

Virginia State Bar Clients' Protection Fund Board
New Member Orientation
VSB Board Room
September 20, 2019, at 9:00 a.m.

AGENDA

- I. Welcome – **Susan B. Tarley, Chair**
- II. New Members
 - 1. Joseph Meek Bowen
 - 2. Christopher Anthony Corbett
 - 3. Brian Dean Lytle
 - 4. Lisa Ann Wilson
- III. Meeting Dates and Locations – **Susan Tarley**
 - 1. Starting Time
 - 2. September 20, 2019 (Richmond)
 - 3. January 31, 2020 (Charlottesville)
 - 4. May 1, 2020 (Richmond)
- IV. Overview of CPF Meeting – **Susan Tarley**
 - 1. Public Meeting
 - 2. Participating by Telephone Conference
- V. Freedom of Information Act and Public Records Act – **Tab 1**
 - 1. VFOIA Summary
 - 2. VSB Policy on Participation Pursuant to VA Code 2.2-3708.2
- VI. Fundamentals of the CPF Process – **Tab 2**
- VII. Workflow
 - 1. Docketing Procedures
 - 2. Digital Files/Dropbox
 - 3. Tablets (iPads) and CPF Resources
 - 4. CPF Direct Line – (804) 775-9426
 - 5. Deferring Cases
 - 6. Confidentiality
 - a. Redaction Policy
 - b. Destruction of Documents
- VIII. Investigations – **Tab 3**
 - 1. Investigating a Claim
 - 2. Investigator Memorandum from Staff
 - 3. Board Member's Report Form
 - 4. Timeline for Circulation of Reports from Staff
 - 5. CPF Email Address: cpf@vsb.org
 - 6. CPF Direct Line: (804) 775-9426

VIRGINIA STATE BAR

Activities Report

2019-2020

Clients' Protection Fund

15-Aug-2019

Member	Address	Contact	Term Expires / Number
6 Susan Bradford Tarley, Esq. Chair	Tarley Robinson, PLC 4808 Courthouse St Ste 102 Williamsburg, VA 23188	757-229-4281 Fax:229-7439 starley@tarleyrobinson.com	2020 / 2
5 Mary Grace Anne O'Malley, Esq. Vice Chair	Mary Grace A. O'Malley, PLLC 9236 B Mosby Street Manassas, VA 20110	703-257-9777 Fax:562-6993 marygrace.omalley@gmail.com	2022 / 2
8 Phillip Verne Anderson, Esq. Member	Frith Anderson & Peake, P.C. 29 Franklin Rd Roanoke, VA 24006-1240	540-725-3361 Fax:772-9167 panderson@faplawfirm.com	2020 / 1
10 Joseph Meek Bowen, Esq. Member	Bowen & Bowen, P.C. P.O. Box 688 Tazewell, VA 24651-0688	276-988-4830 Fax:988-7080 joebowen@bowenlawtaz.com	2022 / 1
9 Christopher Anthony Corbett, Esq. Member	108 N Main St PO Box 1270 Stuart, VA 24171-1270	276-694-7145 Fax:694-2320 cacorbet@embarqmail.com	2022 / 1
3 Paul Geoffrey Gill, Esq. Member	Federal Public Defender Office Suite 3600 701 East Broad Street Richmond, VA 23219-1884	804-565-0870 Fax:648-5033 paul_gill@fd.org	2020 / 1
7 Charles Franklin Hilton, Esq. Member	Wharton, Aldhizer & Weaver, P.L.C. 100 South Mason Street P.O. Box 20028 Harrisonburg, VA 22801-7528	540-434-0316 Fax:434-5502 fhilton@wawlaw.com	2021 / 1
1 Brian Dean Lytle, Esq. Member	Lytle Law, PC Suite 200 11801 Canon Boulevard Newport News, VA 23606	757-595-5655 Fax:595-4262 bdlytle@lytlelaw.com	2022 / 1
2 David Brandt Oakley, Esq. Member	POOLE BROOKE PLUMLEE PC 4705 Columbus Street Virginia Beach, VA 23462-6749	757-552-6035 Fax:552-6016 doakley@pbbp-attorneys.com	2022 / 2
4 Lisa Ann Wilson, Esq. Member	Commonwealth Attorney's Office Suite 5200 1425 North Courthouse Road Arlington, VA 22201	703-228-7087 Fax:228-7116 lwilson@arlingtonva.us	2022 / 1
Thomas Andrew Edmonds, Esq. Member at Large	9401 Michelle Place Richmond, VA 23229	804-740-5762 tomedmonds61@gmail.com	2021 / 2
Melissa Walker Robinson, Esq. Member at Large	Glenn Robinson Cathey Memmer & Skaff PLC Fulton Motor Lofts 400 Salem Ave SW Ste 100 Roanoke, VA 24016	540-767-2200 Fax:767-2220 mrobinson@glenntrob.com	2021 / 1

