

CLIENTS' PROTECTION FUND BOARD MEETING
May 3, 2019 at 10:00 a.m.
Virginia State Bar Offices
1111 East Main Street, Suite 700
Richmond, Virginia 23219

AGENDA

- I. Call to Order – **Susan B. Tarley, Chair**
 - A. Officers
 1. Susan B. Tarley, Chair
 2. Adam D. Elfenbein, Vice Chair
 - B. Welcome
 1. Cameron M. Rountree, VSB Deputy Executive Director
- II. Approval of January 11, 2019, Minutes – **Susan Tarley – Tab 1**
- III. Review of Pending Petitions – **Tab 2**
- IV. Committee and Financial Reports – **Tab 3**
 - A. Financial Report – **Crystal Hendrick**
 1. Collection Efforts – **Vivian Byrd**
 - B. Subcommittee Reports – **Tab 4**
 1. Public Awareness Subcommittee – **Sue Baker**
 - a. January 11, 2019 Claims Report
 - b. Article written by Renu Brennan
 2. Finance Subcommittee Report – **Phillip Anderson**
- V. Board Administrative Matters – **Tab 5**
 - A. Consent Agenda Proposal – **Phillip Anderson**
 - B. CLE Outline – **Mary Grace O'Malley**
 - C. Proposed Rule Revisions – **Susan Tarley and Cameron Rountree**
 - D. Nomination of Election of Officers
 - E. Nomination of Finance Subcommittee Members
 - F. Status Report of Pending Claims – **Jane Fletcher**
- VI. Future Meeting Dates
 1. September 20, 2019 (Richmond)
 2. January 17, 2020 (Charlottesville)
 3. May 1, 2020 (Richmond)
- VII. Goodbye to retiring Board Members
 - Donna S. Baker Adam D. Elfenbein
 - Kenneth B. Murov Margaret A. Nelson
- VIII. Adjourn

VIRGINIA STATE BAR
CLIENTS' PROTECTION FUND BOARD MEETING
January 11, 2019
Minutes

The Clients' Protection Fund Board convened at approximately 10:00 a.m. on January 11, 2019, at the offices of Virginia CLE, 105 Whitewood Road, Charlottesville, Virginia.

Members of the board present in person were:

Susan B. Tarley, Chair
Adam D. Elfenbein, Vice Chair, who joined the meeting at approximately 10:05 a.m.
Phillip V. Anderson
Sue Baker
Thomas A. Edmonds, who joined the meeting at approximately 10:20 a.m.
Charles F. Hilton, who joined the meeting at approximately 10:09 a.m.
Kenneth B. Murov
Margaret A. Nelson
David B. Oakley
Melissa W. Robinson
Mary Yancey Spencer
Dr. Theodore Smith

Members of the board participating by telephone at a remote location were:

Paul G. Gill participated from Miami, Florida, because of a business matter and left the meeting at 11:54 a.m.

Mary Grace O'Malley joined the meeting at approximately 12:56 p.m. and participated from Manassas, Virginia, because of a business matter.

Virginia State Bar staff present:

Vivian R. Byrd
Jane A. Fletcher
Crystal T. Hendrick
Jackie A. Kruszewski, who joined the meeting at approximately 10:10 a.m.

Thomas F. Coates, III, Esquire, counsel to petitioner John Tatoian, attended a portion of the Board meeting.

I. Minutes

The board unanimously approved the minutes of the September 21, 2018 meeting.

**CLIENTS' PROTECTION FUND BOARD MEETING
(January 11, 2019) Minutes**

II. Petitions for Reimbursements

The board considered reports on two 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>
18-555-003176	Mary A. Johnson	Barbour	Edmonds	\$1,500.00	Pay \$1,500.00 ¹
19-555-003180	Steven D. Ratliff	Barbour	Edmonds	\$1,200.00	Pay \$1,200.00

The board considered reports on two requests for reconsideration by petitioners and decided as follows:

18-555-003167	Jessica Jake Wheeler	Phillips	Nelson	\$2,500.00	Pay \$1,250.00 (pay petitioner's parents)
18-555-003170	John A. Tatoian	Andrews	Anderson	\$50,000.00	Affirmed Denial ²

The board heard reports on three petitions carried over from the last meeting (9/21/18) 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>
18-555-003162	William L. Gaskins	Parrott	Elfenbein	\$45,825.00	Pay	\$16,875.00
18-555-003168	Mohammed K. Khateeb	Collette	Gill	\$ 2,000.00	Pay	\$2,000.00 ³
19-555-003179	Samantha J. Williamson	McGarvey	Spencer	\$ 5,000.00	Deny	

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>
18-555-003174	Grazyna Bojakowski	Lormand	Edmonds	\$17,500.00	Pay	\$17,500.00
18-555-003177	Silue Wang	Shearer	O'Malley	\$ 11,500.00	Defer	
19-555-003181	Cynthia Caserta	Phillips	Nelson	\$ 3,800.00	Pay	\$2,914.00
19-555-003189	Bryant B. Coleman	Deatherage	Robinson	\$14,000.00	Deny	
19-555-003193	Sandra Kay Hall Skeens	Bishop	Baker	\$ 7,884.00	Pay	\$7,884.00

III. Committee and Financial Reports

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

¹ The Board increased the payment amount from \$750.00 to \$1,500.00 because of new information gained in investigating the request for reconsideration.

² CPF Board Member Melissa Robinson abstained from voting because she served on the disciplinary board panel that heard the disciplinary matter regarding Mr. Tatoian's complaint about William Andrews.

³ The investigation showed that the petitioner died after he filed the petition. The Board decided that the check should be issued to the petitioner's estate or the legally recognized personal representative of Mr. Khateeb.

**CLIENTS' PROTECTION FUND BOARD MEETING
(January 11, 2019) Minutes**

Clients' Protection Fund Administrator Vivian Byrd presented the collection report.

Sue Baker, Chair of Public Awareness Subcommittee, presented the following report:

1. CPF September 2018 awards totaling \$43,858.46 were published as a news item and reported in the Lawyers Weekly.
2. September 2018 awards were posted on social media, bar's homepage as a news item, CPF homepage and noted in the January VSB E-News.
3. American Bar Association distributed claims report regarding September awards to other CPF jurisdictions.
4. Bar Counsel Edward L. Davis spoke briefly about CPF at the First Day in Practice and Beyond Seminar on 12/4/18, and Vivian Byrd attended the seminar and the Solo & Small-Firm Practitioner Forum on 10/18/18 and distributed CPF info cards and answered questions from lawyers concerning the fund.
5. CPF link was added to 3 additional areas on VSB website: Disciplinary System Actions pages and Attorney Records Search.
6. August 2020 the Virginia Lawyer Magazine will feature Virginia State Bar Clients' Protection Fund, and the Publications Department is willing to help write stories.

Phillip Anderson, Chair of Finance Subcommittee, and Crystal Hendrick briefly discussed the schedule of investments and the 2018 interest on investments.

IV. Board Administrative Matters

The board unanimously adopted the VSB policy on Electronic Participation adopted by the Virginia State Bar Council on October 26, 2018.

The board discussed whether to adopt a policy to meet between regularly scheduled meetings. It was determined by the board that a policy did not need to be adopted, because they can meet as frequently as necessary pursuant to Paragraph 6.

The board unanimously adopted a policy to pay CPF expenses for 2018-2019 fiscal period.

Chair Susan Tarley discussed whether the CPF rule excluding employees of CPF Attorneys from receiving reimbursement from the Clients' Protection Fund disqualifies clients who are not employed by the respondent during the attorney-client relationship, but who subsequently are employed by the respondent. The board agreed that the current language of Client Protection Fund Rule I.F.1. is sufficient and did not need to be referred to the Rules Subcommittee.

The board discussed whether the CPF rule excluding investments as a loss should be referred to the Rules Subcommittee for any additional detail. The board agreed that the current language of Client Protection Fund Rule I.F.4 is sufficient and did not need to be referred.

Phillip Anderson, Chair of Subcommittee to Implement a Consent Agenda, reported on the work of implementing a consent agenda to improve administrative efficiency. Mr. Anderson will have written procedures for consideration by the board at the May meeting and will circulate to the chair and CPF staff prior to the meeting for review.

**CLIENTS' PROTECTION FUND BOARD MEETING
(January 11, 2019) Minutes**

V. Other Business

CPF Counsel Jane Fletcher reviewed the claims processed during recent and current fiscal years and assessed the status of pending petitions.

The next meeting is scheduled for Friday, May 3, 2019, and will be at the VSB Office, Third Floor Conference Room, Bank of America Building, Richmond.

Adjournment

The meeting adjourned at approximately 2:00 p.m.

CLIENTS' PROTECTION FUND BOARD
PENDING PETITIONS
Meeting of May 03, 2019

4/16/2019

<u>Petition Number</u>	<u>Petitioner</u>	<u>Attorney Involved</u>	<u>Investigator</u>	<u>Amount</u>	<u>Action</u>
Petitions carried over from meeting of 01/11/2019					
18-555-003177	Silue Wang	Robert Lyman Isaac Shearer, Jr.	O'Malley	\$ 11,500.00	Deferred (01/11/2019)
New Petitions					
19-555-003188	Elizabeth Corinne McCormack-W	Beverly Anne English	Oakley	\$ 13,947.02	
19-555-003190	Glenn Curtis Hackett	Amber Greene McNabb	Hilton	\$ 3,315.00	
19-555-003191	Roxann J. Franklin Mason	Bobby B. Stafford	Elfenbein	\$ 25,000.00	
19-555-003192	Fouad Fillali	Bryan James Waldron	Gill	\$ 28,000.00	
19-555-003194	Lillie Justice	Jason Lee Hamlin	Murov	\$ 3,000.00	
19-555-003195	Robert G. Beebe	Tawana Denise Shephard	Murov	\$ 18,000.00	
19-555-003196	Theresa J. Kennedy	Scott Alan Webber	Robinson	\$ 2,000.00	
19-555-003197	Nicholas L. Perry	Sean Hanover	Nelson	\$ 4,000.00	
19-555-003198	Donte Chaz Joyner	Shelly Renee Collette	Anderson	\$ 4,900.00	
19-555-003199	Renee Rose Flowers	George Ernest Marzloff	Smith	\$ 500.00	
19-555-003200	Steven E. Mason	Patrick Richard Blaszc	Spencer	\$ 19,270.00	
19-555-003201	Linda Lee Pettit	Robert Lyman Isaac Shearer, Jr.	O'Malley	\$ 10,000.00	
19-555-003203	L. Jack Gray	Bryan James Waldron	Gill	\$ 1,000.00	
19-555-003207	Joline E. Leland	John Wesley Bonney	Edmonds	\$ 2,300.00	
19-555-003208	Robert J. Bentley	Jason Lee Hamlin	Tarley	\$ 500.00	
19-555-003210	Carol Hardy Tyler	Renay Melitta Fariss	Spencer	\$ 2,500.00	

CLIENTS' PROTECTION FUND BOARD
PENDING PETITIONS
Meeting of May 03, 2019

4/16/2019

<u>Petition Number</u>	<u>Petitioner</u>	<u>Attorney Involved</u>	<u>Investigator</u>	<u>Amount</u>	<u>Action</u>
Anderson - New Petitions					
19-555-003198	Donte Chaz Joyner	Shelly Renee Collette	Anderson	\$ 4,900.00	
Edmonds - New Petitions					
19-555-003207	Joline E. Leland	John Wesley Bonney	Edmonds	\$ 2,300.00	
Elfenbein - New Petitions					
19-555-003191	Roxann J. Franklin Mason	Bobby B. Stafford	Elfenbein	\$ 25,000.00	
Gill - New Petitions					
19-555-003192	Fouad Fillali	Bryan James Waldron	Gill	\$ 28,000.00	
19-555-003203	L. Jack Gray	Bryan James Waldron	Gill	\$ 1,000.00	
Hilton - New Petitions					
19-555-003190	Glenn Curtis Hackett	Amber Greene McNabb	Hilton	\$ 3,315.00	
Murov - New Petitions					
19-555-003194	Lillie Justice	Jason Lee Hamlin	Murov	\$ 3,000.00	
19-555-003195	Robert G. Beebe	Tawana Denise Shephard	Murov	\$ 18,000.00	
Nelson - New Petitions					
19-555-003197	Nicholas L. Perry	Sean Hanover	Nelson	\$ 4,000.00	
Oakley - New Petitions					
19-555-003188	Elizabeth Corinne McCormack-W	Beverly Anne English	Oakley	\$ 13,947.02	
O'Malley - Petitions carried over from meeting of 01/11/2019					
18-555-003177	Silue Wang	Robert Lyman Isaac Shearer, Jr.	O'Malley	\$ 11,500.00	Deferred (01/11/2019)

<u>Petition Number</u>	<u>Petitioner</u>	<u>Attorney Involved</u>	<u>Investigator</u>	<u>Amount</u>	<u>Action</u>
O'Malley - New Petitions					
19-555-003201	Linda Lee Pettit	Robert Lyman Isaac Shearer, Jr.	O'Malley	\$ 10,000.00	
Robinson - New Petitions					
19-555-003196	Theresa J. Kennedy	Scott Alan Webber	Robinson	\$ 2,000.00	
Smith - New Petitions					
19-555-003199	Renee Rose Flowers	George Ernest Marzloff	Smith	\$ 500.00	
Spencer - New Petitions					
19-555-003200	Steven E. Mason	Patrick Richard Blaszc	Spencer	\$ 19,270.00	
19-555-003210	Carol Hardy Tyler	Renay Melitta Fariss	Spencer	\$ 2,500.00	
Tarley - New Petitions					
19-555-003208	Robert J. Bentley	Jason Lee Hamlin	Tarley	\$ 500.00	



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 #: **19-55-003198**

Petitioner: **Donte Joyner**

CPF Attorney: **Shelly Collette**

CPF Attorney's Status: **Suspended pursuant to Consent to Revocation 3/23/2018**

Amount Requested **\$4,900.00**

Amount Recommended* **\$0**

Action, if any, Petitioner took to recover claimed loss:

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:

Petitioner retained Collette to represent him on three charges in Winchester: manufacturing controlled substance / felony; two charges of possession of controlled substance / class 5 felony. Petitioner believes that there was a written fee agreement but is not certain. Petitioner is currently incarcerated awaiting sentencing on other charges. He states that he paid Collette, \$4,900 in cash installments and may have at least one receipt but no others. He has no access to his personal files. He did relate that Collette made several court appearances with him in Winchester General District Court. He is now represented by a court appointed attorney in Winchester, with whom we have spoken.

A search of the court's website reveals that Collette was counsel of record on the three charges. Two of the charges were dismissed presumably as a result of Collette's efforts. The third charge, possession of controlled substance / class 5 felony, was certified to the Grand Jury. He was indicted and this matter is pending in Circuit Court with new counsel.

Petitioner does not have sufficient documentation of payment and it does appear that Collette did more than an insignificant amount of work. The court records reveal at least 5 court appearances at which Collette,

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

according to Petitioner, present for at least. We suspect that she may have been present for more given the dispositions. I do not recommend any payment.

Investigating Board Member: **Phillip V. Anderson**
Date of Report:

A handwritten signature in black ink, appearing to read "Phillip V. Anderson", with a long horizontal line extending to the right.



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report

Supplemental Report

Investigating Board Member: Thomas A. Edmonds

Petition # 19-555-003207

Petitioner Joline E. Leland

CPF Attorney John Wesley Bonney

CPF Attorney's Status Revoked

Amount Requested \$ \$2,300

Amount Recommended* \$ 0

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* N/A

Results of Investigation and Recommendation: Petitioner provided inadequate proof she paid money to Bonney, or that the work he did for her was so deficient that it constituted evidence of fraud or dishonest conduct. Bonney was revoked more than five years ago, and she also did not indicate what, if any, efforts she had made to locate him and at least demand he reimburse her.

I emailed her on February 21, 2019, with details about the additional information I would need in order to complete my investigation of her claim and make a recommendation to the board. When I did not get any response from her, I called her on March 7. She indicated she did not receive my email, though she confirmed I had used the correct email address provided in her petition. She gave me her work email also, and I resent my original email to both

* 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

- addresses. Neither I nor the staff at the bar has heard anything further from her, so I am recommending we deny the claim for insufficient information to complete our investigation.

Investigating Board Member: Thomas A. Edmonds
Date of Report: April 10, 2019

* 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

Weakland, Louann

From: tomedmonds@verizon.net
Sent: Wednesday, April 10, 2019 10:21 AM
To: Byrd, Vivian; Fletcher, Jane
Subject: Fwd: Your Clients Protection Fund Petition for Reimbursement

Dear Vivian and Jane: Below are my emails to Ms. Leland. I have heard nothing further from her. Please retain for your file and attach to the report I will file soon on this claim. Thanks.

Tom

-----Original Message-----

From: tomedmonds <tommedmonds@verizon.net>
To: daddysjoline2 <daddysjoline2@gmail.com>; jleland <jleland@qedsysinc.com>
Sent: Fri, 8 Mar 2019 16:36
Subject: Fwd: Your Clients Protection Fund Petition for Reimbursement

Dear Ms. Leland: Per our phone conversation today, I am forwarding to both your personal email address I used earlier and to your work email which you provided in our conversation, my email of Feb. 21, 2019 regarding your petition for reimbursement from the state bar's Clients Protection Fund. The earlier email explains what I will need from you in order to complete my investigation of your claim. I look forward to hearing from you in due course.

Thomas A. Edmonds

-----Original Message-----

From: tomedmonds <tommedmonds@verizon.net>
To: daddysjoline2 <daddysjoline2@gmail.com>
Sent: Thu, 21 Feb 2019 22:21
Subject: Your Clients Protection Fund Petition for Reimbursement

Dear Ms Leland: I write as a member of the board of the Virginia State Bar Clients Protection Fund; I have been assigned to investigate your petition for reimbursement filed on January 22, 2019.

First let me say we are sorry you believe you were treated poorly by your lawyer, John Bonney, and I regret this has caused you to distrust lawyers in general. Most of our bar members in Virginia are honest, competent and highly ethical, so I hope you will not hesitate to contact another lawyer when you need one in the future. You can always check a lawyer's status and prior disciplinary record by calling the Virginia State Bar in Richmond before you retain the person.

