V. Conclusion.

Wherefore, by reason of the foregoing, we respectfully request that the Board reconsider its denial of Mr. Tatoian's Petition and grant him the reimbursement he seeks and is duly entitled to be awarded herein.

I would be happy to respond further to any requests the Board may have.

Very truly yours,

A handwritten signature in black ink, appearing to read 'TFC', with a long horizontal line extending to the right.

Thomas F. Coates, III

TFC,III/tr
Enclosures

cc: Jane A. Fletcher, Esquire, CPF Counsel
John A. Tatoian, Esquire



received
10/1/18

Virginia State Bar

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CLIENTS' PROTECTION FUND BOARD

September 27, 2018

Thomas Coates, III, Esq.
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5206 Markel Rd Ste 200
PO Box 11787
Richmond, VA 23230-0187

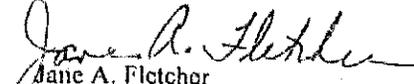
Re: CPF Docket #18-555-003170
Attorney: William Lee Andrews, III
Your client: John A. Tatoian

Dear Mr. Coates:

On September 21, 2018, the Clients' Protection Fund Board met and decided to deny your client John Tatoian's Petition for Reimbursement. The board was of the opinion that the transaction that gave rise to Mr. Tatoian's claim was in the nature of an investment, which the rules governing the administration of the Clients' Protection Fund excludes from the class of reimbursable claims. See Rule I.F.4. The board's investigation showed that before Mr. Andrews received the money Mr. Tatoian invested with persons other than Mr. Andrews, there was no attorney-client or fiduciary relationship between Mr. Tatoian and Mr. Andrews. Throughout the transaction, Mr. Andrews' role was that of "paymaster" to receive and distribute the funds Mr. Tatoian had invested with other persons.

Under the rules of the Fund, you or your client may request reconsideration of the decision by submitting additional information and stating why you believe the Board should change its decision to deny the claim. If we receive a request for reconsideration, the board will again review the claim at its next meeting, currently scheduled for January 11, 2019. **We must receive any such request for reconsideration, in writing, by 4:45 p.m. on October 22, 2018.** Mail your response to the Clients' Protection Fund at the above address or send it by e-mail to cpf@vsb.org. If we do not receive a request for reconsideration by this deadline, the Board's decision to deny the claim will be final.

Very truly yours,


Jane A. Fletcher
Counsel to Clients' Protection Fund

cc: John A. Tatoian, Petitioner

P.O. Box 536
Somers, CT 06071

William Lee Andrews, CPF Attorney
5680 Castle View Lane
Roanoke, VA 24018

Timothy J. Battle, Esq., Counsel to Mr. Andrews
Law Office of Timothy J. Battle
PO Box 320593
Alexandria, VA 22320-4593

VIRGINIA STATE BAR CLIENTS' PROTECTION FUND

In re: Petition for Reimbursement of John A. Tatoian, Esquire

AFFIDAVIT

STATE OF CONNECTICUT
CITY/COUNTY OF New Haven, to-wit:

The Affiant, John A. Tatoian, after first being duly sworn, hereby makes oath as follows:

1. I am making this Affidavit to supplement and clarify certain aspects of my Petition for Reimbursement, and in response to informal inquiries made to my counsel herein by CPF Board Member, Philip V. Anderson, Esquire.

2. As I understand it, Mr. Anderson's inquiries were two-fold: first, whether the sums recovered, which are identified in my response to question 13 of the Petition, *i.e.*, \$65,000 in the case of *Tatoian v. Shea* (USDC Massachusetts, C.A. NO. 3:15-CV14057-MGM, and \$220,000 in the case of *Tatoian v. Junge, et al.* (USDC Connecticut (Civil No. 13 CV 1255)) were specifically earmarked and documented as recovery of punitive damages; and, second, whether I had any direct contact with William Lee Andrews, III, prior to entrusting my funds, which originally totaled \$325,800, with him as escrow agent.