VIRGINIA STATE BAR

Activities Report

2019-2020

Clients' Protection Fund

15-Aug-2019

Member	Address	Contact	Term Expires / Number
Mary Yancey Spencer, Esq. Member at Large	305 Clovelly Road Richmond, VA 23221-0026	myspencer@verizon.net	2022 / 2
Dr. Theodore Smith Lay Member	Fredericksburg District Superintendent PO Box 100 Ladysmith, VA 22501	540-419-5131 rrds@vaumc.org	2022 / 2
Mrs. Vivian R. Byrd Liaison	Virginia State Bar 1111 E Main St Ste 700 Richmond, VA 23219-3565	804-775-0572 Fax:775-0545 byrd@vsb.org	---- / -

VIRGINIA STATE BAR VOLUNTEER REIMBURSEMENT VOUCHER GUIDELINES

The Virginia State Bar (VSB) follows the Commonwealth of Virginia Travel Regulations with certain exceptions. Reasonable and necessary travel expenses incurred by committee members attending committee meetings are reimbursable by the Virginia State Bar. This includes mileage or fares, lodging and certain meal expenses; however, alcoholic beverages and spousal expenses are NOT reimbursable. Committee members are encouraged to minimize travel expenses by reducing overnight stays in connection with committee business. To this end, committee chairs are requested to call meetings at such times and in such places that costs of travel by committee members will be held to a minimum.

Travel reimbursement requests should be filed IMMEDIATELY after a meeting. All vouchers received more than 30 days after the completion of the trip must be approved by the Executive Director. Reimbursement requests received more than thirty days after completion of travel may not be honored.

With reasonable notice, arrangements can be made for a committee to use a VSB meeting room. Meetings at “resort” hotels are usually not allowed and must be cleared in advance by the Executive Committee.

Members attending the VSB Annual Meeting held in June at Virginia Beach are expected to pay their own expenses as a part of their professional responsibility. Hence, expenses of members attending committee meetings scheduled immediately before, after or during the Annual Meeting are NOT REIMBURSABLE. This also applies to committee meetings scheduled immediately before, after or during regular meetings of various voluntary state associations (i.e., VBA, VTLA and VADA) and are considered to be held for the convenience of lawyers attending those association meetings. This policy is in accord with that of the American Bar Association and other state bar associations.

Please refer to the attached sample Travel Expense Reimbursement Voucher for details. Travel Vouchers should be typed or handwritten legibly. Travel expense reimbursement vouchers are available from the bar office (Excel spreadsheet or PDF version via e-mail). Send your email request to: huband@vsb.org. **Each day's expenses must be itemized separately on the voucher. You must attach appropriate itemized receipts.** Travel reimbursements will not be made from credit card receipts or statements.

**VIRGINIA STATE BAR
VOLUNTEER REIMBURSEMENT VOUCHER**

Detailed Instructions

The Virginia State Bar (VSB) follows the Commonwealth of Virginia Travel Regulations with certain exceptions. Since the Virginia State Bar operates entirely on its own revenue, and is a non-Executive Branch agency, some flexibility is allowed in our internal guidelines.

The voucher must be presented for payment within thirty (30) days after completion of travel. All expenses must be reasonable and necessary and related to official VSB business.