As to your petition, I will need more information and/or action on your part in order to complete my investigation and make a recommendation to the board:

1. The rules of the board require documentation that you paid the \$2,300 you are claiming to Mr. Bonney for the services he agreed to perform for you. You have attached a copy of your credit card statement from February, 2014, showing a payment to THE LAW OFFICE OF JOHN NORFOLK VA. This is not sufficient to establish the payment was to Bonney for preparation of a will containing a special needs trust. If you have something like a receipt from him or a written fee agreement obligating him to prepare these documents for you for a fee of \$2,300, one or both of those could serve as corroboration of the payment to him for the agreed services.

2. We reimburse clients only for losses due to the dishonest conduct or fraud of a lawyer with respect to a client. In your petition, you acknowledge that Bonney completed a draft of the documents and sent them to you for review. You say you found some mistakes you wanted corrected, but that this was never done because of Bonney's disbarment and his unavailability when you attempted to contact or find him. Since it appears he made a good faith attempt to do what you hired him to do, the fact there were errors to be corrected is not sufficient to demonstrate dishonesty or fraud on his part. It may be that the representation was substantially completed, and that if you take the documents to another lawyer who does this type of work, he or she could review them and make the corrections you desire for little additional cost. If

the new lawyer determines the documents were not useful in accomplishing what you need and had no value to him or her in completing the representation, then that could establish dishonesty or fraud on Bonney's part.

3. The fund is a source of last resort, not the first place to which a client can look for reimbursement. Even if the two points above can be addressed to our satisfaction, you will need to locate Bonney and determine if he could reimburse you for any part of the fee he took that was not earned. We do not require exhaustion of your remedies against him if he cannot be found or is insolvent and unable to respond to your claim, but Bonney has been out of business as a lawyer for five years and may very well be employed in some other capacity in the Norfolk area. We would need to know that he could not be found after a diligent search, or that he has no ability to reimburse you. If he is located and seems to have employment, then you would need to take him to small claims court and get a judgment against him in order to satisfy any claim you may have. If he cannot be found or is insolvent, you would need to tell us of your efforts to locate him, or of his financial straits that preclude any recovery of your loss from him.

If you can respond affirmatively to these three points, then I can proceed. If not, it appears to me at this preliminary stage that the petition does not meet the requirements of our rules. Please let me know if you have questions or need clarification of anything I have said, and I look forward to hearing from you if you have the requested further information or take the steps required.

Best regards,

Thomas A. Edmonds

CLIENT PROTECTION FUND BOARD MEMBER ADAM ELFENBEIN'S REPORT

Petitioner: Roxann Franklin Mason

Client Protection Fund Attorney: Bobby B. Stafford (deceased).

Status of Attorney: Deceased (November 8, 2011).

Amount Requested: \$25,000

Amount Recommended: \$0.00

Any action taken by petitioner to recover claimed loss: She asked for a refund from the three firms/individuals representing her in this matter. They refused as stated in the April 7, 2011 letter (attached).

Was sufficient documentation of the loss provided: There were five checks from 2009 totaling thirty five thousand dollars (\$35,000.00).

Results of Investigation:

On March 18, 2009 Roxann Franklin Mason entered into a fee agreement signed by Ms. Mason and (1) Bobby Stafford, Esq. for Raby and Stafford; and (2) Charles R. Jones, Esq. for Jenkins & Jones, PLC. There were also addendums dated June 30, 2009 and October 28, 2009 signed by Stacy L. Stafford, Esq. in addition to Ms. Mason, Mr. Stafford and Mr. Jones. (Copies of these documents are attached.)

I spoke with Mr. Jones at length and he says that the firms worked on the case for a couple of years, used up the retainer, and then withdrew when Ms. Mason retained other counsel. He was credible.

Ms. Mason is represented by John S. Lopatto, III, Esq. He and I spoke at length. Mr. Lopatto also prepared a particularly detailed Brief in Support of Ms. Mason's claim with a 120 page appendix.

1. The Petition is time barred.

Client Protection Fund Rule III.(7)(g) states that a claim must be filed within the later of either (a) seven years from the time claimant knew or should have known about dishonest conduct, or (b) within one year of the lawyer's death, disbarment etc. The VSB received the petition on November 20, 2018 (First page of petition with date stamp is attached.) This petition is time barred.

a. More than seven years passed from the time claimant should have known about any dishonest conduct. Petitioner was clearly put on notice by the April 7, 2011 letter from Charles R. Jones, Esq., Stacy L. Stafford, Esq., and Mr. Stafford's attorney in

fact, Charles Barber, Sr. (A copy is attached to this report. The letter is also part of the memorandum filed by Mr. Lopatto) The letter responds to Ms. Mason's termination of the representation and her demand for the return of her \$35,000.00 retainer. Ms. Mason's new attorney, David A. Branch, Esq. entered his appearance on October 12, 2011. (Mr. Lopatto's memorandum at p. 3, line 11.)

Mr. Lopatto argues that the seven years did not begin to run until March, 2012 when Ms. Mason went to Mr. Stafford's office and found it boarded up. I respectfully think that the April 7, 2011 letter clearly put Ms. Mason on notice that she would not receive any refund. Mr. Lopatto argues that the April 7th letter promises that an itemized billing would be provided and that these never were received. Even if this is accurate, it would not take seven months to realize that the itemized billings had not arrived and that there was therefore a problem.

b. More than one year passed since Mr. Stafford's death. Mr. Stafford died November 8, 2011.

2. Failure to seek reimbursement from other sources.

Rule III.7(a) allows the Board to consider any conduct by petitioner which contributed to the loss. Rule II.2(f) requires petitioner to list efforts to seek reimbursement from sources other than the Client Protection Fund. Ms. Mason apparently never pursued any legal action against the Estate of Bobby Stafford, nor against Charles R. Stone, Esq. (or his firm) or against Stacy L. Stafford, Esq. Ms. Mason contributed to her own loss by not taking legal action against these parties directly, if she thought she had a cause of action. Mr. Lopatto argues that Mr. Stafford's estate was *de minimus*. Even if that is accurate, that does not explain not pursuing Ms. Stafford or Mr. Stone. The Client Protection Fund is a resource of last resort.

April 11, 2019
Date


Adam D. Elfenbein



RECEIVED

NOV 20 2018

VIRGINIA STATE BAR

Virginia State Bar
Clients' Protection Fund
Petition for Reimbursement

Mail to:
Virginia State Bar
1111 E. Main Street, Suite 700
Richmond, VA 23219-0026
Attn: Clients' Protection Fund Board
or email to: cpf@vsb.org

If you have questions about how
to complete this Petition, please
call (804) 775-9426 or refer to the
information at www.vsb.org/site/
public/clients-protection-fund/.

This is a request for payment from the Clients' Protection Fund because of the acts of a Virginia attorney whose name is
Robby B. Stafford and whose address is/was
Law Office of Robby & Stafford, 1000 Pendleton St, Alexandria, VA 22314

1. Name of Petitioner (person seeking payment from Clients' Protection Fund):

Mr. Mrs. Ms.

Roxann Franklin Mason

first

middle or initial

last

2. Petitioner's Contact Information:

[Redacted contact information]

Telephone No.:

Street or P.O. Box

Daytime: [Redacted]
Evening: (") " "

City State Zip Code

E-mail address: bbpird@verizon.net (check here to give us permission to contact you by e-mail)

3. Amount you are requesting to receive from the Clients' Protection Fund: \$ 25,000.00

4. Date or period of time in which the alleged loss occurred: 3/18/2009 - 1/2012

5. Name of spouse, if any: Douglas Mason

6. Did you personally pay money to the attorney? YES NO

If you answer NO, and someone else paid the lawyer for you, please state who paid the lawyer and that person's relationship to you

7. Do you have receipts, canceled checks, credit card information, or other documentation to prove your payment?
YES NO If you have documentation, attach copies (not originals) to this petition. If so, then please redact
personally identifying information such as social security numbers, date of birth, driver's license numbers, etc. If you do not have
proof of payment, state why you do not have it.

RABY AND STAFFORD
ATTORNEYS AND COUNSELLORS AT LAW
THE RABY BUILDING
P.O. BOX 830
1000 PENDLETON STREET
ALEXANDRIA, VIRGINIA 22313-0830

BOBBY B. STAFFORD
MEMBER OF THE VIRGINIA AND
DISTRICT OF COLUMBIA BARS
STACY L. STAFFORD
DISTRICT OF COLUMBIA BAR
JAMES H. RABY*
*DECEASED 9-3-81

TELEPHONE NUMBERS
PHONE (703) 549-0284
FAX (703) 893-5137
E-mail vze26wgs@vortzon.net

April 7, 2011

Roxann J. Franklin-Mason
PO Box 40357
Washington, DC 20016

Dear Mrs. Mason:

Pursuant to your letter dated April 4, 2011, and the termination provision in the Joint Retainer Agreement dated March 18, 2009, we hereby acknowledge your termination of our engagement to represent you in the Federal District Court Cases against the Department of Navy (i.e. Roxann J. Franklin Mason v. Secretary of the Navy, Civil Action No. 96-2505 *et al*).

Notwithstanding, we note, with emphasis that your unilateral and unauthorized repossession of the files was improper client conduct based upon your failure to notify us in advance of your intent to retrieve your files. It is improper for a client to go into an attorney's office without permission and seize any documents. You have always had access to your documents and to date, you have not made a request for your records to be returned.

Moreover, in terminating a case, there is a process which is undertaken to ensure that all documents are properly transferred to the client. In light of the improper steps undertaken by you to repossess your files, we will not and cannot be held liable for any documents that you may or may not have in your possession. Throughout our representation, we provided you a copy of each and every document (pleadings, letters, etc) at the time of filing. All copies of any and all documents are in the repossessed files.

~~The Joint Retainer Agreement~~ outlines a specific methodology for the specific termination of our attorney/client engagement. You have not adhered to the termination provision, in that; you are requesting the immediate return of \$35,000. We direct your attention specifically to Paragraph 8B which states:

"Should you terminate our representation prior to completion of your legal matter, your deposit will be refunded to you. However, as work will have been performed on your behalf, we will apply our normal billable rates to any work performed. Should the resulting amount exceed the 25% previously referenced in 2(A), the excess amount is likewise non-refundable. In no circumstance will you be charged a fee greater than that listed in paragraph 2(A)."

Mrs. Roxann J. Franklin-Mason
Page Two

To date, the number of billable hours has far exceeded your initial retainer amount of \$35,000. Within a reasonable period of time, we will provide you with an itemized billing illustrating all work performed in your behalf on all cases in United States District Court and United States Court of Federal Claims.

It is with our deepest regret that you did not allow us to complete our mission in bringing your cases to closure. Should you engage new counsel, we are prepared to coordinate and discuss this matter as necessary and appropriate.

We thank you kindly for your time and attention to this matter and we wish you well.

Very truly yours,


BOBBY B. STAFFORD, ESQ. CHARLES R. JONES, ESQ. STACY L. STAFFORD, ESQ.
CHARLES BARBER, SR.
POA

RABY AND STAFFORD
ATTORNEYS AND COUNSELLORS AT LAW
THE RABY BUILDING
P.O. BOX 630
1000 PENDELTON STREET
ALEXANDRIA, VIRGINIA 22313-0630

BOBBY B. STAFFORD
MEMBER OF THE VIRGINIA AND
DISTRICT OF COLUMBIA BARS
JAMES H RABY*
*DECEASED 9-3-81

TELEPHONE NUMBERS
(703) 549-0284
FAX (703) 683-5137
EMail: vze26wgs@verizon.net

March 18, 2009

Roxann J. Franklin Mason
PO Box 40357
Washington, DC 20016

Re: JOINT RETAINER AGREEMENT

- 1) Roxann J. Franklin Mason v. Hansford T. Johnson, Acting
Secretary of the Navy
Civil Action No. 03-045 (RWR/JMF)
- 2) Roxann J. Franklin Mason v. Gordon R. England,
Secretary of the Navy
Civil Action No. 96-2505 (JMF)

Dear Ms. Mason:

We are pleased you have employed Bobby B. Stafford, Esquire and Stacy L. Stafford, Esquire of the law firm of Raby and Stafford and Charles R. Jones, Esquire, of the law firm Jenkins & Jones, PLLC in connection with the above-referenced matter.

At the outset, it is noted and emphasized that this is a joint retainer agreement whereby the two law firms have agreed to combine their resources in order to assist you in the resolution of your case. The firms are located in two different jurisdictions; however, this agreement will provide specific information concerning the fee splitting arrangement and the matter in which this engagement will be handled.

It is standard operating procedure, in both firms, to send all new clients a letter in which we set forth the nature and terms of our representation. Although we do not wish to be overly formal with you, we have found it to be helpful to set forth these terms in advance and to give clients the opportunity to ask any questions that may be raised. This joint employment letter will confirm our agreement, and our work will begin when we have received the required deposit and the signed original of this letter, including all pages.

The Attorneys (CRJ, BBS & SLS) will jointly provide legal services to Roxann J. Franklin Mason in connection with the above captioned matter, and the scope of the service we will render, the manner of calculating, billing, and collecting legal fees and other aspects of the proposed representation are mutually agreed to be as follows:

1. Services to be provided:

The Attorneys shall jointly provide the following services to include litigating, advising, counseling, negotiating, investigating, and handling the claims in the employment discrimination and breach of contract suit, Civil Action No. 03-045 and retaliation case, Civil Action No. 96-2505 (JMF), both in the United States District Court for the District of Columbia.

2. Determination of Fees for Service:

A. We will jointly provide the services described above for an initial retainer of \$15,000.00.

FEE SCHEDULE:

March, 2009 --	\$15,000.00
May 31, 2009--	5,000.00
July 31, 2009--	5,000.00
September 15, 1009 -	10,000.00

Notwithstanding these options, the initial retainer shall be divided as follows: (55% Charles R. Jones, and 45% for Bobby B. Stafford and Stacy L. Stafford (22.5%, BBS & 22.5% SLS). The remainder of the legal fees for our services to you, will be one-third (1/3) of the total amount recovered in your case. Due to each lawyer's different jurisdictional requirements, both in the District of Columbia and Virginia, the retainer fee shall be placed in two separate escrow accounts and each draw shall result in a billing statement to the client, which shall be jointly provided by the Attorneys on a monthly basis. One quarter of this amount shall be non-refundable as payment for the initial research and investigation of your matter. Please understand that under the Virginia Bar Rules, all funds will be held in the Trust Account for the Raby & Stafford Law office, at the Bank of America, NA. Under the DC Bar Rule, all funds will be held in the Trust Account for the law firm of Jenkins & Jones, PLLC at the Chevy Chase Bank.

3. Firm Personnel. Our attorneys have varying areas of expertise and amounts of experience. We shall in each instance provide services in the most effective and efficient manner. To accomplish this goal, you agree that Charles R. Jones will provide the lead role, Stacy L. Stafford will provide the legal research, etc., and Bobby B. Stafford will have principal responsibility for your general representation and oversee the litigation process. However, if additional attorneys are needed for expertise of other professionals, we reserve the right to assign those particular attorneys who will be working on your behalf. Typically, attorneys within the firm may need to confer on certain aspects of the representation to provide levels of expertise appropriate to your legal needs. We will discuss the assignment of our personnel with you at your request.

4. Disbursements and Expenses.

We may incur various expenses in providing services. You agree to pay all such expenses and to reimburse us for all out-of-pocket expenses that we pay on your behalf at the conclusion of this case. Expenses that may be incurred include, but are not necessarily limited to, charges for serving and filing papers, courier and messenger services, recording and certifying documents, deposition and court transcripts, investigations, expert witness fees, long distance telephone calls, copying charges, travel expenses, including mileage outside of the local area, and significant excess postage charges.

5. Statements.

We will jointly send you a monthly statement. The amounts billed are due upon receipt. If the account is overdue by more than thirty (30) days, we reserve the right to terminate all further services and/or apply to any court for permission to withdraw from any litigation in which we represent you, upon notice to you to that effect, or suspend the provision of any further service to you until your account balance is paid. If we bring suit against you to collect any balance owed, you agree to pay us an additional amount of 25% of the balance owed as attorney fees. Any unpaid balance for fees or costs will accrue interest at the rate of 1.5% per month.

6. Client cooperation.

It is imperative for us to have your full cooperation and provide us with all the information we need in order to represent you properly. This means promptly responding to our requests, as such matters as providing names and addresses of potential witnesses. If there is any change in your address or telephone number, please notify us immediately.

7. Scope of representation.

We are not responsible for any legal matter which our services or advice have not been specifically requested and confirmed by us in writing.

8. Your right to terminate representation

A. You reserve the right to terminate this representation with or without cause. You need to notify us in writing if you want to terminate our representation. When we receive your written notice of termination, we will stop all legal work on your behalf immediately. You will promptly reimburse us for all fees, charges and expenses incurred pursuant to this agreement before the date of the written notice of termination.

B. Should you terminate our representation prior to completion of your legal matter, your deposit will be refunded to you. However, as work will have been performed on your behalf, we will apply our normal billable rates to any work performed. Should the resulting amount exceed the 25% previously referenced in

2(A), the excess amount is likewise non-refundable. In no circumstance will you be charged a fee greater than that listed in paragraph 2(A).

- C. Our regular billable rates are within the following ranges each Attorney shall bill accordingly:

Charles R. Jones	\$300.00 per hour
Bobby B. Stafford	\$300.00 per hour
Stacy L. Stafford	\$200.00 per hour

Our rates are reviewed and adjusted periodically without notice.

9. Work Papers, Etc.

All work papers and other materials that we create during our representation are initially our property. However, all of your documents that come into our possession and copies of all other materials, for which you have paid a fee, will be provided to you as soon as reasonably possible on your written request. We will retain our file for this matter for a period not less than three (3) years after our engagement has terminated or work on your case has stopped. However, after three (3) years, we may dispose of the file without notice or obligation to you.

10. Waiver of Warranties.

We are committed to serve in your best interests at all times in bringing this matter through to fruition. Our entitlement to the fees and reimbursement for disbursements described above is not contingent upon the final outcome of any particular matter that you have requested us to undertake. We cannot and do not warrant or predict final developments or results of any matter.

11. Our Right to Terminate Representation.

We may withdraw from representation in this matter if you: insist upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law; personally seek to pursue an illegal course of conduct; insist that the law firm pursue a course of conduct that is illegal or that is prohibited under the disciplinary rules; render conduct that is contrary to the judgment and advice of the attorneys, but not prohibited under the disciplinary rules; consult with another attorney without first notifying us; are unduly influenced, in our determination, by persons not a party to your case of deliberately disregarding any agreement or obligation to us as to the timely payment of expenses or fees as required by this agreement for services rendered. We may also withdraw if you insist on disregarding our advice as to tactical control over your case. According to the Virginia Code of Professional Responsibility and the District of Columbia Code of Professional Responsibility, we are not allowed to relinquish the responsibility for the tactical conduct of a case to any client. If someone other than you is responsible for paying your legal fees, under the Code of Professional Responsibility, that person cannot exert influence over how we conduct your representation. You alone have the right to make strategic choices

with us in your case, to decide if you are satisfied with our representation, or to decide if you wish to terminate our representation.