3. The answer to the first inquiry is no, there is no documentation specifically allocating the sums recovered to punitive damages or otherwise. I simply made that allocation on the legal premise that interest and other charges, including punitive damages, should be discharged before the original principal as to any sums recovered. However, I do wish to point out something that I neglected to point out in my Petition, specifically that the sums which were recovered on my behalf were diminished in each instance by the attorney's fees of the lawyers who represented me in the two cases in which the recoveries were made. My counsel in the *Tatoian v. Shea* matter, Jeffrey Hellman, Esquire, deducted \$21,666.65 in fees and \$1,665.37 in

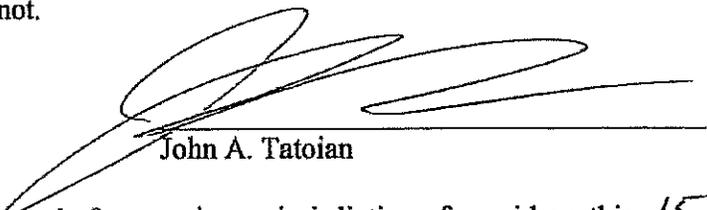


suit costs from the \$65,000 sum collected in that case, leaving me a net recovery of \$41,667.88. My counsel in the *Tatoian v. Junge, et al.* matter, Berglund, Armstrong & Mastny, P.C., collected the \$220,000 sum recovered in increments over the period of almost one year, between September 2014 and August 31, 2015, and, from the said aggregate total of \$220,000, deducted \$36,000 in aggregate attorney's fees, leaving me a net recovery of \$184,000. Accordingly, the combined net sum I have personally recovered against my \$306,870 loss at the hands of Mr. Andrews is \$225,667.88 (\$184,000 + \$41,667.88), and my net loss, even if the sums recovered were deducted from the principal sum loss, remains at \$81,202.12. Attached are escrow account & settlement records from my respective attorneys verifying the foregoing information.

4. In response to the second inquiry, I did not have direct contact with Mr. Andrews before my funds were placed with him. However, I was well aware that Mr. Andrews was a licensed Virginia attorney in good standing, and I relied entirely upon such status in making my decision to entrust my funds to him as escrow agent. I testified at some length about this in the Virginia State Bar hearing proceedings against Mr. Andrews.

5. I would be pleased to respond further if any additional information is required.

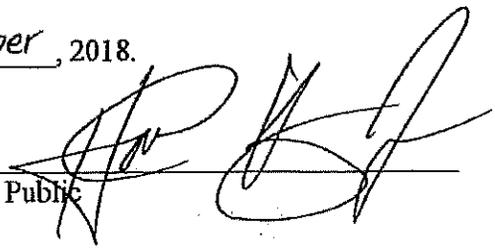
And further this Affiant sayeth not.


John A. Tatoian

Sworn and subscribed to in person before me in my jurisdiction aforesaid on this 15 day of September, 2018.

Given under my hand this 15 day of September, 2018.

My commission expires: April 30, 2022
Commission No.: 148333


Notary Public



Thomas F. Coates, III, Esquire, VSB #01176
COATES & DAVENPORT, P.C.
5206 Markel Road, Suite 200
Richmond, VA 23230
(804) 285-7000
(804) 285-2849 Fax
tcoates@coateslaw.com
Counsel for Petitioner

SETTLEMENT SUMMARY SHEA

SETTLEMENT AMOUNT: \$65,000.00

ATTORNEY HELLMAN DISBURSEMENTS -\$1,665.47

(SEE INVOICE ATTACHED)

ATTORNEY HELLMAN FEES: -21,666.65

TOTAL PROCEEDS TO JOHN TATOIAN: \$ 41,667.88



Jeffrey Hellman

John Tatoian

LAW OFFICES
COATES & DAVENPORT, P.C.
5206 MARKEL ROAD, SUITE 200
RICHMOND, VA 23230

Jane A. Fletcher, Esquire
Clients' Protection Fund Board
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026

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OCT 19 2008
VIRGINIA STATE BAR

HAND
DELIVERED



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CLIENTS' PROTECTION FUND BOARD

October 23, 2018

Thomas Coates, III, Esquire
Coates & Davenport, P.C.
5206 Markel Road, Suite 200
P.O. Box 11787
Richmond, Virginia 23230-0187

Re: Clients' Protection Fund Claim filed by John A. Tatoian
CPF Docket # 18-555-003170

Dear Mr. Coates:

We received your request for reconsideration of the board's decision to deny the above-referenced claim. The Clients' Protection Fund Board is scheduled to meet on January 11, 2019, and will then make its final decision on the claim. To verify the date, time and location of this meeting, call the above number or visit our website, www.vsb.org/site/events/.

Very truly yours,

Vivian R. Byrd
Clients' Protection Fund Administrator

cc: John A. Tatoian, Petitioner
Phillip Verne Anderson, Investigator (with copy of Request for Reconsideration)
William Lee Andrews, CPF Attorney
Timothy J. Battle, Esquire