The following expenses are reimbursable on the travel voucher:

- Mileage:** \$0.58/mile for travel by personal automobile (eff. 1/1/2019)
- Transportation:** **ORIGINAL RECEIPTS REQUIRED, PHOTOCOPIES NOT ACCEPTED;** includes necessary train, cab, bus fares. For reimbursement of airline ticket charges, ticket stubs or a hardcopy of the confirmation from an Internet reservation site showing the total cost and confirmed services must be attached to the travel voucher. If you choose to fly to and from a meeting, you will be reimbursed for the most economical means of travel; airfare or mileage, meals, and lodging, whichever is less. Car rental is only allowed in rare cases; contact the VSB Fiscal Office for advance approval.
- Lodging:** **ORIGINAL RECEIPTS REQUIRED, PHOTOCOPIES NOT ACCEPTED.** State travel regulations set the standard lodging rate at \$94 within the state of Virginia. This standard rate may vary for different locations. **Effective 10/1/2018, the standard lodging rate for Richmond city limits is \$147.** State guidelines should be followed when possible; otherwise, reimbursement may be allowed for a higher amount, not to exceed 150% of the state approved rates. Please consult your liaison or the Virginia State Bar Fiscal Office for rates in specific locations. Please note that whenever a staff person has established a negotiated rate for a specific event, this rate overrides the standard rate for that area.
- Telephone:** Personal telephone calls are not a reimbursable expense.
- Parking/Tolls/Tips:** Must be claimed as "Other Expense"; if parking or toll charge exceeds \$20, an original receipt is required. **Tolls incurred for using Express Lanes or High Occupancy Toll (HOT) lanes for**

convenience purposes are NOT a reimbursable expense. Valet parking is reimbursable only when a special need justifies the expense. Incidental tips for bellman, transportation, parking and other similar travel related services is limited to \$10 per day.

Meals: Necessary & reasonable; meal reimbursement is normally allowed only when overnight travel is involved. Reimbursement for meal gratuity is limited to 20% for exceptional service. In order to be reimbursed for meals, you must indicate the time of departure and arrival on your voucher. The following amounts are allowed for meal reimbursement, including taxes and gratuity:

Breakfast	\$15
Lunch	\$15
Dinner	\$35

Snacks are not a reimbursable expense.

If you claim reimbursement for another VSB volunteer in addition to yourself, you must list the names(s) of the individual(s) included.

The following information must be included on the travel voucher (refer to numbers on attached sample copy):

1. Agency – Virginia State Bar
2. Social Security #: – enter social security number of traveler – **required**
3. Name & address of traveler, LAST NAME FIRST
4. State employee? – mark the appropriate box
5. Signature of traveler – **required**
6. Date & explanation – refer to information printed on voucher for required information
7. Purpose of travel – in most cases, check “other” and indicate in the space provided which meeting you attended

Note: On the departure or return day of an overnight trip, meal expenses incurred while traveler is en route may be reimbursed, depending on departure, arrival and travel time. Departure and arrival times must be noted in order to be reimbursed for meal expenses.

All other items will be filled in by the Virginia State Bar Fiscal Office. **Mail the original form and original receipts to the State Bar office (1111 E. Main Street, Suite 700, Richmond, VA 23219-0026). FAXES AND EMAILS ARE NOT ACCEPTABLE.**

Please direct your questions to the State Bar Fiscal Office, (804) 775-0526.

VOLUNTEER REIMBURSEMENT VOUCHER

DEPARTMENT, INSTITUTION, OR AGENCY

1 Virginia State Bar

PREPARE WITH INK OR TYPEWRITER. USE ADDITIONAL SHEETS WHEN NECESSARY

PERSONAL VEHICLE USE STATEMENT - VOLUNTEER

X PERSONAL VEHICLE - COST BENEFICIAL TO THE STATE - PERSONAL MILEAGE RATE

STATE VEHICLE - NOT AVAILABLE OR ACCESSIBLE - PERSONAL MILEAGE RATE

STATE VEHICLE - AVAILABLE OR NOT REQUESTED - FLEET RATE

I HEREBY CERTIFY THAT EXPENSES LISTED BELOW WERE INCURRED BY ME ON OFFICIAL BUSINESS OF THE COMMONWEALTH OF VIRGINIA AND INCLUDE ONLY SUCH EXPENSES AS WERE NECESSARY IN THE CONDUCT OF BUSINESS.