12. General Provisions.

Commencement of Representation – Our joint representation of you will begin when we have received the signed original copy of this letter, including all pages, and the required deposit.

Entire Agreement – This agreement constitutes the entire agreement between the parties to it and may not be modified except in writing signed by the parties or their authorized representatives.

Binding Effect – This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

Assignment – This agreement may not be assigned by either party, except with the written consent of the other party, except to the extent that our employment of other attorneys and third parties is expressly contemplated in this agreement.

Controlling Law – This agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia for the law firm of Raby and Stafford and Jenkins & Jones, PLLC this agreement shall be construed and enforced in accordance with the law of the District of Columbia.

If the foregoing terms are acceptable, please sign and return the original copy of this letter, including all pages, and the required deposit. We look forward to working with you.

Sincerely yours,


BOBBY B. STAFFORD, ESQ
Law Office of Raby & Stafford


CHARLES R. JONES, ESQ
Jenkins & Jones, PLLC

I understand and accept the terms of this joint retainer agreement.


Signature: Roxann J. Franklin Mason

3/18/09
Date of Acceptance

ADDENDUM TO JOINT RETAINER AGREEMENT
As of June 30, 2009

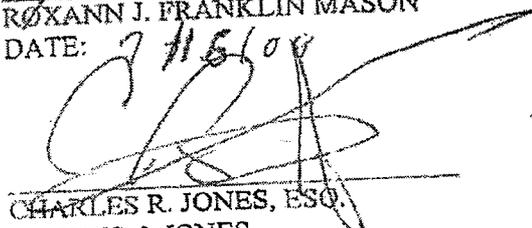
This agreement is amended due to oversight in the original script and thus, the agreement is AMENDED accordingly:

"At the end of litigating both the Discrimination case, now in the United States Court of Federal Claims, and the Retaliation Case, in the United States District Court, and recovery is had, the client is entitled to an adjustment in the fee collected in the amount of \$20,000.00, which will be reimbursed from the attorney's fees received at the time of settlement.

SEEN AND AGREED TO:


ROXANN J. FRANKLIN MASON

DATE: 7/15/09


CHARLES R. JONES, ESQ.
JENKINS & JONES

DATE: 7-20-09


BOBBY B. STAFFORD, ESQ.
LAW OFFICE OF RABY & STAFFORD

DATE: 7-16-09


STACY L. STAFFORD, ESQ.
LAW OFFICE OF RABY & STAFFORD

DATE: 7-16-09

ADDENDUM TO JOINT RETAINER AGREEMENT
As of October 28, 2009

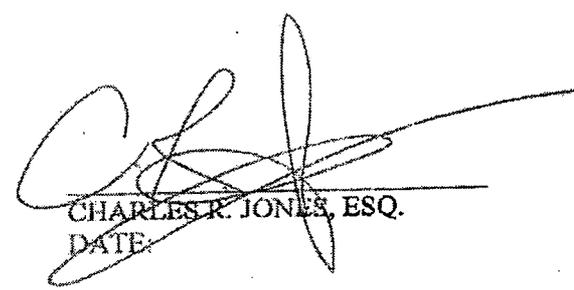
This Joint Retainer Agreement is amended to reflect the following additions/changes to the original agreement dated March 18, 2009 to include the following:

1. It is understood and agreed between the parties that Bobby B. Stafford, Esq., Charles R. Jones, Esq., and Stacy L. Stafford, Esq., (The Attorneys) shall be entitled to receive 33 1/3% of the lump sum received as a result of settlement or litigation in this matter.
2. That The Attorneys are not entitled to any future increased individual monthly annuity benefits received after the lump sum payment.
3. That The Attorneys will request that the Government pay the 33 1/3% attorneys fees to be paid by the Defendant/Government. The Attorneys stipulate that this will be requested but cannot guarantee that the Defendant/Government will.

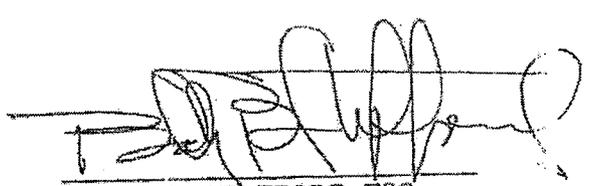
SEEN AND AGREED TO:



ROXANN J. FRANKLIN MASON
DATE: 10/28/09



CHARLES R. JONES, ESQ.
DATE: 10-28-09



BOBBY B. STAEFORD, ESQ.
DATE: 10/28/09



STACY L. STAFFORD, ESQ.
10/28/09

Client Protection Fund Board Investigating Board Member's Report

Petitioner: Fouad Fillali

Respondent: Bryan James Waldron

Client Protection Fund Attorney: Paul G. Gill

Status of Attorney: Revoked after Disciplinary Board hearing on Sept. 28, 2018; order entered October 15, 2018

Amount Requested: \$28,000

Amount Recommended: \$6,375

Results of investigation:

Petitioner Mr. Fouad Fillali signed a form contract from Revolution Redemptions ("RR") on June 5, 2015, with the following most relevant provisions:

1. RR would render assistance to Fillali to recover "unclaimed funds that potentially belong to you (the 'Claim')," in return for the right to 33 percent of said recovery;
2. RR would get a lawyer to assist Fillali in the Claim if necessary;
3. that lawyer would be responsible for "recovering your Claim and distributing your portion to you."

The form "Referral Agreement" signed by respondent Waldron on September 14, 2015, reflected the following most relevant provisions:

1. RR would refer claimants of "unpaid surplus funds from mortgage foreclosures" to attorney Waldron;
2. Waldron would be "expected to enter into an agreement with each Claimant to engage Attorney's services (the 'Attorney-Claimant Engagement Letter')."
3. Waldron agreed to pay RR "its 33% share" of collected Claims, unless otherwise stated on the "Attorney-Client Engagement Letter;"¹ and
4. In exchange for Attorney assistance to Claimants, "RR will donate legal fees to Attorney for the Claimant's benefit," in the amount of \$250 upon each occurrence

¹ Neither petitioner, respondent, nor RR produced a copy of a signed (or unsigned) form Attorney-Claimant Engagement letter related to petitioner. Having said that, it is clear that the parties treated Fillali's initial engagement of Waldron's services as premised on an engagement letter like that referred to in the form contract between RR and Fillali, and the referral agreement between RR and Waldron. That seems sufficient to establish an attorney-client relationship between Fillali and Waldron, and a fiduciary one.

of the following: (a) execution of an engagement letter; (b) attendance of “any court hearing required” in connection with surplus funds; and (c) RR’s receipt of a written order of the appropriate court for release of surplus funds.

The “Claim” here stemmed from \$86,036.90 held by the Fairfax County Circuit Court in the case of Barcroft Hills Condominiums Council of Co-Owners (“Barcroft”), Case No. CL-2010-0017524. The suit reflected Barcroft’s efforts to enforce memoranda of liens for unpaid condominium assessments on a condominium Filalli owned, and adjudicate the priority of liens attaching to the proceeds of a court ordered sale of the property.

Waldron secured on March 11, 2016, an Order of Payment, signed by a circuit judge in Fairfax, which ordered disbursement of the entire sum to him, as counsel for Fillali. There seems no evidence that he circulated the order to counsel for the plaintiff or other defendants in the case that gave rise to the sum.

Barcroft discovered the order, and promptly moved to reconsider, citing lack of notice of the Order of Payment, as among the grounds for reconsideration.

On April 26, 2016, the Fairfax Circuit Court entered a Consent Order of Payment, which recited the procedural history of the case, vacated the Order of Payment Waldron had obtained, and ordered instead by agreement of all parties, to disbursement of the “remaining surplus funds previously paid into the Court” as follows:

\$12,500	To Barcroft, to cover specified memoranda of liens
\$12,500	To Fillali
\$61,036.90	To Nationstar Mortgage, LLC, successor in interest to Bank of America, which held the original deed of trust on the property securing a residential mortgage lien

The signatures of all counsel, including Waldron’s, reflect that the order presented by counsel for Barcroft, and entered by the Court, was seen, and not objected to by Waldron (as counsel for Fillali), or counsel for Nationstar.

The only evidence of payment by Waldron to Fillali thereafter is a \$2,000 personal check. The memo line reads “case settlement.” The only evidence of payment by Waldron to RR is a wire transfer of \$2,500 (20 percent, not 33 percent).

Waldron contends that any agreement involving RR applied only to funds “immediately due” the client, and that Fillali was not really owed any funds, given the claims or potential claims of other creditors. However, the form referral agreement between RR and Waldron (or presumably any attorney) clearly contemplates work being done by the attorney, including “any court hearing required,” which hardly sounds “immediate.” In addition, the RR documents never use the phrase “immediately due.” Rather, they refer to “unclaimed funds,” or more specifically (in the referral agreement) “unclaimed surplus funds resulting from mortgage foreclosures,” which echoes the phrase “remaining surplus funds” used even in the Consent Order of Payment Waldron submitted to the court.

Waldron further contends that he explained all the work he had to do to Fillali and RR's representative, and they both "agreed" to "share a new amount," which was more than what they would have gotten but for Waldron's negotiations. This is not credible, for at least the following reasons:

1. Fillali denies a new agreed amount of compensation or way of calculating same.
2. RR's representative denies any such thing, either.
3. There is no remotely contemporaneous writing—email, text, or print—to corroborate such claim at all.
4. Likewise, no writing suggests a basis in hourly rate or otherwise, for Waldron to keep \$8,000 (64 percent of recovery on claim, versus probably not more than \$1,000 due under terms of agreement with RR), and send RR only 20 percent (versus 33 percent) of the total figure recovered, leaving Fillali with only 16 percent (versus more like 65 percent he anticipated under dealings with RR).

Fillali, for his part, makes a claim before this body for \$28,000. A letter preceding his formal claim describes the basis for that figure: "Only \$56,000 was believed owed to Bank of America; the rest had no basis to get any of my funds; [Waldron] gave them \$61,036.89. . . . "Assuming the validity of the [Bank of America] claim (\$56,000), I should have received about \$30,000. Please consider my claim for \$30,000 minus \$2,000 received = \$28,000." From his submissions, he also seems to believe the Barcroft-related liens, and perhaps others, were discharged in bankruptcy or otherwise baseless on their merits.

When I asked Fillali the basis for valuing the interest of Bank of America (transferred to Nationstar Mortgage) at \$56,000, he only said that was what his friend "Sam" told him. Sam is apparently a lawyer who came up with that figure after reviewing court records Fillali got. Even though Fillali describes Sam as not wanting his name associated with the matter, Fillali gave me contact numbers for Sam. Sam and I have not spoken as of this writing.

As for the bankruptcy musings, Fillali filed for chapter 7 or 13 bankruptcies five times between 2010 and 2013, receiving one chapter 7 discharge and getting all other cases dismissed. However, liens secured by property survive bankruptcy discharge.

Fillali's last bankruptcy case also characterized one secured lien as valued well over \$200,000, and Barcroft as holding secured liens approaching \$12,000 in value, even in 2013. The Bank of America priority lien secured by Fillali's condominium was also mentioned in the complaint which initiated the above-referenced Barcroft litigation. The loan secured was in the principal amount of \$220,000 in June 2005.

Court records also reflect ample civil litigation by Barcroft against Fillali, and a number of civil judgments against him, by default or otherwise, from 2009 through 2012.

Several memoranda of liens were filed, were recognized, and received priority just behind the mortgage, in the Barcroft litigation over proceeds of the condominium sale. The liens, after accounting for accrued interest, exceeded the \$12,500 which Barcroft ultimately received.

In short, I have no evidence that Barcroft's liens were fraudulent or inflated, any more than that the Nationstar claim was. Counsel for Barcroft likewise advised me that the \$61,036.90 figure which went to Nationstar was appropriate.

Conclusions and Recommended Disposition

The respondent lawyer is revoked. The claim before the Board is timely. As related to disbursement of the "surplus claims" described above, any claimed loss arose from a lawyer-client relationship or fiduciary relationship between petitioner and respondent.

Waldron does not even dispute the original compensation terms were described in the form contract between RR and Fillali, and the referral agreement between RR and Waldron. By those terms, Waldron should have paid Fillali 67 percent of \$12,500, or \$8,375, not 16 percent, or \$2,000, and sought whatever payment he agreed to under the referral agreement from RR.

Waldron may have done more work than he expected to get what recovery he did on Fillali's behalf. But the evidence does not support his contention that Fillali (or RR) agreed to a different arrangement. To unilaterally keep nearly 2/3 of the sum recovered represents dishonest conduct causing a loss to Fillali of \$6,375. I recommend payment of the claim to that extent.

#

Client Protection Fund Board Investigating Board Member's Report

Petitioner: L. Jack Gray

Respondent: Bryan James Waldron

Client Protection Fund Attorney: Paul G. Gill

Status of Attorney: Revoked after Disciplinary Board hearing on Sept. 28, 2018; order entered October 15, 2018

Amount Requested: \$1,000

Amount Recommended: \$500

Results of investigation:

By form retainer agreement dated September 24, 2015, petitioner L. Jack Gray retained respondent Bryan J. Waldron to represent him in a dispute involving “the violation of certain fiduciary duties by family members of client.” The agreement included a \$1,000 retainer, which Gray paid, but Waldron’s fee otherwise was limited to a 40 percent contingency fee.

Waldron drafted and filed a complaint for Gray against Gray’s sister, Agnes Louise Gray, in Arlington Circuit Court on November 13, 2015. It contained little substance. It started with seven brief paragraphs alleging facts or jurisdiction, and concluded with a 3-sentence prayer for relief. It also barely identified four alleged documents: (1) a living trust dated February 12, 2001, executed by Gray’s mother, Milmae F. Gray; (2) a power of attorney the executed in October 2012 appointing Agnes Gray as agent and attorney-in-fact, with L. Jack Gray as successor agent; (3) an executed will by the mother dated January 11, 2013; and (4) an irrevocable trust agreement signed by the mother the same day. The documents were not attached to the complaint. Gray did not initially give such documents to Waldron, nor did Waldron ask for originals or copies thereof.

The complaint said little else about the theory of liability. For jurisdictional and venue purposes, it averred “acts and omissions constituting the breach of contract” to have occurred in Arlington. It offered only two other factual allegations “in regard to [the sister’s] fiduciary obligations.” First, it alleged the sister “failed to act in regard to” the October 2012 power of attorney. Second, it alleged the sister was required under “the terms of the contract to file the will and refused. Upon this refusal, she should have passed this obligation to successor in interest Plaintiff Lee Jackson Gray, her brother. The will was thus never filed. As a result of this nonfeasance, Plaintiff suffered material economic damages.” The complaint concluded with a prayer for judgment in the amount of \$150,000, and for an order enjoining the sister from “participating in any further management or administration” of the mother’s estate.

(On August 13, 2013, in the matter of In re Milmae F. Gray, CL No. 2013-07049, in the Circuit Court of Fairfax County, the court appointed a guardian and conservator for Milmae Gray. The order doing so also revoked all financial and medical powers of attorney previously executed by her. L. Jack Gray and Agnes Louise Gray noted their objections, *pro se*, to that order. From public records, it appears their mother died in November 2013.)

Court records reflect that the complaint Waldron filed was served, and prompted three pleadings. A demurrer alleged the complaint failed to set forth the essential facts of the claim and the basis for any causal connection between any alleged malfeasance and the claimed economic damages. A plea in bar alleged (accurately) that the above-referenced Fairfax County order appointing a guardian had revoked any powers of attorney pertaining to financial matters, such that any claim for breach of fiduciary duty was time barred. Finally, Agnes Gray filed a Motion Craving Oyer, requesting an order that plaintiff produce the documents referred to in the complaint.

Waldron attended the first hearing scheduled in the case, on defendant's demurrer and motion craving oyer; the plea in bar was not addressed. After argument from counsel, the Arlington County Circuit Court entered an order on January 22, 2016, sustaining both motions. It ordered that the complaint be refiled within 21 days, accompanied by "complete and authentic copies of the four documents referenced in said Complaint." The order was drafted by counsel for Agnes Gray. Waldron signed the order as seen and agreed to.

Promptly thereafter, there were clearly efforts by Waldron to secure the documents from Gray. Gray came up with three of the four; he never secured the fourth. As of this writing, I am waiting to hear back from Mr. Gray about which document described in the complaint was he unable to provide, and whether he ever did uncover same.

On March 30, 2016, Agnes Gray moved to dismiss. The motion noted the procedural history of the case, and the failure of Waldron to refile the complaint and the documents it referred to as previously ordered. Counsel for Ms. Gray notified Waldron of a hearing on the motion to dismiss, held on April 15, 2016. Waldron did not appear. An order of dismissal, noting Waldron's absence, was entered the same day.

Conclusions and Recommended Disposition

The respondent lawyer is revoked. The claim before the Board is timely. Petitioner does not claim a loss beyond the retainer he clearly paid. According to CPF Rule of Proc. I.G.2.:

2. Any act committed by a Lawyer in the nature of failure, refusal or inability to refund unearned fees received in advance where the Lawyer performed no legal services or such an insignificant service that the failure, refusal, or inability to refund the unearned fees constitutes a wrongful taking or conversion. Where the Board finds that the legal services performed by the Lawyer are more than insignificant, but the Lawyer has not fully earned the entire fee, the failure,

refusal or inability to refund the unearned fees may still constitute a wrongful taking or conversion, and the Board may reimburse fifty percent of the total fees paid by the petitioner.

As relevant to Waldron's representation of Gray, Waldron clearly drafted a complaint-- however ambiguous, short, and bare bones--and attended one hearing on two of the motions it spawned. However, his only response to the motions was to ask Mr. Gray for documents. He did not oppose the relief proposed in the sister's demurrer and motion craving oyer. He did not file even the three documents he did receive from Gray. He did not seek leave for discovery to inquire if the defendant had any documents cited in the complaint, or seek extra time to file them, or conduct discovery or investigation to obtain other evidence of their content.

The issue is not whether the additional work would have avoided dismissal. The question is, even assuming for argument's sake that the service Waldron performed was "more than insignificant," does his refusal to return any part of the \$1,000 retainer constitute a wrongful taking or conversion.

