The yearly fees that lawyers pay to the Virginia State Bar support numerous civic activities and professional improvements, but perhaps nothing does more to enhance the profession than the small fee paid to the Clients’ Protection Fund (CPF).

The fund, which is supported by an annual fee of $25 paid by Virginia lawyers — $10 starting in July 2018 — reimburses people who have suffered a financial loss because of the dishonest conduct of a Virginia lawyer.

In most cases, the offending lawyer has been disciplined by the bar for unethical behavior and the lawyer’s license has been revoked or suspended. In a few cases, the lawyer involved has died and the clients are left with no other way to get their money back.

The bar has long recognized that while discipline protects the public from any future misconduct by the lawyer, it doesn’t reverse the lawyer’s previous conduct. The bar must sometimes act to make right the damage done by dishonest lawyers.

One case, which was investigated by current VSB President Doris Henderson Causey, involved a lawyer, Darryl A. Parker, who was hired by a woman who doesn’t speak English to represent her disabled son with a lawsuit filed against a public school system. The boy’s arm was broken while he was at school and the school system had taken responsibility.
The client had agreed to a one-third contingency fee. Parker worked out a settlement through the school’s insurance carrier for $60,000.

Parker received the check and had the client endorse it. He then deposited the money in his trust account and promised to send the client her son’s share. Despite repeated calls to Parker, the client was never able to collect any money. Instead, Parker spent the money on personal and other expenses.

After getting nowhere with Parker, the client eventually filed a bar complaint. On August 28, 2015, Parker’s license was revoked by the Virginia State Bar Disciplinary Board.

While that action advanced the bar’s mission of protecting the public and regulating the profession, the disciplinary system is not set up to reimburse clients for the dishonest conduct of their lawyer. That’s where the CPF steps in.

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The client’s petition to the CPF for reimbursement was assigned to Causey, who was a member of the CPF board at the time.

“Everything that was done on the case was done in English, and they couldn’t speak English,” Causey said. “The family desperately needed the money to take care” of the boy.

After her investigation, Causey recommended the board pay the client $50,000, which was the maximum allowed at the time. That limit has since been increased to $75,000.

The files of the CPF contain many cases like the one involving Parker where people of modest means were taken advantage of by a dishonest lawyer.

In another case, lawyer Tawana Shephard was hired to represent a client in a loan modification case. The client reported that Shephard promised results within two months for fees totaling $10,500, which the client paid. The CPF investigator found that other than a phone call from an employee of Shephard’s law firm indicating negotiations were going to start, no work was performed.

Eventually, the client went to the law firm office and found that it was closed.

Shephard’s license was revoked by the VSB Disciplinary Board on November 20, 2015. Her client in this matter was ultimately reimbursed the entire $10,500 by the CPF.

One more representative case involved a woman’s dispute with a used car dealer. The woman had agreed to trade in her car and pay $1,500 for another used car. When the deal fell through, the dealer refused to return the trade-in or the $1,500.

The woman hired Jean Jerome Dandy Ngando Ekwalla’s firm, the Ngando Law Firm, which filed suit. The client paid the firm $2,850 and several other fees during the course of the case, which was to go to arbitration. The client paid all the fees, which totaled $8,423.70, but Ekwalla never paid the arbitration fee and later refused to refund the money to the client.

On October 29, 2015, Ekwalla’s license was revoked by the VSB Disciplinary Board.

The CPF paid the client $8,423.70 to reimburse her for her losses to Ekwalla. To date, the CPF has paid more than $150,000 in claims to Ekwalla’s clients. He has been convicted of eight counts of writing bad checks and is awaiting sentencing.

While too often the CPF is asked to deal with cases involving people who desperately need the money reimbursed, desperation is not a defining criterion.

Margaret Nelson, the immediate past chair of the CPF board, describes a case where a family was defrauded by a trusted longtime friend. The lawyer represented an elderly couple, and when one of them died he assisted the executor of the estate and took control of the couple’s assets. “After the second spouse died, the family discovered that all the money was gone,” Nelson said.

The family had no inkling anything was wrong because the second spouse had been well taken care of. “This was a family that had loved and taken care of their parents. They were mortified that this lawyer did this to them,” Nelson said.

The lawyer was convicted of embezzlement and was disbarred, but none of the family’s money could be recovered. The CPF granted the beneficiaries $50,000 each, the maximum allowed at the time. Had the limit
been what it is now, the petitioners would have been eligible for $75,000 each.

During the last fiscal year, the Clients’ Protection Fund distributed more than $343,000 to clients who suffered financial losses because of the dishonest conduct of a Virginia lawyer whose license was suspended or revoked, or who had died. The payments, which involved thirteen lawyers, were made between July 1, 2016, and June 30, 2017.

The Virginia State Bar takes its fiscal duty to its members extremely seriously and recognizes that even a $25 per annum fee must serve an important purpose. By allowing the VSB to make whole those who have suffered financial losses as the result of corrupt behavior by Virginia lawyers, the Clients’ Protection Fund elevates the reputation of the entire profession and ensures that the bad behavior of a few lawyers does not leave innocent clients with no course of restitution.

The Virginia Clients’ Protection Fund paid its first claim in 1978. The fund is underwritten by an annual fee paid by Virginia lawyers. No taxpayer money is used. A fourteen-member board of volunteer lawyers and laypeople administers the fund. Board members investigate all claims on the fund and decide on the amount of any awards.

For claims to qualify, the lawyer named in the claim can no longer be practicing and the loss must be caused by dishonest conduct. The fund is considered an avenue of last resort after other possible payment sources such as insurance and the accused lawyer have already been exhausted or are not available.

Awards have been made in cases where the lawyer:

- stole or embezzled money or property from a client
- could not refund, or refused to refund, the portion of the client’s fee that the lawyer had not earned
- did sham work that did not advance the client’s goal
- performed work that was fraudulent or unethical, such as preparing documents with information the lawyer knew to be false.

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For more information, please visit:
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at davidson@vsb.org.

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**TECHSHOW**

The only thing changing faster than the law is technology ... and staying technologically competent not only benefits your practice, it is a key part of the Rules of the Supreme Court of Virginia.

**April 23, 2018**

Greater Richmond Convention Center, Richmond