4 STATE EMPLOYEE? YES X NO

5 SIGNATURE OF TRAVELER DATE

TITLE

I HEREBY CERTIFY THAT THE TRAVEL UNDERTAKEN IN THIS REIMBURSEMENT VOUCHER HAS BEEN REVIEWED AND APPROVED AS NECESSARY FOR THE CONDUCT OF BUSINESS OF THE COMMONWEALTH.

VA STATE BAR APPROVAL

DATE

1. DATE	2. LOCATION AT WHICH EXPENSE WAS INCURRED. POINTS BETWEEN WHICH TRAVEL WAS NECESSARY, METHOD OF TRANSPORTATION USED AND MILEAGE RATE ALLOWED. EACH DAYS EXPENSES MUST BE SHOWN SEPARATELY.	3. MILES TRAVELED	4. MILEAGE AMOUNT		6. MEALS		7. LODGING	8. OTHER (ITEMIZE IN SECOND COLUMN)	AMOUNT
					#	AMT.			
6				X					
				X					
				X					
				X					
				X					
				X					
				X					
				X					
				X					
				X					
I certify all computations are correct and that all necessary and required receipts are attached. Initial _____		TOTALS			X				
VOUCHER NUMBER		DATE(MMDDYY)				TOTAL SHEET 2			
PURPOSE OF TRIP									
7						GRAND TOTAL			

FOR VIRGINIA STATE BAR USE ONLY

DEPT CC ACCOUNT TASK AMOUNT

FOIA and Open Meeting Resources

VIRGINIA FREEDOM OF INFORMATION ACT & VIRGINIA PUBLIC RECORDS ACT

I. INTRODUCTION

The VSB and its boards, committees, conferences, employees, and volunteers are subject to both the:

- Virginia Freedom of Information Act (VFOIA), Va. Code § 2.2-3700, *et seq.*, and
 - Virginia Public Records Act (PRA), Va. Code §§ 42.1-76-42.1-91.
- VFOIA ensures Virginians access to both:
- a. **public records** in the custody of a public body, its officers, and employees, and
 - b. **meetings** of public bodies, wherein public business is conducted.
- PRA governs how long a government entity must **retain** certain records.

II. RECORDS

Records are broadly defined under both VFOIA and the PRA to include all recorded information, whatever the form, **prepared for or used in the transaction of public business**.

- a) **VFOIA** - all writings and recordings prepared or owned by, or in the possession of, a public body or its officers, employees, or agents in the transaction of public business. Va. Code § 2.2-3701.

1. Examples include but are not limited to:
- e-mails,
 - text messages,
 - handwritten notes,
 - typewritten documents,
 - electronic files,
 - audio, or video recordings,
 - CDs,
 - emails,
 - photographs, or
 - any other written or recorded media; and

- Minutes of meetings of public bodies.

Records include **all drafts** and final versions.

- b) PRA** - recorded information, regardless of physical form, that documents a transaction or activity by or with any public officer, agency, or employee of an agency.

The recorded information is a public record **if it is produced, collected, received, or retained in pursuance of law or in connection with the transaction of public business.**

The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record.

- c) VFOAI Exemptions** - under VFOIA, all public records are **open to the public**, unless a specific exemption in law allows the record to be withheld.

1. Statutory exemptions include:

- personnel exemptions,
- the attorney-client privilege,
- attorney-client work product, and
- personal contact information, all as defined and limited at Va. Code § 2.2-3705.1.

2. Rules of Court exemptions include: Part Six, Section IV, Paragraph 10-2.E. ADVISORY OPINIONS OR RULES. Confidentiality.

Provides that the records of the Ethics Committee, including Committee deliberations, memoranda, correspondence, and work product shall be confidential and privileged and will not be provided to anyone absent a court order.