Perhaps it is a closer call than I perceive it, but I would say it does, by a preponderance of evidence. There is nothing innovative, time consuming, or difficult about seeking discovery, investigating facts, or arguing for more time from opposing counsel or the court. Competency and diligence required those efforts, and the retainer was probably not fully earned by filing a scant complaint, attending a single hearing, and agreeing to the granting of motions.

I recommend paying 50 percent of the claim, or \$500.

#



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: Charles F. Hilton, Esquire

Petition # 19-555-003190

Petitioner Glenn Hackett

CPF Attorney Amber Greene McNabb

CPF Attorney's Status deceased

Amount Requested \$ 3315.00

Amount Recommended* \$0.00

Action, if any, Petitioner took to recover claimed loss:

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: Skopic law office is offering \$2300.00 for a final settlement to Glenn Hackett. Mr. Hackett agreed and executed the agreement.

Investigating Board Member: Charles F. Hilton, Esquire

Date of Report: April 1, 2019

Kyle Skopic was appointed receiver for attorney McNabb's practice. Mr. Hackett agreed with Skopic to a settlement of \$2300. Release attached and includes CPF.

* 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

LAW OFFICE OF KYLE E. SKOPIC, PLLC

Phone: (703) 246-9530 • Fax: (703) 246-9531 • E-mail: Kyle@SkopicLaw.com

Mailing Address:
P.O. Box 1468
Fairfax, Virginia 22038-1468

Office Location:
10511 Judicial Drive, Suite 107
Fairfax, Virginia 22030

COPY

March 7, 2019

Glenn Hackett
9994 Sowder Village Square, PMB#283
Manassas, VA 20109

Re: Refund of retainer funds – Law Practice of Amber Greene McNabb

Dear Mr. Hackett:

Thank you for your patience while I work on the matters related to the closure of Amber Greene McNabb's law office. I have now resolved many of the outstanding issues and can better address your request for refund of your retainer funds.

According to Ms. McNabb's records, you advanced her \$3,605.00 on February 16, 2018, to handle a divorce case filed against you on March 15, 2018. You subsequently had a Pendente Lite hearing on May 2, 2018. I am aware that Ms. McNabb issued discovery to your wife (today I received some discovery responses from your wife's attorney and forwarded them to Ms. Yurkowski by express mail). According to Ms. McNabb's records, on July 26, 2018, you paid her an additional \$3,315.00. Ms. McNabb's family member(s) advise me that she was spending quite a bit of time on your case shortly before she died. I have not yet obtained Ms. McNabb's billing records related to your case and, as discussed during our conversation, your client file has not been located.¹ I am aware that you filed a claim with the Virginia State Bar (VSB) Client Protection Fund which is still under investigation.

When we spoke on March 1, 2019, you stated that you are seeking a refund of "\$2,300 to \$2,500." In recognition of the circumstances, I believe that I am able to refund to you \$2,300 from the receivership, provided that you accept that as payment in full and are willing to withdraw your claim pending with the VSB's Client Protection Fund.

RECEIVED

MAR 22 2019

VIRGINIA STATE BAR

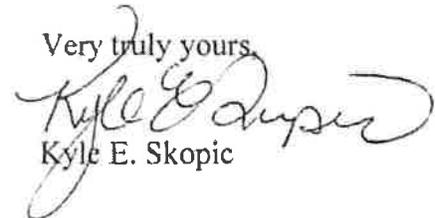
¹ Today I spoke with your wife's attorney and requested that he send Ms. Yurkowski a copy of everything that he sent to, and received from, Ms. McNabb. He assures me that he will promptly provide the requested information and if he does not, I will bring the matter to the Court's attention for intervention.

Letter to Glenn Hackett
March 7, 2019
Page 2 of 2

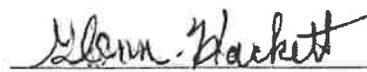
If you are in agreement, please sign below where indicated and return this letter to me in the enclosed, self-addressed envelope. I have enclosed a copy of the letter for your records. I will then need to get court approval (most likely on April 5, 2019) before I can send you payment.

I welcome your further contact if you would like to discuss any aspect of this matter.

Very truly yours,


Kyle E. Skopic

I, Glenn Hackett, accept \$2,300.00 in full settlement of my claim for refund of monies advanced to Amber Greene McNabb and the Law Office of Amber Greene McNabb, for legal services. Further, I hereby release the estate of Amber Green McNabb, the Virginia State Bar Client Protection Fund and the Receiver of Amber Green McNabb's law practice from further liability in connection with this matter.



Glenn Hackett

Date: 3/15/2019



Virginia State Bar

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Richmond, Virginia 23219-0026
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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report

Supplemental Report

Investigating Board Member: Kenneth B. Murov

Petitioner: Lillie Justice **Petition #** 19-555-003192

CPF Attorney: Jason Lee Hamlin

Status of Attorney: Deceased November 10, 2018.

Amt. Requested: \$3,000.00 **Amt. Recommended*** None at this time. See discussion.

Action, if any, Petitioner took to recover claimed loss: Subsequent to the death of Respondent, the Circuit Court of the City of Chesapeake appointed by order entered November 20, 2018 Robert R. Kinser, Esquire as the Receiver for Respondent's law practice. His phone number is 757-382-4155.

Was sufficient documentation of loss provided? Yes No

A copy of a check to Respondent dated October 2, 2018 in the amount of \$3,000.00 was provided.

If actual, quantifiable loss was established, approximate date loss occurred* See Results discussion below.

Results of Investigation and Recommendation: Petitioner hired Respondent October 2, 2018 to represent her son, Christopher Justice, on criminal charges. Petitioner and her son appeared at the preliminary hearing on November 16, 2018 and determined he had not advised the court that he had been retained to represent Mr. Justice, and accordingly, he was not counsel of record. They learned shortly thereafter Respondent had died on November 10, 2018. Pursuant to an order of disbursement

entered April 4, 2019, the sum of \$5,434.14 has been paid to the Clerk of the Circuit Court of the City of Chesapeake for future claims owed by Respondent. I have talked to Mr. Kinser's assistant who is handling this matter, and neither Petitioner nor Christopher Justice are among the claims approved for disbursement per the April 4, 2019 disbursement order. Accordingly, before the Client Protection Fund Board considers this claim, it is recommended that Petitioner should file a claim with the Special Receiver of the Circuit Court of the City of Chesapeake. If that claim is not successful, she should have the option to revisit her petition with CPF.

Investigating Board Member: Kenneth B. Murov

(Print or type name)

April 16, 2019
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: Kenneth B. Murov

Petitioners: Helene Beebe Cunningham & Robert G. Beebe Petition # 19-555-003195

CPF Attorney: Tawana Denise Shepard

Status of Attorney: Virginia License Revoked November 20, 2015 and in Maryland disbarred August 6, 2015. Also had an Agreed Public Reprimand dated April 21, 2015 in Virginia prior to Revocation.

Amt. Requested: \$18,000 **Amt. Recommended*** \$11,554.28.

Action, if any, Petitioner took to recover claimed loss: Although Petitioners filed a claim for reimbursement in Maryland, they have not provided any supporting documentation in four years. Maryland advised the petitioners in 2015 to pursue a claim in either Virginia or D.C. Maryland also advised that they have not paid any claims related to the respondent's conduct. The foregoing has been confirmed by Vivian Byrd in her conversation with Cathy Miele, Investigator for the Maryland Client Protection Fund. Ms. Byrd also contacted the D.C. administrator and was advised no claim has been filed in D.C. The foregoing is consistent with the other Shepard cases I have handled. I have also relied on CPF Rule I. C. and Jane Fletcher's memorandum opinion dated September 16, 2016, that a claim against a Virginia lawyer through the Virginia CPF is valid even though the conduct took place in Maryland.

Was sufficient documentation of loss provided? Yes (partial verification) No

Copies of Petitioner's checks verified payments of \$11,554.28 from March, 2011 through March, 2012.

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

See verification of payments above and results of Investigation discussion below.

Results of Investigation and Recommendation: This is the same scheme as in the other Shepard cases. Ms. Cunningham and Mr. Beebe retained Ms. Shepard and The Glenmore Law Firm to seek a loan modification for two pieces of real estate. They are husband and wife. Engagement letters similar to the other cases were signed by the Petitioners and Respondent Shepard on behalf of The Glenmore Law Firm. Nothing was accomplished on behalf of the Petitioners. The Petitioner's efforts to contact Respondent after March, 2011 were generally unsuccessful. I have confirmed all of the foregoing in a telephone call with Ms. Cunningham on April 13, 2019. Billing Petitioners was all that Respondent did. Mr. Beebe has verified payments of \$5,395.00. Ms. Cunningham has verified payments of \$6,159.28. The recommendation is to pay Mr. Beebe \$5,395.00 and Ms. Cunningham \$6,159.28 for a total of \$11,554.28.

Investigating Board Member: Kenneth B. Murov

April 16, 2019

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 Nicholas L. Perry Petition # 19-555-003197

CPF Attorney Sean Hanover

Status of Attorney License revoked pursuant to Consent to Revocation, effective February 12, 2019 due to his conviction for felonies in Maryland. He is also revoked in Maryland since January 1st. The revocation is not related to this matter at this time.

Amount Requested \$ 4,000.00 Amount Recommended \$ 0

Action, taken by Petitioner to recover claimed loss: Plaintiff says he has called and emailed for receipt of his personal documents and refund of \$4,000 without success.

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

If actual, quantifiable loss was established, approximate date loss occurred November 27, 2018 or February 12, 2019 depending upon interpretation of information.

Results of Investigation and Recommendation:

Unrefuted factual input comes in writing from Attorney Hanover and Petitioner Perry with copies of the: 1) Retainer Agreement (August 31, 2018); 2) J & DR Temporary Custody Order (entered September 10, 2018 by Judge Carr after a full hearing set as an emergency hearing before Judge Carr; and, 3) copies of two checks totaling \$4,000 from Petitioner to the Hanover Law Firm. The Retainer specifically calls for the client to be assisted by another member of the law firm. Petitioner does not refute this and expressed no dissatisfaction with the attorney who assisted him, Mr. Christian Fernandez.

There is also a two-page detailed billing statement for period of September 6, 2018 – September 21, 2018) (with no records for time up until November 27 when a signed order released the Hanover Law Firm from the case).

After reviewing these records and written statements made by both parties explaining their respective positions, I spoke with Petitioner Perry and he confirmed the legitimacy of the retainer agreement, copies of his two checks (\$4,000) paid to the Hanover Law Firm for the services of Christian Fernandez, and the four-

* 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

page court order signed by Judge Carr. Petitioner doesn't think that the time records presented by Attorney are accurate for the amount of time spent but he did agree that between September 6th and September 10 he had numerous conversations with Attorney Christian Fernandez who handled the matter from the Hanover Law Firm. He also agrees that he provided personal records, cell phone messages and photos to Mr. Fernandez to prepare for the emergency hearing that became set on September 6th by motion of Petitioner's wife.

The emergency hearing motion came on to the docket at Petitioner's wife motion to halt all contact with the child based on alleged circumstances that occurred at the day care center at some point during that week. These events occurred after the Retainer Agreement was signed on August 31st.

Pursuant to the extensive statement provided to me on behalf of Attorney Hanover, the unrefuted documents listed above, and the statements of Petitioner in my telephone conversation, I find that a substantial amount of legal preparation, research and trial litigation occurred in this matter by Attorney Christian Fernandez, on behalf of the Hanover Law Firm at the rate of \$350 per hour as agreed to and signed by the Petitioner.

Additionally, a cost for an expert was expended for a licensed clinical social worker, Ms. Sara Bermingham. In our conversation, the Petitioner said he paid that fee separately but could not provide the record of that payment for me.

My recommendation is that the full fee has been earned by the Hanover Law Firm by the work done by Christian Fernandez.

April 30, 2019

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: David Oakley
(Print or type name)

Petitioner Elizabeth Corinne McCormack-Whittemore Petition # 19-555-003188

CPF Attorney: Beverly English

Status of Attorney: Consent to Revocation effective 2/1/2017

Amt. Requested \$ 13,947.02 Amt. Recommended*: \$ 9,947.02

Any action taken by Petitioner to recover claimed loss? Yes No (explain) Petitioner filed suit and accepted a settlement of \$29,000.00 from insurance carrier. See attached explanation.

Results of Investigation and Recommendation: See attached.

Check here if Results and Recommendation are continued to other pages.
Was sufficient documentation of loss provided? Yes No (explain) Petitioner provided evidence of funds wired into CPF attorney's account.

Investigating Board Member: David Oakley
(Print or type name)

04/23/2019
Date

/s/ David Oakley
Signature of Board Member

* 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

Petitioner: Elizabeth Corinne McCormack-Whittemore
CPF Attorney: Beverly English
Petition # 19-555-003188

Results of Investigation:

On October 30, 2014, Petitioner and her husband sold their jointly owned real estate, 733 Fiona Lane, Virginia Beach, VA. Prior to that sale, they were in a contested divorce. The proceeds of the sale after all other disbursements totaled \$38,947.02. Those proceeds were wired to Ms. English's escrow account. The Petitioner and her husband asked Ms. English to hold the proceeds in escrow until it was determined in their divorce action who should receive the funds. Evidence of the funds being wired to Ms. English's escrow account include an outgoing wire transfer confirmation and a trust account ledger.

Ms. English's license to practice law was revoked February 1, 2017 as part of a Consent to Revocation wherein Ms. English signed an affidavit admitting she gave access to her trust/escrow accounts to third parties whom she did not adequately oversee. Those third parties engaged in a scheme of embezzlement and fraud. The affidavit also stated that all client funds in Ms. English's control had been disbursed, and numerous parties have filed claims for her failure to disburse escrow funds. According to recent court filings, Linda and Jeffrey Deguzman were the third parties responsible for the embezzlement and fraud scheme. The Deguzmans and title companies they controlled issued hundreds of checks with Ms. English's forged signature and/or use of a signature stamp without her permission to steal over \$1 million dollars from Ms. English's trust accounts. Ms. English denies participation in the embezzlement scheme and it is unknown at this time if she will be charged criminally. The Deguzmans have plead guilty to criminal charges and sentencing hearings are scheduled for this summer.

Petitioner's attorney learned of Ms. English's license revocation and the embezzlement of the escrow funds in July of 2017. In October 2017, he filed a claim with Torus National Insurance Company ("Torus") and filed a lawsuit against Ms. English and her firm, a solo practice on behalf of Petitioner. According to Ms. English's attorney, the Torus policy is the only insurance available and there no other bonds or insurance contracts to make a claim against. Torus has denied coverage for Petitioner's claim on multiple grounds.

In December 2017, Petitioner and her husband entered into a property settlement agreement which included an agreement to split 50/50 recovery of any of the proceeds Ms. English failed to distribute. Further, they agreed to evenly split any costs incurred in pursuing these funds. In other words, Petitioner is bound by the property settlement agreement to share 50% of any funds she is able to recover, including any award by the CPF. Petitioner's attorney has charged hourly for his filing of the lawsuit in circuit court, but he has not charged for any filings with the CPF.

Recently, Petitioner agreed to accept a settlement from Torus, despite their denial of coverage, in the amount of \$29,000, \$4,000 of which was allocated to attorney's fees. This settlement agreement releases all claims against Torus as well as claims against Beverly English and her solo practice law firm. According to counsel for Ms. English, if a judgment was entered against her, her intent is to file for bankruptcy. Acceptance of the settlement agreement was reasonable under the

circumstances since any further recovery against Ms. English, her law firm or Torus was doubtful. Thus, Petitioner has satisfied the Rule 1.F.8 requirement to first pursue other sources of recovery before obtaining an award from the CPF.

Petitioner seeks an award of \$13,947.02. This is equal to the funds that were to be held by Ms. English in escrow less the \$25,000 settlement proceeds. Petitioner did not deduct the \$4,000 settlement proceeds which the parties to that agreement allocated as reimbursement for attorney's fees. According to our rules, "any type of consequential or incidental losses or damages, whether or not such losses or damages arise out of Reimbursable Losses" are excluded from the definition of Reimbursable Losses. CPF Rule I.F.7. Petitioner's attorney's fees incurred in the lawsuit appear to be such consequential or incidental losses. Therefore, it would be appropriate to consider the full settlement amount of \$29,000 as recovered from other sources, and Petitioner's Reimbursable Loss is \$9,947.02.

CLIENTS' PROTECTION FUND
INVESTIGATING BOARD MEMBER'S REPORT

Petitioner: Silue Wang

Petition Number: 18-0033174

CPF Attorney: Robert Shearer

Status of Attorney: Suspended for 3 years (June 22, 2018)

Date Loss Occurred: June 21, 2017

Amount Requested: \$11,500 (entire fee he paid to lawyer)

Amount Recommended: \$11,500

Any legal action taken by Petitioner to cover claim loss:

Investigating Board Member: Mary Grace A. O'Malley

Results of Investigation and Recommendation:

Mr. Wang hired Mr. Shearer for a custody matter in Prince William County JDR Court. There was no engagement agreement. Mr. Wang gave Mr. Shearer a check for \$11,500 dated May 22, 2018 and there was text correspondence between the two that indicated this was a flat fee. Mr. Shearer deposited the \$11,500 in his personal account (not a business account). Mr. Wang indicates that he and Mr. Shearer had telephone conferences on the following dates:

5/18/17 - 2 mins	6/4/17 - 1 min
5/18/17 - 24 mins	6/4/17 - 4 mins
5/22/17 - 1 min	6/6/17 - 14 mins
5/22/17 - 33 mins	6/8/17 - 3 mins
5/22/17 - 1 min	
5/24/17 - 4 mins	6/19/17 - 3 mins
5/31/17 - 5 mins	6/20/17 - 10 mins
5/31/17 - 1 min	6/20/17 - 11 mins
6/1/17 - 10 mins	6/21/17 - 5 mins
6/3/17 - 33 mins	= total 165 mins

Mr. Wang indicates that he believed the short 1 minute and 2 minute calls were either calls where Mr. Wang did not pick up and it went to voicemail and he either hung up or left a voicemail. Mr. Wang indicates that the first 24 minute call was before he retained Mr. Shearer and if he did not retain Mr. Shearer then he was not expected to pay for the telephone call. Mr. Wang further indicates that he had to repeat all of these telephone calls with his next counsel. Mr. Shearer appeared at the June 20, 2017 initial return and had the case continued to a later date in 2017. Mr. Wang advised me that at the initial return Mr. Shearer did not appear to know the case facts and made statements in court that were false. Mr. Wang indicates that the hearing was 30 minutes or less. He further indicates that Mr. Shearer was living in the Chantilly area at the time and working out of his home so he may have had at least 30 minutes travel time to and from the courthouse in Manassas. Mr. Shearer did not respond to Mr. Wang after the initial hearing until Mr. Wang filed with the State Bar. The Mother also filed a petition in Stafford County and there was disagreement as to whether the flat fee covered the Stafford County matter as well as the Prince William matter after the hearing, but Mr. Shearer did not respond to Mr. Wang regarding the same and did not appear at the hearing. After Mr. Wang filed with the State Bar, Mr. Shearer agreed to give him back the \$11,500 in full and asked that Mr. Wang tell the State Bar that they settled everything. Mr. Wang never received the \$11,500 or any part of the funds. Mr. Shearer was suspended for 3 years after hearing. Mr. Wang obtained new counsel and resolved the issue with the new counsel. Mr. Wang made significant efforts to locate Mr. Shearer after Mr. Shearer ceased work on his account and was unable to locate an address for Mr. Shearer. Mr. Wang went to multiple business addresses attempting to locate Mr. Shearer and each time found he was either not there or no longer working there. Mr. Wang indicated the Mr. Shearer moved from his personal residence during this time period also and he is unaware of where Mr. Shearer is so he is unable to sue him to recover the funds. I attempted to contact Mr. Shearer myself. I made multiple attempts to telephone him on his cell phone and it beeped as busy each time. I was able to leave a voicemail asking for a return call at a number listed as his work number an email to another claimant, but the voicemail message was generic and did not identify whom you reached at that number. My emails to his work email and the yahoo emails he provided the bar were returned.