3. Rules of Court exemptions include: Part Six, Section IV, Paragraph 10-5.C. ADVISORY OPINIONS OR RULES. Confidentiality.

Provides that communications between Ethics Counsel and members requesting advice are confidential.

4. Rules of Court exemptions include: Part Six, Section IV, Paragraph 13-30.A. CONFIDENTIALITY OF DISCIPLINARY RECORDS AND PROCEEDINGS. Confidential Matters.

- Bar complaints, unless introduced at a public hearing or incorporated in a Charge of Misconduct, when the matter is placed on the public docket, or a Certification.

- Bar investigations, except Reports of Investigation admitted as exhibits at a public hearing.
 - Impairment proceedings.
 - Notes, memoranda, work product, research of Bar Counsel.
 - Records protected by RPC 1.6.
 - Subcommittee records and proceedings, except determinations imposing public discipline.
 - Deliberations and working papers of the District Committees, Disciplinary Board, and three-judge Circuit Courts.
5. Rules of Court, Part Six, Section IV, Paragraph 13-30. K. Records of the Disciplinary System. In no case shall confidential records of the attorney disciplinary system be subject to subpoena.

d) Requests for Information/Records - if you receive any request for information or records in connection with your work with the VSB, please contact the CPF Administrator. The VSB must timely, within five business days, respond to any request for production, including citing any appropriate exemption and/or producing the non-exempt records.

e) Retention of Records – the following rules govern your retention of Bar-related records:

1. Any records you receive from the VSB are duplicates unless you have taken substantive notes and have documents that should be included as part of the work product of the file.
2. If you send an e-mail that relates to the transaction of section business, please either copy or forward to your liaison. Once sent to your liaison, you do not have to preserve it.
3. If you create a record outside of what is provided to you by the VSB, please scan or copy it and send it to your liaison.
4. Once the VSB liaison is in possession of any records you have created or obtained outside of what the VSB provided to you, you may destroy your case file.
5. Try not to commingle personal and official e-mails. Private e-mails do not need to be retained; emails relating to the transaction of public business do. When sending e-mails or otherwise acting on behalf of the VSB, please be mindful of the fact that you are creating a public record.
6. If you have any questions, please do not hesitate to call your liaison.

III. MEETINGS

A meeting is defined as **three or more members of the public body**, or a quorum if the public body is less than three members, **where public business is transacted or discussed**, whether or not minutes or votes or taken. To avoid an accidental electronic meeting, please do not e-mail more than one other member about VSB business, and please do not hit reply all if other members of the committee are copied on the e-mail. Please use the “bcc” (blind carbon copy) option when emailing a group.

- a) **Meetings requirements** - VFOIA imposes various requirements for meetings applicable to all public bodies; these include:
1. post notice of meetings at least three working days in advance of the meeting;
 2. ensure the meeting is open to the public; and
 3. Take and preserve minutes.

IV. CONCLUSION

For a helpful discussion about this topic and other FOIA questions, please see the attached publications by the Virginia FOIA Council:

- *A Guide to the Virginia Freedom of Information Act for Members of Boards, Councils, Commissions, and other Deliberative Public Bodies*
- *A Guide to the Virginia Public Records Act, E-Mail: Use, Access & Retention*
- *Access to Public Meetings under the Virginia Freedom of Information Act*

Clients' Protection Fund Board

Highlights of Open Meeting Law for Board Members

What does Virginia law require for Clients' Protection Fund Board Meetings?

- In general, information about Clients' Protection Fund claims is subject to being released to the public under the Freedom of Information Act, [Va. Code Section 2.2-3700 et seq.](#)¹
- Meetings of the Clients' Protection Fund Board are **open meetings**, open to the public.
- The date, place and time of board meetings is posted on the VSB website at least **three working days** before the meeting. This information must include remote locations if any board members are participating electronically. Remote locations are also open meetings, and meeting materials available at the main meeting location must be available at each remote location. [Va. Code Section 2.2-3708.2](#)
- If ANY meetings include electronic attendance, at least ONE meeting “annually” shall be by in-person attendance only. [Va. Code Section 2.2-3708.2\(D\)\(1\)](#)
- Electronic participation in a meeting is possible only if:
 - The CPF Board has adopted a written policy allowing for and governing participation of its members electronically. The policy must include an approval process for electronic participation. The board must follow the policy strictly and uniformly.
 - A quorum of the CPF Board is physically assembled at one meeting location²; and
 - The voice of the electronic participant must be heard by everybody at the main meeting location.