Recommendation: Petition should be granted. Mr. Shearer did little to earn the \$11,500 and has not returned the funds (which he placed in his personal account). If the board is assessing the matter as to 100% returned, 50% returned or 0 returned then 100% should be returned. The only potential substantive work done on this matter was a 30 minute court appearance for an initial return. The court appearance is not substantive, given that Mr. Shearer made false statements at the hearing and the initial return was continued.

CLIENTS' PROTECTION FUND
INVESTIGATING BOARD MEMBER'S REPORT

Petitioner: Linda Lee Petit

Petition Number: 19-555-3201

CPF Attorney: Robert Shearer

Status of Attorney: Suspended for 3 years (June 22, 2018)

Date Loss Occurred: June 21, 2017

Amount Requested: \$10,000

Amount Recommended: \$10,000

Any legal action taken by Petitioner to cover claim loss: Unable to locate Mr. Shearer

Investigating Board Member: Mary Grace A. O'Malley

Results of Investigation and Recommendation:

Ms. Petit is the Mother of Robbie Petit. Ms. Petit's daughter (Robbie's sister) is Melinda Petit. I spoke with Linda Lee Petit, Robert (Robbie) Petit and Melina Petit. Both Robbie and Melinda had used Mr. Shearer for legal services prior to this current case, including Melinda's divorce in 1992, a prior case for Robbie and a child support matter related to Robbie's son that seems to have been on-going in the same time period. The family retained Mr. Shearer for the child support matter for a flat fee of \$3,500. The family agrees that he did work on the child support matter, although they are not impressed with the outcome of the case. A custody matter then arose related to Robbie's son as the son's Mother had issues that eventually involved Child Protective Services. Ms. Petit, Melinda and Robbie met with Mr. Shearer together regarding the custody issue. Mr. Shearer requested another flat fee of \$13,500 to handle the custody matter regarding Robbie's son. Ms. Petit paid Mr. Shearer the \$13,500 and Robbie was the client. Mr. Shearer advised Melinda Petit that she should take the check from her Mother Linda to Navy Federal Credit Union and deposit the money into Mr. Shearer's account. Mr. Shearer provided Melinda with the account number. The account number that Mr. Shearer provided to Melinda was the same account number that Mr. Shearer provided another claimant and in Mr. Shearer's suspension order it states that this account number was Mr. Shearer's personal account. Melinda was able to provide the check for \$13,500 made payable to Mr. Shearer, the receipt showing the NFCU deposit and the emails from Mr. Shearer providing the account number and the directions to take the check to deposit into his account at NFCU. The initial meeting was 60 to 90 minutes per all three Petit family members. They did not pay him separately for the meeting and did not know what it would have cost if they did not retain him.

Robbie had filed the original pleading in Fairfax County *pro se*. The family members agree that Mr. Shearer did not draft any pleadings that they saw. They discussed him drafting a pleading

with him and he told them he was drafting the pleading. None of them ever saw a draft pleading. Per Melinda and Robbie, Mr. Shearer appeared for an initial return on Robbie's petition and the matter was transferred from Fairfax to Prince William County by the Judge (*sua sponte*). Melinda and Robbie both indicate that court appearance was about 60 minutes. There was then a long delay in the transfer of the file to Prince William County (months). To the best of the family's knowledge, the custody matter was never heard by the Court, and they are not sure if the file ever made it to Prince William County's Juvenile and Domestic Relations District Court. In the meantime, Robbie's son's Mother worked with Child Protective Services and resolved her issues leaving Robbie with a weak custody case.

There was an additional criminal charge for withholding a child contrary to a custody order that Robbie's son's Mother brought against Robbie. Mr. Shearer agreed to take that matter on as part of the original \$13,500 fee. The criminal charge was brought after the \$13,500 was already paid. Mr. Shearer appeared on the criminal charge. The criminal charge was eventually dropped. When I first spoke to Robbie, he did not remember a criminal charge and indicated that he had not been represented by Mr. Shearer on the same. After Melinda was able to locate a warrant for the charge, I spoke with Robbie again. At that time, Robbie indicated that he had been represented by Mr. Shearer on that charge, but had forgotten about it previously. Robbie indicates the court appearance was 60 minutes or so. There were also additional communications by email with Melinda and Mr. Shearer about both the custody matter and the criminal case. Robbie also indicated in my last telephone call with him that he had confused some of his earlier statements with the child support matter and then he had reviewed the documents with his sister. He then clarified his thoughts as they are listed above. Prior to that point, he had additional complaints about missed court appearances and being forced to negotiate with DCSE, but indicated in the last call that those related to the separate child support matter.

Mr. Shearer had most communications with Melinda regarding Robbie's case. However, Robbie indicates that he never officially waived attorney client privilege to allow Mr. Shearer to speak with Melinda. The family collectively did not understand attorney client privilege or that Mr. Shearer's communications should have been with Robbie as the client. Ms. Petit and Robbie both indicated that Melinda kept all the records and did most of the communicating. After Mr. Shearer disappeared for some time, Melinda eventually was able to speak to Mr. Shearer and exchanged emails with him. Mr. Shearer claimed in an email to Melinda to have done 8 hours of work on the matter as well as the criminal charge. Melinda and Robbie both agree that Mr. Shearer did enough work to justify \$3,300 in fees. Melinda indicates that she and Mr. Shearer agreed that he would refund \$10,000. Mr. Shearer indicates in an email to Melinda that he disputes the \$10,000 was accurate, but was in agreement to make monthly payments towards that amount. Mr. Shearer sent one \$200 monthly payment to Linda Petit and she never received another. Melinda and Robbie believe that Mr. Shearer did \$3,300 worth of actual work on the account and she received that \$200 payment for her mother. Thus, they filed a petition for \$10,000.

The Petit family made significant efforts to locate Mr. Shearer after Mr. Shearer ceased work on this account and was unable to locate an address for Mr. Shearer. Ms. Petit went to Mr. Shearer's business address attempting to locate Mr. Shearer and found he was either not there or no longer working there. Melina indicated that Mr. Shearer moved from his personal residence

during this time period also. All three Petit family members attempted to contact Mr. Shearer and none were able to obtain any further communication after the \$200 payment was made. The Petit family members are unaware of where Mr. Shearer is located so they are unable to sue him to recover the funds. I attempted to contact Mr. Shearer myself. I made multiple attempts to telephone him on his cell phone and it beeped as busy each time. I was able to leave a voicemail asking for a return call at a number listed as his work number an email to another claimant, but the voicemail message was generic and did not identify whom you reached at that number. My emails to his work email and the yahoo emails he provided the bar were returned.

Recommendation: Petition should be granted. Mr. Shearer did nothing to earn the remaining \$10,000 requested and has not returned the funds (which he placed in his personal account). The funds should be paid to Linda Petit and Robbie should be required to sign an assignment of claims to the bar before the claim is paid to Ms. Petit.



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report Supplemental Report Add to Consent Agenda

Investigating Board Member: Melissa W. Robinson

Petition # 19-555-003196

Petitioner: Theresa J. Kennedy

CPF Attorney: Scott Alan Webber

CPF Attorney's Status: Consent to Revocation 8/21/18

Amount Requested \$2,000.00

Amount Recommended* \$ 0.00

Action, if any, Petitioner took to recover claimed loss: No action.

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:

Theresa J. Kennedy retained CPF Attorney Webber to represent her daughter, Macy Lynn Nestor, on two criminal charges in the Bedford County General District Court involving possession of marijuana and driving after illegally consuming alcohol while under the age of 21. The flat fee for this representation was \$2,000.00 which was promptly paid by Ms. Kennedy.

Attorney Webber met with the client and her mother. On the DUI charge, he learned that Ms. Nestor claimed to have falsely admitted to being the driver of the vehicle when it was stopped, despite the fact that a relative of her boyfriend had really been driving and had convinced her to switch places in the vehicle. Attorney Webber encouraged the client to see if she could convince either her former boyfriend or the relative to testify on the issue.

* 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

Attorney Webber's file reflects that on December 7, 2017, shortly after meeting with Ms. Nestor and her mother, he noted his appearance with the Court on behalf of Ms. Nestor and moved the trial date to May 21, 2018.

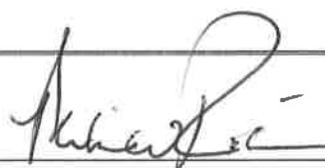
Attorney Webber also represented to the undersigned that he began negotiations with the Commonwealth's Attorney and anticipated that the marijuana charge would be dropped, but that the DUI charge would likely have to be litigated. On May 21, 2018, the return date for the trial, Ms. Nestor appeared but Attorney Webber did not due to the fact that the matter had inadvertently been left off of his calendar by his assistant. Attorney Webber wrote to the court that day, moving the case to August 29, 2018.

On June 26, 2018, Attorney Webber entered into a plea agreement, pleading guilty to lying to the FBI regarding sexual liaisons with clients and illegal possession, use and distribution of controlled substances. Prior to that date, he had arranged for two other Roanoke criminal defense attorneys to handle all of his cases and each client was informed of the status, including Ms. Nestor, according to Attorney Webber. Patrick Kenney, Esquire, confirms that he had agreed to handle the remainder of Ms. Nestor's case and would not have been billing her anything for doing so pursuant to his agreement with Attorney Webber. Both Attorney Webber and Mr. Kenney's offices made numerous attempts to get Ms. Nestor to come in and sign a substitution order, which was not accomplished until October 18, 2018, according to Attorney Webber's assistant. In the meantime, the General District Court judge continued the matter several times but finally appointed a public defender to the case. Mr. Kenney indicated that this resulted from Ms. Nestor's failure to return calls to his office to coordinate a date and get the substitution order in place.

After first speaking with the Petitioner who was under the impression that her daughter had never been informed of transfer of the case to Mr. Kenney, the undersigned spoke with Ms. Nestor. Ms. Nestor recalls that Mr. Kenney was supposed to assume the handling of her case. Her complaints stemming from showing up in court without a lawyer really pertain to Mr. Kenney. She likewise complained that he or his office personnel were rude when they were able to finally talk. However, she readily conceded that she is very difficult to reach by cell phone based on where she lives and there was a fair amount of phone tag with Mr. Kenney's office.

Based on the interviews of all involved, I recommend no payment on this claim because I do not believe that Attorney Webber's actions meet the definition of dishonest conduct for not refunding unearned fees and that he had performed significant services for the Petitioner which would have been carried out to conclusion by Mr. Kenney had both law firms not had such difficulty in reaching Ms. Nestor. Her own partial responsibility for the situation is also a factor in my recommendation, although any failure on her part was certainly not intentional.

Investigating Board Member: _____


Melissa W. Robinson

Date of Report: April 17, 2019



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report

Supplemental Report

Investigating Board Member: Smith

Petition: # 19-555-003199

Petitioner: Renee Rose Flowers

CPF Attorney: George E. Marzloff

CPF Attorney's Status: 3 year Suspension (agreed disposition)

Amount Requested: \$500

Amount Recommended* \$500

Action, if any, Petitioner took to recover claimed loss:

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

If actual, quantifiable loss was established, approximate date loss occurred* June 2017

Results of Investigation and Recommendation:

In the timeframe of June, 2017 Ms. Renee Flowers spoke with Attorney George E. Marzloff and they reached a verbal agreement in which Ms. Flowers hired Attorney Marzloff and paid him \$500. A Retainer Agreement was not written which in part has resulted in a disagreement between the parties regarding client understanding of the work agreement, unfulfilled client expectation of the purpose of the hiring, and disagreement between Attorney Marzloff and Ms. Flowers regarding the work to be produced. This investigator has spoken with both Ms. Flowers and Attorney Marzloff to hear their respective understandings of their verbal agreement.

Ms. Flowers states she paid Attorney Marzloff the \$500 fee to "initiate paperwork for a work release, or file for a work release for Mr. Jarrod Harris." Ms. Flowers and Attorney Marzloff both agree that Ms. Flowers agreed to additional fees if the services required action beyond the initial \$500. Attorney Marzloff states an understanding of the verbal agreement in which he was to "investigate and advise" whether Mr. Harris was eligible for work release. A significant

* 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

consideration in this petition is the factor of communication. Both Ms. Flowers and Attorney Marzloff acknowledge issues of mis-communication that took place in the client attorney agreement. Ms. Flowers reports difficulty in being able to speak with Attorney Marzloff. Attorney Marzloff states three somewhat contradictory communication statements. Attorney Marzloff in accepting an agreed disposition and in responding to this petition has provided these statements:

- a) There was no fraud involved, “I have since learned that my assistant was giving me only a very few of the messages from Ms Flowers because Ms Flowers called so often so I had no idea she was having such a problem reaching me. I realize that I am nevertheless responsible for the communications issue;”
- b) “I assumed we were just waiting for approval or rejection;”
- c) “I would call if I had something to report.”

This investigator considers the agreed disposition involving attorney client communication and Attorney Marzloff’s statements pertinent to the question of whether reimbursement is warranted because they contribute directly to the purpose and intent of the verbal agreement.

In addition to hearing the paid fee understandings of Ms. Flowers and Attorney Marzloff, this investigation sought to clarify these essential questions:

- 1) Was the \$500 fee paid earned by Attorney Marzloff?;
- 2) Did Attorney Marzloffs’ performance fulfill the verbal agreement with his client?;
- 3) Can Attorney Marzloff provide evidence (irrefutable or other) that he made it clear to his client that he had reached the end of his ability to fulfill the verbal agreement?;
- 4) Did the communications challenges not only contribute to but prevent Attorney Marzloff from fulfilling his clients’ expectations and fulfilling the verbal agreement?

It is the opinion of this investigator that Attorney Marzloff did perform services for Ms. Flowers as is well documented in his submission of the case file.

It is the opinion of this investigator that the services performed by Attorney Marzloff did not fulfill the verbal agreement between he and his client and that as Mr. Marzloff states, it is his responsibility to communicate well with his client(s). Thus, I take Mr. Marzloff at his word in saying that he must accept responsibility for the performance of his law firm including any staff issues.

In interviewing Attorney Marzloff, I asked if he might be able to provide any documentation that would support his recall of telling Ms. Flowers that he could not file a work release with the Corrections system. A supporting document

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

would confirm the timeline and refute Ms. Flower's claim that she was never told by Attorney Marzloff that he was not permitted to submit work release documents on Mr. Harris' behalf. Such documentation has not been produced. I do not doubt Attorney Marzloff's discovery that he was not permitted to file for work release on Mr. Harris' behalf, but I do however question whether this very essential piece of information made its way from Attorney Marzloff to Ms. Flowers. Additionally, in hearing and reading Attorney Marzkoffs' response that he assumed they were waiting to hear an "approval or reject" reply from Ms. Flowers leads this investigator to the conclusion that Attorney Marzloff not only had communication challenges with Ms. Flowers, but that this vital detail of Mr. Jarrod needing to file his own work release request very likely did not occur. If Attorney Marzloff's extensive case file proved otherwise, I would reach a different conclusion.

Last, but not least, it is the responsibility of the Client Protection Fund Board (CPF Board) to consider factors including and beyond services performed. In cases of some level of services performed by the attorney, the CPF Board must determine more than questions of which portion of hourly fees that might have been earned. It is our responsibility to determine whether the full scope of the Retainer Agreement or verbal agreement satisfied the clients understanding and expectation of the agreement. It is my opinion that the services Attorney Marzloff performed did not enable through proper communication his client to fulfill the purpose for which she hired Mr. Marzloff. I therefore recommend that Ms. Flowers be reimbursed the full \$500.

Investigating Board Member: Smith
Date of Report: April 18, 2019



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Petition # 18-555-003200
Petitioner Steven E. Mason
CPF Attorney Patrick Richard Blaszc
Attorney's Status Revoked, September 27, 2018

Amount Requested: \$19,270, plus interest

Amount Recommended: 0

Action, if any, petitioner took to recover claimed loss: On September 8, 2016, Mr. Mason's attorney, Wayne Cyron, sent a letter to Mr. Blaszc asserting malpractice claims and demanding \$19,270. On October 18, Mr. Cyron filed a warrant in debt in the Fairfax County General District Court seeking judgment for legal malpractice and negligence. On February 9, 2017, the court entered judgment for \$19,270, plus interest.

Was sufficient documentation of loss provided? VSB files include documentation of the Fairfax General District Court judgment for \$19,270.

If actual, quantifiable loss was established, approximate date loss occurred: February 9, 2017.

Results of Investigation: Steven E. Mason retained Patrick Blaszc to represent him and his company SEM Investments, LLC. in a breach-of-contract dispute arising from the termination of a franchise agreement with Edible Arrangements International, LLC. The franchise agreement was dated March 2, 2007, and granted SEM permission to operate an Edible Arrangements franchise in Winchester, Virginia. Blaszc had previously represented SEM in the sale of another Edible Arrangement franchise. Mr. Mason was satisfied with his representation in that matter.

The Winchester franchise was operated by Sharon Mason, Steven Mason's wife. After she became ill, Mr. Mason notified Edible Arrangements that he could no longer operate the Winchester franchise and was forced to terminate the agreement. The Winchester franchise stopped operating on November 4, 2013.

On June 2, 2014, Edible Arrangements filed an action against SEM and Mr. Mason in Prince William Circuit Court for wrongfully abandoning the business and breaching the franchise agreement (CL14-4007). The complaint alleged that SEM: 1) failed to return proprietary equipment; 2) failed to reimburse Edible Arrangements \$1308.43 that EAI paid to customers whose orders were not fulfilled; and 3) owed Edible Arrangements a weekly royalty fee of \$200 through March 2, 2017.

Mr. Mason stated that Mr. Blaszczyk agreed to represent him in this matter for \$4500, which he paid with two checks. The first check (\$2000) is dated June 20, 2014, and made out to Patrick Blaszczyk. The second check (\$2500) is dated July 31, 2015, and made out to Team Gold USA.

Mr. Blaszczyk did not file a responsive pleading. He also did not respond to requests for admissions and other discovery requests. He did communicate with EAI's counsel, seek continuances, appear at hearings, and note an appeal. On June 11, 2015, the circuit court granted EAI summary judgment on counts 2 and 3 of their complaint. On July 11, 2015, Blaszczyk filed a breach-of-contract and tortious interference lawsuit on SEM's behalf against EAI (CL15-5492). EAI removed that action to federal court and filed a counterclaim. Mr. Blaszczyk did not file a responsive pleading to EAI's counterclaim, even after the federal court ordered him to do so. (October 12, 2015)

On August 26, 2015, the circuit court entered final judgment in case CL14-4007. The court awarded EAI \$34,400 in damages and \$5,000 in attorney's fees. The federal court entered a default judgment for EAI January 21, 2016.

Mr. Mason, SEM, and EAI eventually settled all claims on the following terms: Mr. Mason paid EAI \$2800 and returned the proprietary equipment.

Conclusion and recommendations: Mr. Mason seeks reimbursement of \$19,270. The elements of that claim are listed in the letter to Mr. Blaszczyk asserting malpractice claims and demanding \$19,270: 1) settlement payment to EAI \$2800; 2) attorney's fees Patrick Blaszczyk \$4500; 3) court reporter \$340; 4) value of equipment returned to EAI \$3200; 5) attorney's fees for alternate representation \$4830; 6) value of Mr. Mason's time \$3600. They also are the basis for the Prince William County District Court judgment for malpractice and negligence. These are unreimbursable losses attributable to "malpractice or the inadequate, insufficient or negligent rendition of services." CPF Rule 4.A., CPF Rule I.E.1., CPF Rule I.F.5., and CPF Rule I.F.7. Therefore, the claim should be denied.



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Petition # 19-555-003210
Petitioner Carol Hardy Tyler
CPF Attorney Renay M. Fariss
Attorney's Status Deceased, November 4, 2018

Amount Requested: \$2,500

Amount Recommended: \$1,500

Action, if any, petitioner took to recover claimed loss: On September 17, 2018, Mr. Tyler's current attorney, Amanda D. Jones wrote to Ms. Farris requesting a statement and refund to Mr. Tyler of the trust account balance owed to him.

Was sufficient documentation of loss provided? Yes, copies of two \$1500 checks, dated September 15, 2017, and November 3, 2017. Also, a letter from Ms. Fariss acknowledging the receipt of the September check.

If actual, quantifiable loss was established, approximate date loss occurred: Approximately July 2018.

Results of Investigation and Recommendation: In September 2017, Mr. Tyler retained Renay Fariss to represent him in a divorce case pending in the Greensville County Circuit Court. He paid her a total of \$3000. At the time, his counsel of record was Ronnie C. Reaves of Weldon, N.C. Mr. Reaves was the second attorney to represent Mr. Tyler in the divorce action, which was filed in 2013. In October 2017, Ms Farris took the following actions: 1) She sent Mr. Tyler an engagement letter and a retainer agreement, which he endorsed and returned to her; 2) She prepared a motion for substitution of counsel and sent it to Mr. Reaves and the court; 3) She sent a proposed settlement agreement to Mrs. Tyler; 4) She also requested a hearing date from the court.

During the first part of 2018, Mr. Tyler made numerous attempts to reach to Ms. Fariss to discuss the status of his case. She did not return his calls until July 2018 when she told him that she had health problems and was not able to work on his case. He then retained Amanda D. Jones of Emporia. Ms. Jones discovered that the original divorce case had been purged from the court's docket on May 25, 2018. On September 17, 2018, Ms. Jones wrote to Ms. Fariss requesting a statement and refund of the trust account balance owed to Mr. Tyler. Ms. Fariss did not respond to the letter. On January 28, 2019, Frank Richardson, Ms. Fariss's husband notified Mr. Tyler that she died on November 4, 2018.

A recent VSB inquiry found no trust account or personal assets available to reimburse Mr. Tyler.

Conclusion: I recommend that the fund reimburse Mr. Tyler \$1500, which is 50% of the fee he paid Ms Fariss. The fee was not fully earned, but the legal services were more than insignificant. Rules of Procedure of the Clients' Protection Fund, Paragraph I.G.2.

Investigating Board Member: Mary Yancey Spencer



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

Initial Report

Supplemental Report

Investigating Board Member: Susan B. Tarley

Petitioner: Robert J. Bentley

Petition #: 18-555-003208

CPF Attorney: Jason L. Hamlin

Status of Attorney: Deceased

Amt. Requested: \$500.00

Amt. Recommended*: \$500.00

Action, if any, Petitioner took to recover claimed loss: Petitioner recently sent in claim to Receiver. Receiver had already prepared distribution order so Petitioner's claim was not included. Order says that the case will remain open for additional claims.

Was sufficient documentation of loss provided? Yes No

If actual, quantifiable loss was established, approximate date loss occurred*: DOD unknown. Receivership filed in November, 2018. Receipt for \$500.00 payment dated June 12, 2018.

Results of Investigation: Jason L. Hamlin was retained to represent Tahim Shabazz. His father, Robert Bentley paid the retainer of \$500.00. Shabazz was charged with possession of marijuana, possession of heroin and identity theft. The Receiver provided me with Hamlin's file for Shabazz. There were discovery responses from the Commonwealth in the file but it appeared to be driven by an open-policy as there were no copies of correspondence or pleadings in the file. Shabazz only met with Hamlin one time. Hamlin never appeared in court.

Recommendation: I recommend that Petitioner should receive payment of \$500.00

Investigating Board Member: Susan B. Tarley

(Print or type name)

4-29-19

Date

Signature of Board Member

* 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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MEMORANDUM

TO: Clients' Protection Fund Board

FROM: Crystal Hendrick

DATE: April 22, 2019

SUBJECT: March 2019 Financial Report

The balance in the fund as of March 31, 2019 is more than \$10.1 million. Total revenue collected as of March 31 is approximately \$482,700. Of that amount, \$328,000 is from the assessment collected from all active attorneys, approximately \$143,200 is from interest on investments and approximately \$11,500 is from debt set-off and individual restitution.

The schedule of investments reflects the long-term investments held by the fund as of March 31. Long term investments total approximately \$10.0 million and the average yield is 2.00%.

The CPF Summary as of March 31, 2019 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 MARCH 31, 2019**

Cash Balance as of July 1, 2018	\$	9,765,666.08
Year-to-Date Revenue through March 31, 2019		482,709.27
Year-to-Date Expenses through March 31, 2019		<u>(93,341.46)</u>
Cash Balance as of March 31, 2019	\$	<u>10,155,033.89</u>
Liability for claims approved but not paid:		<u>2,000.00</u>
March 31, 2019 Available Cash Balance :	\$	<u>10,153,033.89</u>

Funds Invested/Maintained as Follows:

BB&T Business Checking Account		180,033.89
Federal Home Loan Bank (Face Value \$2,150,000)		2,150,000.00
Federal Home Loan Mortgage Corp. (Face Value \$1,200,000)		1,200,000.00
Federal National Mortgage Association (Face Value \$2,975,000)		2,975,000.00
Federal Farm Credit Bank (Face Value \$3,650,000)		<u>3,650,000.00</u>
Total Cash and Investments	\$	<u>10,155,033.89</u>

**VIRGINIA STATE BAR
 CLIENTS' PROTECTION FUND
 MONTHLY STATEMENT OF REVENUE & EXPENSES
 FOR MARCH 2019**

	BALANCE 3/1/2019	MAR 2019 ACTIVITY	BALANCE 3/31/2019
REVENUE			
INTEREST:			
Investment Interest	\$ 106,471.34	\$ 36,738.96	\$ 143,210.30
REIMBURSEMENT FROM ATTORNEYS:			
AG's Collections	1,200.00	0.00	1,200.00
Debt Set-Off Receipts	5,283.89	0.00	5,283.89
Individual Restitution	4,965.08	80.00	5,045.08
TRANSFERS:			
CPF Assessment	327,295.00	675.00	327,970.00
Total Revenue:	\$ 445,215.31	\$ 37,493.96	\$ 482,709.27
EXPENSES			
Bank Service Charges	-	0.00	0.00
Attorney General's Fees	360.00	0.00	360.00
CPF Board Expenses - Oper. Acct. Reim.	-	0.00	0.00
Payments to Clients	92,981.46	0.00	92,981.46
Total Expenses:	\$ 93,341.46	\$ -	\$ 93,341.46
Total Revenue Over/(Under) Expenses	\$ 351,873.85	\$ 37,493.96	\$ 389,367.81

**SCHEDULE OF INVESTMENTS
AS OF MARCH 31, 2019**

MATURITY DATE	INVESTMENT	TERM	ISSUE DATE	COUPON RATE	CARRYING AMOUNT
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
12/8/2025	Federal Farm Credit Bank	9 years	12/8/2016	2.980%	200,000.00
3/13/2026	Federal Farm Credit Bank	7 years	3/13/2019	3.220%	600,000.00
3/26/2026	Federal Farm Credit Bank	9.75 years	8/1/2017	2.840%	500,000.00
3/20/2028	Federal Home Loan Bank	9.2 years	1/7/2019	3.240%	200,000.00
Total Investments - Principal					9,975,000.00

Average Coupon Rate 2.00%

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
3/31/2019	9,765,666	0	327,970	143,210	11,169	20	92,981	10,155,034
Grand Total		3,927,022	8,588,620	4,114,293	610,149	1,668	7,084,656	

* 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.

Clients' Protection Fund Board Pays \$51,123 to Petitioners

At its most recent meeting on January 11, 2019, in Charlottesville, the [Virginia State Bar Clients' Protection Fund Board](#) approved payments totaling \$51,123.

The board approved new claims in the amount of \$47,173 regarding five Virginia lawyers. In the largest award of the meeting, one petitioner, a former client of Michael Anthony Lormand of Glen Allen, was awarded \$17,500 as reimbursement for funds that the attorney collected for her spousal arrearages but failed to remit to her. The bar [revoked](#) Lormand's license to practice in June of 2018 for misconduct related to the petitioner's case.

Another petitioner recovered \$16,875 for fees paid to Christopher DeCoy Parrott of Manassas. Parrott's license was initially suspended in November of 2016, and, failing to comply with the terms of the suspension, his license was [revoked](#) in October of 2017. Parrott, facing discipline, signed an agreement in 2017 to pay the petitioner back, but that never occurred.

The board approved a \$2,000 payment to a petitioner's estate to reimburse for work in a divorce case in which Shelly Renee Collette did not do significant work. The petitioner died after he filed the petition, but before the Board considered the claim. Collette's license was [revoked](#) in March of 2018.

A former client of Charles Gregory Phillips of Salem was awarded \$2,914 – reimbursement for a fee given to Phillips for work on a divorce proceeding that wasn't carried out. Phillips attempted to present investigators with an itemized bill that showed work occurring before the petitioner retained him and after the petitioner terminated the representation. The bill was deemed fraudulent, and the petitioner's complaint to the bar was one of the cases that led to Phillips' ten-month [suspension](#) last year.

A petitioner, the mother of a decedent in a wrongful death action, received \$7,884 as reimbursement for funds that the attorney Michael Alan Bishop received before his death but failed to pay to the wrongful death beneficiaries. The attorney did not maintain the funds for disbursement to the beneficiaries. The VSB encourages lawyers to take a moment to [plan ahead for protecting their clients' interests](#) in the event of death or disability.

At the meeting, the board also affirmed its prior decisions in September 2018 to approve three claims from former clients of Phillips and Brent Lavelle Barbour, totaling \$3,950. In Phillips' case, the petitioner appealed the awarded amount of \$1,250, asking for the full requested amount of \$2,500. The board decided, however, that some work had been performed in her divorce and custody case, and they affirmed their award of \$1,250.

Barbour, whose license was [revoked](#) in February 2018, requested reconsideration of two awards given to his former clients in September. The board affirmed an award of \$1,200 as reimbursement for unearned fees in one criminal case. And, in another, the board increased its award from \$750 to the full amount requested by the petitioner, \$1,500. In both cases, Barbour had not done any significant work for the clients.

A full chart of the amounts paid as a result of January's meeting follows.ⁱ

New Petitions

Docket Number	Lawyer's Name	City of Record	Amount Paid	Type of Case
18-555-003162	Christopher DeCoy Parrott	Manassas, VA	\$16,875	Unearned fees/Civil Law - State
18-555-003168	Shelly Renee Collette	Winchester, VA	\$2,000	Unearned fees/Family Law
18-555-003174	Michael Anthony Lormand	Glen Allen, VA	\$17,500	Unearned fees/Family Law
19-555-003181	Charles Gregory Phillips	Salem, VA	\$2,914	Unearned fees/Family Law
19-555-003193	Michael Alan Bishop Deceased	Meadowview, VA	\$7,884	Unearned fees/Personal Injury/Property Damage

Reconsidered Petitions

18-555-003176	Brent Lavelle Barbour	Lynchburg, VA	\$1,500	Unearned fees/Criminal Law
19-555-003180	Brent Lavelle Barbour	Lynchburg, VA	\$1,200	Unearned fees/Criminal Law
18-555-003167	Charles Gregory Phillips	Salem, VA	\$1,250	Unearned fees/Family Law

At the January meeting, the board also read a letter of gratitude from Jason Blye, a claimant awarded \$4,360 in September. "After the outcome of my case, I had become so discouraged and felt that all hope was lost," he wrote. "I had never felt so cheated in my life and the thoughts of having let my daughter down were overwhelming at times. ... 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."

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. VSB Executive Director Karen Gould [gave a report](#) on the fund and fee earlier this year.ⁱⁱ

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.

ⁱ The Virginia State Bar delays the release of the final chart, as the awards given to new petitioners are subject to a 30-day appeal period.

ⁱⁱ While the VSB does not name petitioners in news summaries, recipients of Clients' Protection Fund disbursement are a matter of public record. Contact the CPF administrator, or review the [meeting materials linked on the event page](#) for the January Clients' Protection Fund Board meeting.

The Intersection of Client Protection and Lawyer Well-Being: An Ounce of Prevention is Worth a Pound of Cure

Vol. 26 No. 1

By Renu Brennan

Renu Brennan is Bar Counsel at the Virginia State Bar. Prior to being appointed Bar Counsel, Ms. Brennan served as the bar's Deputy Executive Director where she oversaw the Clients' Protection Fund. Ms. Brennan has prosecuted many cases throughout the Commonwealth before district committees, the Virginia State Bar Disciplinary Board, and three-judge panels. Additionally, she has taught CLEs on various subjects, including aging attorneys and the disciplinary process. Prior to coming to the Bar, Ms. Brennan was a partner with the firm of Vandeventer Black, LLP where she handled professional malpractice and commercial litigation. Ms. Brennan is licensed in Virginia, the District of Columbia, and California, where she practiced in Los Angeles.

With the Privilege of Self-Regulation Comes Responsibility That the Profession Must Shoulder Together

Lawyers should be justly proud of our commitment to public protection and of being the only profession that assesses itself to reimburse the losses caused by a few dishonest members. Indeed, every state and the District of Columbia and every Canadian province has a lawyers' fund for client protection ("Fund"), most of which are financed wholly by lawyer contributions. Our willingness to examine our profession and to pay for the financial malfeasance of our fellow lawyers reflects our commitment to public protection. It is this willingness to examine the profession critically and our demonstrated commitment to right wrongs that ensures we are worthy of the privilege of self-regulation.

Recently, the legal profession has put itself under the microscope and examined hard, critical studies reflecting high rates of chronic stress, depression, and substance use among lawyers. Compelled by the data, leaders in the profession formed the National Task Force on Lawyer Well-Being, which issued a report, [*The Path to Lawyer Well-Being: Practical Recommendations for Positive Change \(Report\)*](#). Through the Report, the task force calls to action all stakeholders in the profession – including judges, regulators, bar associations, professional liability carriers, lawyer assistance programs, and law firms – to join forces to confront our problems in order to maintain public confidence in the profession. The task force recommends specific changes for each stakeholder, and conversation and coordination by all. As task force Co-Chairs Bree Buchanan and James Coyle urged in their August 14, 2017, cover letter: "Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer."¹

¹ Bree Buchanan & James C. Coyle, cover letter, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (Aug. 14, 2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>.

Our collective and continuing response to the Report must demonstrate again that the legal profession is worthy of the privilege of self-regulation. “To maintain public confidence in the profession . . . we have to act now.”²

The Reality is that Lawyers’ Funds for Client Protection Confront the Burden of Reimbursing Unpaid Fees of Lawyers Who Suffer from Impairments

The Funds are tasked with reimbursing clients for the financial losses caused by lawyer misappropriation. As part of this duty, many Funds compensate clients for the unearned fees of lawyers, who are disabled, impaired, or who have abandoned their practice, and whose licenses are suspended or revoked. (The District of Columbia now compensates even when the lawyer’s license has not been suspended or revoked.) This practice is consistent with the Funds’ purpose of public protection, including the promotion of public confidence in the administration of justice and the integrity of the legal profession.

As set forth in the ABA Model Rules for Lawyers’ Funds for Client Protection, Rule 10.C.1, dishonest conduct that serves as a predicate for eligible claims includes the failure to refund unearned fees received in advance as required by ABA Model Rule of Professional Conduct 1.16. According to the ABA *Survey of Lawyers’ Funds for Client Protection (2014-2016)* (Survey), reporting U.S. jurisdictions paid an average of \$5.2 million, \$7.6 million, and \$4 million in claims between the years of 2014-2016, respectively.³ The amount of reimbursement varies based on reimbursement limits and lawyer population, but some jurisdictions report reimbursements of as much as \$88 million in a single year.⁴ Although the Survey does not yet track Funds’ reimbursement due to lawyer impairment, the numbers are likely significant. Unearned fees consistently remain one of the highest areas of reimbursement. The reality is that Funds have limited resources and limiting losses is essential. Prudent Fund management and self-regulation dictate that those tasked with client protection roll up our sleeves and help in the battle to avert losses by partnering with lawyers’ assistance programs and other interested entities to prevent harm to clients.

Lawyer Well-Being as Loss Prevention - Protects Clients While Helping Lawyers

The mission of the ABA Standing Committee on Public Protection in the Provision of Legal Services (“committee”) is to develop and strengthen client protection mechanisms, including programs to reimburse financial losses caused by lawyer misappropriation of client funds. The committee sponsors educational programs, provides onsite consultations, develops model rules for adoption as ABA policy, and conducts and publishes surveys. It also works with the National

² *Id.*

³ See ABA Standing Committee on Client Protection, *ABA Lawyers Fund for Client Protection (2014-2016)*, Section III, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2014_16_survey_of_lawyers_funds_for_client_protection_final.pdf (last visited Mar. 11, 2019).

⁴ *Id.*

Client Protection Organization (NCPO) to address current and emerging issues in client protection, including loss prevention.

One of the most important tools, other than creating and gathering resources, is the dialogue the committee facilitates, among jurisdictions, among different entities within the ABA, and with the NCPO. The groups work both independently and collaboratively to foster dialogue and examine the best ways to avoid and prevent harm – not just to reimburse clients after they are harmed.

The committee's current loss prevention resources are robust and include:

- Planning for Lawyer Retirement, Death or Disability
- Payee Notification
- Insurance Disclosure
- Fee Arbitration
- Mediation of Client-Lawyer Disputes
- Client Trust Account Records
- Trust Account Overdraft Notification
- Random Audit of Trust Records

Whether formally or informally, the committee and its members, in coordination with the Commission on Lawyers Assistance Programs and other ABA entities, the NCPO, and members of the broader legal community, should consider additional or enhanced efforts to be proactive in addressing impairment, and the role client protection programs may have in such efforts. Several states including Colorado, Connecticut, Florida, Georgia, Illinois, Massachusetts, New Mexico, Texas, Vermont, Virginia, West Virginia, and Wisconsin have established their own state task force or commission to investigate the Report and the task force's recommendations. Again, dialogue is critical. Small steps forward may include a more robust listserv discussion, as well as webinars to educate the profession about identifying lawyers in crisis, addressing those issues before clients are harmed, and about succession planning. Through enhanced dialogue and focus on prevention, the committee can develop guidance to help ease the pressure on Funds.

Conclusion

An ounce of prevention, particularly with regard to Funds, is worth a pound of cure. Lawyer wellness is critical to the profession and to the public, and as such, must be a sustained commitment by all tasked with the responsibility of public protection. The intersection of lawyer well-being and public protection is obvious; its importance to Funds is clear. We must ensure that wellness is not relegated to the issue *du jour*, or perceived as a flash in the pan. We need to lead through demonstrated commitment to well-being and to educate, so that lawyer wellness is not minimized or portrayed as only lawyer protection, but also as public protection.

What is the value of a lawyer saved? Or better yet, of a lawyer who does not need to be saved because we have been proactive in emphasizing lawyer well-being as an end in and of itself? That is not a riddle. These are questions that bear asking as we consider the high rate of lawyer depression and substance abuse and the Funds needed to reimburse the public harmed by lawyer malfeasance.

Thankfully, our leadership is now openly addressing these questions, because they pertain to all of us in our on-going efforts to improve the caliber of not only our profession, but also our professional lives.

Consent Agenda Proposal

Any investigative report on any Petition seeking reimbursement from the Client Protection Fund for an amount of \$2,500 or less may be added to a Consent Agenda for action by the Board without discussion on the recommendation of the Committee Investigator with the concurrence of the Chair, provided the report is completed by the established reporting deadline and circulated to the Board (prior to OR a set time period before) the meeting. Any item added to a Consent Agenda may be removed and presented for active discussion at the request of any member of the Board or staff at any time. If a petitioner is present at the meeting and his or her Petition is on the Consent Agenda, it shall automatically be removed from the Consent Agenda and placed on the Meeting Agenda.

CLIENTS' PROTECTION FUND: WHAT IS IT AND HOW DO YOU FILE A PETITION?

CLIENT PROTECTION FUND PURPOSE

- The VSB maintains a Clients' Protection Fund to protect the public from lawyers who mishandle funds.
- The Fund makes monetary awards to persons who have suffered financial losses because of dishonest conduct by Virginia lawyers.
- The Fund is a remedy of last resort for persons who are not able to obtain reimbursement from other sources, such as a bond, insurance, or the lawyer or law firm involved.

WHERE DOES THE MONEY COME FROM?

- The Supreme Court of Virginia authorized an assessment for the Clients' Protection Fund in addition to active members' regular bar dues. The current annual assessment is \$10 per member for Virginia.
- The monies in the Fund are invested conservatively to maintain an adequate reserve to pay all reimbursable claims.

WHO ADMINISTERS THE FUND?

- Claims for reimbursement from the Fund are decided by a 14-member board appointed by the Virginia State Bar's governing council consisting of thirteen lawyers and one non-lawyer.
- Ten members are appointed to achieve geographical balance across the Commonwealth. There are also four "At-Large" Board members.
- A member term is three years and each member can serve two consecutive terms.
- The Board is assisted administratively by bar staff members, including the Clients' Protection Fund Administrator and a staff lawyer who serves as Counsel to the Clients' Protection Fund. The Deputy Executive Director for Communications and Public Service is the administrative staff liaison to the Board.
- The board generally meets three times per year.

WHAT BOARD MEMBERS DO

- Members of the Board investigate each claim and recommend approval or denial. The report is made to the Board and the entire Board votes on the final decision.
- The decision whether to pay a claim is entirely within the discretion of the Board.

THRESHOLD REQUIREMENTS FOR A CLAIM

Lawyer must be

- Disbarred or suspended pursuant to the Supreme Court rules regarding the disciplining of lawyers (Pt. 6, Section 4, Paragraph 13 of Rules of Supreme Court of Virginia); or
- Voluntarily resigned from the practice of law in Virginia; or
- Dead; or
- Adjudicated incompetent; or

- Subject of a bankruptcy case affecting client claims; or
- Whereabouts unknown to the VSB.

AND

The loss must be

- caused by the dishonest conduct (defined term) of the lawyer and
- arises out of a lawyer-client relationship or fiduciary relationship between the lawyer and the claimant.

A Statute of Limitations applies. To be timely, the Petition must be filed by the latter of :

- 7 years from the time the Claimant knew or should have known of the Dishonest Conduct that forms the basis of the claim OR
- 1 year from first of the threshold requirements (suspension, disbarment, death, e.g.)

Rule of Procedure IV.F.7.

Petitioner must agree to assignment of any claims he has against the lawyer, lawyer's assets or estate. Rule of Procedure VII.

Petitioner must not be able to recover the funds elsewhere.

EXCLUSIONS FROM PAYMENT

There are several EXCLUSIONS that preclude reimbursement even if the threshold requirements are met: Rule of Procedure I.F.1-8.

Reimbursement is prohibited for:

- Losses of spouses, parents, children, grandparents, siblings or other close relatives of the lawyer;
- Losses of partners, associates, employers and employees of the lawyer;
- Losses of a business entity controlled by the lawyer;
- Losses of any governmental entity or agency;
- Losses that arise out of a loan or investment transaction with the lawyer.
- Losses arising from the lawyer's malpractice or the inadequate, insufficient or negligent rendition of services;
- Losses for interest, late fees, penalties, surcharges or any type of consequential or incidental losses or damages;
- Losses covered by another source of payment such as a bond, insurance or a surety agreement;
- Losses that may be covered from any source, such as through litigation, mediation or enforcement of a judgment by the Petitioner; and
- Losses by a financial institution covered by commonly available insurance or a surety contract.

LIMITS ON REIMBURSEMENT

Reimbursements are limited to:

- **\$50,000.00** per Petitioner if the loss occurred before July 1, 2015 or
- **\$75,000.00** per Petitioner if the loss occurred on or after July 1, 2015.

Rule of Procedure IV.F.2.

The overall maximum or cap on reimbursements regarding any one lawyer or lawyer association is 15% of the net worth of the fund when the first claim is made. Rule of Procedure IV.F.3.

HOW TO FILE A CLAIM

- Petitioner or the attorney must complete the Virginia State Bar Clients' Protection Fund Petition for Reimbursement (Form attached).
- Petitioner must complete assignment of claims to the Bar with the Petition.
- Form may be submitted to the Bar via email or mail.
- Any relevant evidence shall be attached to the petition when submitted, i.e. proof of payment, engagement agreement, correspondence with the lawyer relevant to the claim for reimbursement, etc.
- No attorney shall be compensated for presenting a petition except as authorized by the Client Protection Fund Board.
- The Board expects that the attorney generally will assist the petitioner *pro bono*. However, where the attorney expends an unusual amount of time and effort, the Board may authorize a modest fee to be paid to the attorney. This fee shall be paid from the amount approved for payment to the petitioner.

HOW CLAIMS ARE DETERMINED

The Clients' Protection Fund Board has discretion regarding payment of claims. See Rule of Procedure IV.F.1-6 for the factors the Board shall consider in exercising its discretion.

Both the Claimant and Respondent may request a reconsideration of the board's decision within 30 days of the denial or determination of the amount of a claim. Rule of Procedure V.

If a lawyer later desires to petition for his/her license to be re-instated then that lawyer shall reimburse the client protection fund for any funds paid from the fund before the license can be restored. There has been a ruling that the amounts due to the Clients' Protection Fund are not dischargeable in Bankruptcy (cite Young and Ngando).

Conduct can be unethical or cause the attorney to receive discipline but the claim is not reimbursable. For example, a lawyer may be disciplined for a conflict of interest rule violation or failure to communicate with the client, but these situations in most cases would not support payment by CPF. Similarly, malpractice by the lawyer does not necessarily give rise to a reimbursable claim.

CPF Petitioner need not file a discipline complaint before filing CPF claim, but if a complaint is filed, it often will contain information helpful to the Investigator and Board in deciding the claim.

WHEN PAYMENT IS MADE

If the discipline case is still pending, the CPF Board usually awaits final disposition before considering CPF petition.

WHAT YOU CAN DO

- If you identify a potential claimant then you should direct them to the fund and, if

possible, assist them in filing claims.

- Maintain separate client trust accounts and comply with ethics rules regarding the same.
- Maintain a healthy work life balance.
- Identify substance abuse issues and seek help for them.
- Identify mental health issues and seek help for them.

Attachments – a sample petition, the bankruptcy cases – Young and Ngando (also add cite), a comparison of CPF dues per state/territory nationally.

Discuss –

We need a better title

What is the focus? Educate? 10 things to learn, etc?

Remedies to get money back other than the reinstatement of license?

RULES OF THE CLIENTS' PROTECTION FUND-RULES OF THE VIRGINIA STATE BAR

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These rules are composed of a Preamble consisting of 10 sections regarding the Purpose, Funding, Authority and Administration of the Clients' Protection Fund; and 12 Rules of Procedure.

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PREAMBLE

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~~PURPOSE, FUNDING, AUTHORITY AND ADMINISTRATION~~

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~~Section PARAGRAPH 1 PURPOSE AND FUNDING~~

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A. The purpose of the Clients' Protection Fund (the "Fund") is to promote public confidence in the administration of justice and the honor and integrity of the legal profession by, as set forth at Part Six, Section IV, Paragraph 16 of the Rules of the Supreme Court, reimbursing all or part of losses sustained by clients or those to whom a fiduciary duty is owed as a result of a Virginia State Bar member's dishonest conduct.

B. The Council of the Virginia State Bar ("Council") shall appoint a Clients' Protection Fund Board (the "Board") to receive, hold, manage, invest and distribute the monies transferred to the Fund in accordance with the procedures established by Council, as set forth herein.

C. Pursuant to Va. Code § 54.1-3913.1, the Clients' Protection Fund is a special fund of the Virginia State Bar that consists of moneys transferred to it from the State Bar Fund and the Virginia State Bar's Administration and Finance Account. Va. Code § 54.1-3913.1 authorizes the Supreme Court of Virginia to adopt rules assessing members an annual fee of up to \$25 to fund the Clients' Protection Fund. The Council shall transfer to the Fund all amounts specially assessed upon Virginia State Bar members for the Fund and shall make appropriations adequate to maintain the funding of the Fund at a reasonable level.

D. Council shall review the financial condition of the Fund annually as part of the Virginia State Bar's budgetary process at which time Council may approve disbursements to the Fund.

~~E. AUTHORIZED INVESTMENTS~~

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

1. Interest-bearing deposits, in federally insured banks and savings institutions (including certificates of deposit as authorized by Va. Code §§ 2.2-4407, 4509 and 4518);
2. Direct obligations of the Commonwealth of Virginia and the United States Government, and securities of entities created by Congress and authorized to issue such securities; provided that no such obligation or security shall have a maturity beyond ten years from the date of the investment; and provided further that the interest, discount or other gain or income realized from any such investment, net of any bank or brokerage charges incurred in connection therewith, shall automatically become a part of the Fund; and
3. Corporate notes as authorized by Va. Code § 2.2-4510.

F. The interest and any other income received from any other sources by the Fund is to be added to and automatically become a part of the Clients' Protection Fund.

G. The Council at any time may abolish the Clients' Protection Fund and the Board. In the event of such abolition, all assets of the Clients' Protection Fund shall be and remain the property of the Virginia State Bar to be used for its general purposes, as determined by the Council.

Section ~~PARAGRAPH 2~~ THE CLIENTS' PROTECTION FUND BOARD

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The Board shall consist of fourteen (14) members, one of whom shall be a non-lawyer, appointed by the Council. One member shall be from each of the ten (10) Disciplinary Districts in Virginia, and four (4) shall be appointed from the Commonwealth at large. All appointments shall be for a term of three (3) years. No appointee shall serve more than two (2) consecutive full terms. No appointee shall be reappointed until after the expiration of at least one (1) year following the end of the second full term. Vacancies shall be filled by appointment by the president of the Virginia State Bar for the unexpired term.

Section ~~PARAGRAPH 3~~ POWERS OF BOARD

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The Board may use or employ the Clients' Protection Fund for any of the following purposes within the scope of the Board's objectives:

1. To make payments or reimbursements on approved petitions as herein provided to clients or other persons or entities to whom a fiduciary duty is owed;
2. To purchase insurance to cover such losses in whole or in part, provided that such insurance is obtainable at reasonable cost and is deemed appropriate and provided that the purchase of such insurance is approved by the Council;
3. To pay the Board's operating expenses in accordance with Council policies; and
4. To reimburse to the Virginia State Bar, in whole or in part, only those costs of receiverships initiated by the Virginia State Bar that were occasioned by the need for the receiver to administer, pursue or defend assets, the recovery or preservation of which would inure to the benefit of one or more clients or other members of the public who have suffered losses as a result of the dishonest conduct of the Virginia State Bar member who is the subject of the receivership, acting as either a lawyer or as a fiduciary in the matter or matters in which the loss or losses occurred.

Section ~~PARAGRAPH 4~~ ELIGIBLE CLAIMS

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A. The Board is authorized to consider petitions for reimbursement of actual, quantifiable losses caused by the dishonest conduct of a member of the Virginia State Bar, acting either as a lawyer or as a fiduciary in the matter in which the loss arose, except to the extent to which they are bonded or such losses are otherwise covered. The Fund is intended to be a remedy of last resort for persons who cannot obtain reimbursement from other sources. The Fund does not cover malpractice or the inadequate, insufficient or negligent rendition of services by the lawyer or collateral losses suffered as a result of the lawyer's malpractice or the inadequate, insufficient or negligent rendition of services.

B. Eligible claims arise from cases in which a member: ~~The member must have:~~

1. has been disbarred or suspended from the practice of law, or transferred to the Disabled and Retired class of membership, pursuant to any provision of Paragraph 13 of Part 6, Section IV of the Rules of the Supreme Court of Virginia; or
2. has voluntarily resigned from the practice of law in Virginia; or
3. has died; or
4. has been adjudicated incompetent; or
5. has been the subject of a bankruptcy case that would stay, reduce or discharge the claims of the member's past or present clients; or
6. whose the member's whereabouts are ~~is~~ unknown to the Virginia State Bar.

C. The Board shall have complete discretion to approve or deny petitions including the order, extent and manner of payment.

D. In establishing, maintaining and administering the Fund, the Virginia State Bar does not create or acknowledge any legal responsibility for the acts of individual lawyers.

E. All reimbursements of losses from the Fund shall be in the sole discretion of the Board and not as a matter of right. No client or member of the public shall have any right in the Fund as a third party beneficiary or otherwise.

F. No attorney shall be compensated for presenting a petition except as authorized by the Board.

Section ~~PARAGRAPH 5~~ DUTIES AND RESPONSIBILITIES OF BOARD

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The Board shall have the following duties and responsibilities:

1. To investigate and review all claims submitted to the Board in accordance with its Rules of Procedure;
2. To approve or deny the claim, and if approved, determine the amount which should be paid on the claim;
3. To make recommendations to Council regarding policies and procedures involving the Fund as it deems necessary and appropriate;
4. To provide a full report at least annually to Council and to provide all necessary reports;
5. To publicize, as permitted by law, its activities to the public and the members of the Virginia State Bar; and

6. To manage the monies in the Fund.

~~Section~~ PARAGRAPH 6 BOARD MEETINGS

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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.

~~Section~~ PARAGRAPH 7 NOTICE OF MEETINGS

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Board members shall be given not less than fifteen (15) days' written notice of the time and place of a regular meeting and not less than five (5) days' written notice of each special meeting. Notice of any meeting may be waived by a Board member either before or after the meeting.

~~Section~~ PARAGRAPH 8 QUORUM

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Six or more members of the Board shall constitute a quorum for the transaction of business.

~~Section~~ PARAGRAPH 9 OFFICERS AND TERMS

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The chair and vice chair of the Board shall be elected by a majority of the Board at the last meeting of the fiscal year. Their terms shall extend until the last meeting of the next fiscal year and until their successors are elected. Should a vacancy occur in the office of chair or vice chair, such vacancy shall be filled by majority vote of the members of the Board at the meeting next following the occurrence of the vacancy.

~~Section~~ PARAGRAPH 10 CONFLICT OF INTEREST

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A Board member who has or has had an attorney-client relationship or fiduciary relationship with a Petitioner or Lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that Petitioner or Lawyer. A Board member with any other past or present relationship with a Petitioner or the Lawyer whose alleged conduct is the subject of the claim shall disclose such relationship to the Board and, if the Board deems appropriate, that Board member shall not participate in any investigation or adjudication of the claim.

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

I. JURISDICTION

The Board is authorized to consider petitions for reimbursement of actual, quantifiable losses caused by the dishonest conduct of a member of the Virginia State Bar, acting either as a lawyer or as a fiduciary in the matter in which the loss arose, except to the extent to which they are bonded or such losses are otherwise covered. The Fund is intended to be a remedy of last resort for persons who cannot obtain reimbursement from other sources. The Fund does not cover malpractice or the inadequate, insufficient or negligent rendition of services by the lawyer or collateral losses suffered as a result of the lawyer's malpractice or the inadequate, insufficient or negligent rendition of services.

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II. I. DEFINITIONS

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

- A. The **"Board"** shall mean the Clients' Protection Fund Board.
- B. The **"Fund"** shall mean the Clients' Protection Fund of the Virginia State Bar.
- C. A **"Lawyer," "Attorney" or "Respondent"** shall mean one who, at the time of the act complained of, was a member of the Virginia State Bar, as defined in the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 2, and was actually engaged in the practice of law in Virginia. The fact that the act complained of took place outside of the Commonwealth of Virginia does not necessarily mean that the Lawyer was not engaged in the practice of law in Virginia.
- D. A **"Petitioner" or "Claimant"** shall mean a person or entity that applies to the Board for payment pursuant to the rules applicable to the Fund.
- E. **"Reimbursable Losses"** are limited to actual, quantifiable losses, supported by documentation, of money or other property that meet the following test, and not otherwise excluded in [these Rules] [paragraph II.F].
 - 1. There is a lack of recourse to the Lawyer because the Lawyer:
 - a) has been disbarred or suspended from the practice of law, or transferred to the Disabled and Retired class of membership, pursuant to any provision of Paragraph 13 of Part 6, Section IV of the Rules of the Supreme Court of Virginia; or
 - b) has voluntarily resigned from the practice of law in Virginia; or
 - c) has died; or
 - d) has been adjudicated incompetent; or

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- e) has been the subject of a bankruptcy case that would stay, reduce or discharge the claims of the member's past or present clients; or
- f) whose whereabouts are unknown to the Virginia State Bar; and

2. The financial loss was caused by the dishonest conduct of the Lawyer and arose out of, and by reason of, a lawyer-client or fiduciary relationship.

~~1. 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 or fiduciary relationship. The Board is authorized to consider petitions for reimbursement of actual, quantifiable losses caused by the dishonest conduct of a member of the Virginia State Bar, acting either as a Lawyer or as a fiduciary in the matter in which the loss arose, except to the extent to which the Lawyer is bonded or such losses are otherwise covered. The Fund is intended to be a remedy of last resort for persons who cannot obtain reimbursement from other sources. The Fund does not cover malpractice or the inadequate, insufficient or negligent rendition of services by the lawyer or collateral losses suffered as a result of the lawyer's malpractice or the inadequate, insufficient or negligent rendition of services. Fee disputes are not reimbursable losses.~~

~~2. The Lawyer has been disbarred or suspended from the practice of law pursuant to any provision of Paragraph 13 of Part 6, Section IV of the Rules of the Supreme Court of Virginia, has voluntarily resigned from the practice of law in Virginia, has died, has been adjudicated incompetent, has been the subject of a bankruptcy case that would stay, reduce or discharge the claim, or whose whereabouts is unknown to the Virginia State Bar.~~

F. The following shall be excluded from “**Reimbursable Losses**”:

1. Losses of spouses, parents, children, grandparents, siblings or other close relatives, partners, associates, employers and employees of the Lawyer causing the losses;
2. Losses by any business entity controlled by the Lawyer;
3. Losses of any governmental entity or agency;
4. Losses occasioned by a loan or an investment transaction with the Lawyer, unless it arose out of and in the course of the attorney-client or fiduciary relationship and, which, but for the fact that the Lawyer enjoyed an attorney-client or fiduciary relationship with the Petitioner, could not have occurred. In considering whether that standard has been met, the following factors will be considered:
 - a. Any disparity in bargaining power between the Lawyer and the client, including differences in their respective educational backgrounds and business

sophistication;

b. The extent to which the attorney-client or fiduciary relationship overcame the will or wishes of the Petitioner;

c. The extent to which the Lawyer, by virtue of the attorney-client or fiduciary relationship with the Petitioner, became privy to information as to the Petitioner's financial affairs; and

d. Whether a principal part of the service arose out of a relationship requiring a license to practice law.

5. Losses or collateral losses arising from the Lawyer's malpractice or the inadequate, insufficient or negligent rendition of services;

6. Claims by a Petitioner for damages for a cause of action in which a Lawyer represented the Petitioner and that never resulted in a settlement or judgment;

7. Claims for interest, late fees, penalties or surcharges or any type of consequential or incidental losses or damages, whether or not such losses or damages arise out of Reimbursable Losses; and

8. 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:

a. Losses covered by any bond, surety agreement or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated to the extent of that subrogated interest. The Fund is intended to be a remedy of last resort;

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

c. Losses of any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract.

G. **"Dishonest Conduct"** may include, but is not necessarily limited to:

1. Any act committed by a Lawyer in the nature of theft, conversion, embezzlement or withholding of money or property from its rightful owner, recipient or person entitled to receive such money or property.

2. Any act committed by a Lawyer in the nature of failure, refusal or inability to refund unearned fees received in advance where the Lawyer performed no legal services or such an insignificant service that the failure, refusal or inability to refund the unearned

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fees constitutes a wrongful taking or conversion. ~~Where the Board finds that the legal services performed by the Lawyer are more than insignificant, but the Lawyer has not fully earned the entire fee, the failure, refusal or inability to refund the unearned fees may still constitute a wrongful taking or conversion, and the Board may reimburse fifty percent of the total fees paid by the Petitioner.~~

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

~~3. The Fund does not cover malpractice or the inadequate, insufficient or negligent rendition of services by the Lawyer or collateral losses suffered as a result of the Lawyer's malpractice or the inadequate, insufficient or negligent rendition of services.~~

III. BOARD'S DISCRETION AND FACTORS TO CONSIDER IN EVALUATING PETITION

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The Board shall exercise its discretion in deciding whether a Lawyer committed Dishonest Conduct. In making its determination, the Board may consider such evidence as it deems appropriate, including, but not limited to, the following:

- A. An order from any court or disciplinary tribunal disciplining a Lawyer for the same act or conduct alleged in a petition or otherwise finding that a Lawyer committed Dishonest Conduct; or
- B. A final judgment imposing civil or criminal liability upon a Lawyer for such conduct.

IV.H. PETITION FOR REIMBURSEMENT

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- A. The Virginia State Bar staff shall prepare a form of petition for reimbursement. In its discretion the Board may waive a requirement that a petition be filed on such form.
- B. The petition shall contain the following statement:

“IN ESTABLISHING THE CLIENTS' PROTECTION FUND, THE VIRGINIA STATE BAR DID NOT CREATE OR ACKNOWLEDGE ANY LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS. THE PAYMENT OF REIMBURSABLE LOSSES FROM THE CLIENTS' PROTECTION FUND SHALL BE IN THE SOLE DISCRETION OF THE CLIENTS' PROTECTION FUND BOARD AND NOT AS A MATTER OF RIGHT. THE CLIENTS' PROTECTION FUND IS INTENDED TO BE A REMEDY OF LAST RESORT, AND PETITIONERS MUST PURSUE OTHER RECOVERY OPTIONS BEFORE FILING A CLAIM. NO PERSON OR ENTITY SHALL HAVE ANY RIGHT IN THE CLIENTS' PROTECTION FUND AS A THIRD PARTY BENEFICIARY OR OTHERWISE.”

- C. At a minimum the Board will require the following information from the Petitioner:
1. Petitioner's name, address and telephone number;
 2. The name and last known address of the Lawyer allegedly responsible for the claimed loss;
 3. The amount of the loss claimed and documentation supporting the loss, including a copy of any written fee or retainer agreement pertaining to the claim and proof of payment for monies the Petitioner or anyone on his or her behalf paid directly to the Lawyer;
 4. The date or period of time over which the alleged loss occurred;
 5. The date the Petitioner discovered the loss and how the Petitioner discovered the loss;
 6. A description of the Lawyer's dishonest conduct and the names and addresses of any witnesses who have knowledge of the loss;
 7. The name of the person or entity, if any, to whom or which the loss has been reported (e.g. Commonwealth's Attorney, police, Virginia State Bar, disciplinary agency, or other person or entity);
 8. Any other source of reimbursement, including but not limited to, any insurance, fidelity or surety agreement or bond;
 9. A description of the efforts by the Petitioner to recover the alleged loss from the Lawyer or from other sources of reimbursement besides the Virginia State Bar;
 10. The circumstances under which the Petitioner has been, or will be, reimbursed for any part of the claim (including the amount received, or to be received, and the source), along with a statement that the Petitioner agrees to notify the Fund of any reimbursements the Petitioner received during the pendency of the claim;
 11. The existence of facts known to the Petitioner relevant to the claim;
 12. The name, address, e-mail address and phone number of the lawyer assisting the Petitioner with the claim, if any;
 13. The Petitioner's agreement to cooperate with the Virginia State Bar regarding the claim or with any civil actions which may be brought in the name of the Virginia State Bar and/or the Petitioner, pursuant to a subrogation and assignment clause;

14. The Petitioner's agreement to repay the Fund if the Petitioner is subsequently reimbursed from another source, but only to the extent the Petitioner's recovery from the other source would exceed the amount of the claim;

15. The name and address of any other fund to which the Petitioner has applied or intends to apply for reimbursement, together with a copy of the application;

16. A statement that the Petitioner agrees to the publication of appropriate information about the nature of the claim and the amount of reimbursement, if reimbursement is approved; and

17. The notarized signature of the Petitioner.

D. All information and statements by the Petitioner shall be under oath.

E. Petitions shall be submitted to the Virginia State Bar. If the staff of the Virginia State Bar determines that the petition complies with the minimum requirements of these Rules, the petition shall be investigated and approved or denied by the Board.

IV. PROCESSING PETITIONS

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A. Virginia State Bar staff shall promptly send each petition to a Board member for investigation and report. A copy shall be sent to the Lawyer at his or her address of record maintained by the Virginia State Bar. The Lawyer or his or her representative may respond to the petition within thirty (30) days of the date of the letter transmitting the petition to him or her.

B. Petitions shall be assigned based on the workload of each Board member, and, when possible, by giving preference for assignment to a Board member who works or lives in the jurisdiction in which the Lawyer maintained his office, place of employment or address of record with the Virginia State Bar.

C. A member to whom a petition is referred for investigation shall conduct such investigation as to him or her seems necessary and desirable in order (1) to determine whether the petition is for a Reimbursable Loss, and (2) to guide the Board in determining the extent, if any, to which the loss should be reimbursed from the Fund.

D. The Board member who investigates a petition shall prepare a written report and recommendation as to whether the petition should be approved or denied. Such report shall be available for inspection by the Board members attending the meeting at which the petition is reviewed.

E. Petitions shall be processed based on the investigating Board member's written report and recommendation. Upon request of a Board member, the Board shall hear the Petitioner, the Lawyer or such other evidence as may be presented. The Lawyer or his or her personal representative, or the Petitioner or his or her personal representative, may request to address the Board at a meeting at which the Board is considering the claim. Any such request must be made

to the Chair or his or her designee, and the Chair may restrict or limit the length or subject matter of any statements permitted.

F. The Board shall, in its sole discretion and by a majority vote, determine whether a claim ~~is~~ approved or denied, and if approved, the amount of loss, if any, for which any Petitioner shall be reimbursed from the Fund. Although only a majority vote is required to approve or deny a petition, the Board should aspire to come to a consensus on every petition. In making such determination, the Board shall consider *inter alia*, the following:

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1. Any conduct of the Petitioner which contributed to the loss.

2. Where the Board finds that the Lawyer performed no legal services or such an insignificant service that the failure, refusal or inability to refund the unearned fees constitutes a wrongful taking or conversion, the Board may reimburse 100% of the total fees paid by the Petitioner.

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

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~~4.~~ The loss to be paid to any one Petitioner shall not exceed \$75,000 for losses incurred on or after July 1, 2015, or \$50,000 for losses incurred on or after July 1, 2000, and prior to July 1, 2015, or \$25,000 for losses incurred prior to July 1, 2000. For purposes of this provision, the Board may regard two or more persons, firms or entities as one Petitioner with respect to a Lawyer's dishonest conduct in handling a given matter where the facts and entities are found to justify such a conclusion in the sole discretion of the Board.

~~5.~~ The total amount of losses reimbursable hereunder on account of the misconduct of any one lawyer or association of lawyers (including, without limitation, a law firm, professional corporation, or an office-sharing arrangement among lawyers) shall be limited to fifteen percent (15%) of the net worth of the Fund at the time the first claim is made. In the event of multiple claims on account of the misconduct of any one lawyer or association of lawyers, claims may be considered in any order or grouping which the Board, in its discretion, finds appropriate, taking into account the equities and timeliness of each claim, and no further payment shall be made in respect to misconduct of any one lawyer or association of lawyers once the fifteen percent (15%) limit has been reached.

~~6.~~ The total amount of Reimbursable Losses in previous years for which payment has not been made and the total assets of the Fund.

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~~7.~~ The Board may, in its sole discretion, allow further payment in any year on account of a Reimbursable Loss allowed by it in prior years which has not been fully

paid; provided such further payment would not be inconsistent or in conflict with any previous determination with respect to such loss.

~~86.~~ No payment shall be made upon any petition, a summary of which has not been submitted to the Board members in accordance with these Rules of Procedure. No payment shall be made to any Petitioner unless said payment is duly approved by the Board as set forth above.

~~97.~~ No claim shall be considered by the Board unless the same shall have been filed within seven (7) years from the time the Petitioner knew or should have known of the Lawyer's Dishonest Conduct, or within one (1) year after the first occurrence of one of the following events, whichever date is later:

a. the Lawyer has been disbarred or suspended from the practice of law, ~~or transferred to the Disabled and Retired class of membership,~~ pursuant to any provision of Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia; ~~or~~

b. the Lawyer has voluntarily resigned from the practice of law in Virginia; ~~or~~

~~e. the Lawyer has died;~~

~~c.d.~~ the Lawyer has been adjudicated incompetent; ~~or~~

~~d.e.~~ the Lawyer has been the subject of a bankruptcy that would stay, reduce or discharge the claims; ~~or~~

~~f. the whereabouts of the Lawyer is unknown to the Virginia State Bar.~~

G. The Board may make a finding of Dishonest Conduct for purposes of adjudicating a claim. Such a determination is not a finding of Dishonest Conduct for purposes of professional discipline.

VI. REQUEST FOR RECONSIDERATION

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The Petitioner or Lawyer may request reconsideration in writing within thirty (30) days of the decision. If the Petitioner or Lawyer fails to make a request or the request is denied, the decision of the Board is final. There shall be no appeal from a decision of the Board.

VII. RESTITUTION TO FUND

A Lawyer whose Dishonest Conduct has resulted in reimbursement to a Petitioner shall make restitution to the Fund including interest and the expense incurred by the Fund in processing the claim.

VIII. ASSIGNMENT AND SUBROGATION

Payment shall be made from the Fund only upon condition that the Petitioner execute an assignment of Petitioner's assignable rights against the Lawyer or his/her successors in interest including, but not limited to the Lawyer's personal representative, heirs, devisees and assigns, on such terms as the Board may deem proper under the circumstances, including reimbursement of costs incurred in prosecuting a claim against the Lawyer or his or her successors in interest. The Virginia State Bar may bring an action pursuant to the assignment on behalf of the Fund and/or the Petitioner. The net proceeds collected by reason of such assignment shall be for the sole benefit of the Fund and deposited therein, and enforcement of this right shall be within the sole discretion of the Board. Prior to the commencement of an action by the Board, it shall advise the Petitioner thereof at his or her last known address. The Petitioner may then join in such action to press a claim for his or her loss in excess of the amount of the payment made by the Fund or for any other claims. The Board may impose such other conditions and requirements as it may deem appropriate in connection with payment to any Petitioner.

IX. VIII. PAYMENT OF RECEIVERSHIP COSTS

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

IX. CONFIDENTIALITY

The dissemination of information shall comply with Virginia law.

XI. GENERAL PURPOSES

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

XII. AMENDMENTS

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

Rev. 2/27/09
Rev. 3/3/2006
Rev. 2/23/2013

Rev. 10/24/2014

Rev. 2/25/2017 - Approved by Council February 25, 2017 (replaces 1976 "Resolution of the Council of the Virginia State Bar Establishing a Clients' Protection Fund" and "Rules of Procedure of the Clients' Protection Fund")

Proposed Revisions: -/-/2019

**Clients' Protection Fund
Status of Pending Cases
May 3, 2019 Board Meeting**

Received in Current Fiscal Year

Received in Fiscal Year 2019: 38

(partial year, 7/1/2018 –5/2/2019)

Closed: 16

Open: 22 Consists of:

16 On May 2019 Meeting Docket

2 On hold for related discipline case¹

4 To be assigned for investigation, reporting at September 2019 meeting

Received in Prior Fiscal Years

Received in Fiscal Year 2018 53

(7/1/2017 – 6/30/2018)

Closed: 52

Open: 1 (on May 2019 docket)

Received in Fiscal Year 2017: 53

(7/1/2016 – 6/30/17)

Received in Fiscal Year 2016: 87

(7/1/2015 – 6/30/16)

Received in Fiscal Year 2015: 84

(7/1/2014 – 6/30/2015)

Received in Fiscal Year 2014: 104

(7/1/2013 – 6/30/2014)

Noteworthy cases on horizon:

We currently do not have a large volume of claims regarding any one attorney.

Receiverships Affecting Future Claims

Receiverships that may affect Clients' Protection Fund claims:

- Amber McNabb (deceased); Jason Hamlin (deceased)

¹ Claims regarding Cynthia King and Joseph Morrissey