[Virginia Code Section 2.2-3708.2\(C\)](#)

¹ Previous Virginia Code Sections 2.2-3708 and 2.2-3708.1, which dealt with electronic meetings, were repealed and replaced with Virginia Section 2.2-3708.2.

² A quorum of the Clients' Protection Fund Board is six (6) members. Clients' Protection Fund Rules, Paragraph 8.

Clients' Protection Fund Board

Highlights of Open Meeting Law for Board Members

- If the CPF Board allows electronic participation by members, the public must be provided “a substantially equivalent electronic communication means through which to witness the meeting.” [Va. Code Section 2.2-3708.2\(D\)\(1\)](#). For example, if members participate by telephone, a telephone number allowing a member of the public to monitor the meeting would meet this requirement.
- The CPF Board must specifically approve each request to participate electronically and record in its minutes the reason for such electronic participation. [Va. Code Section 2.2-3708.2 \(A\)\(2\)](#).
- **Exception to remote location being an open meeting and three-days' notice requirement unnecessary:**
 - Three days' public notice does not necessarily have to be given AND the remote location does not necessarily have to be open to the public IF the board member's electronic participation is due to EITHER “a temporary or permanent disability or other medical condition that prevents the member's physical attendance” OR “a personal matter” and the member specifies the personal matter. In this situation, the CPF Board should include in its minutes the specific nature of the disability, medical condition or personal matter and the remote location from which the member is participating. [Va. Code Section 2.2-3708.2\(A\)](#)
 - Such electronic participation by a member for these reasons is limited each *calendar year* to *two* meetings. [Va. Code Section 2.2-3708.2\(A\)\(1\)\(b\)](#). The Clients' Protection Fund Board normally meets three times each fiscal year, but we track CPF Board members' electronic participation on an ongoing basis to make sure we comply with this law.
- **Closed meetings** are allowed in certain situations. See Virginia Code Section 2.2-3711. It is highly unlikely that the Clients' Protection Fund Board's business will provide a basis for holding a closed meeting.

However, if the Board decides that the law allows it to hold a closed meeting, the Board must first take a vote in an open meeting

- Identifying the subject matter to be discussed at the closed meeting;
- Stating the purpose of the closed meeting; and
- Making a specific reference to the applicable exemption from open meeting requirements ([Va. Code Sections 2.2-3707 and 2.2-3711\(A\)](#)). A general reference to the broad law is not sufficient.

[Va. Code Section 2.2-3712\(A\)](#).

Clients' Protection Fund Board

Highlights of Open Meeting Law for Board Members

At the conclusion of the closed meeting, the Board shall immediately reconvene in an open meeting and take a recorded vote to be included in the minutes certifying that only public business matters lawfully exempted from open meeting requirements and only the specific subjects identified to be discussed were actually discussed. Va. Code Section 2.2-3712(D)

What documents should not be shared at CPF Board meetings?

Because meetings are public, no non-public information should be included in meeting materials. Non-public information includes, but is not limited to:

- **Personal Information** of individuals, such as birthdates, social security numbers, driver's license numbers, and account numbers on bank documents or credit cards. For a more extensive list, see Virginia Code Section 2.2-3801 (**Government Data Collection and Dissemination Practices Act**).
- **Confidential information from Virginia State Bar discipline cases (Supreme Court Rule 13-30)**
 - Complaints;
 - Investigative materials, including Reports of Investigation, unless they have been admitted as exhibits at a public hearing.

How do we protect non-public information?

- **Redaction** of personal information in otherwise public documents.

If VSB staff sends Board members documents with personal information displayed, we will redact the information. If you obtain documents with personal information, you must redact the personal information if you intend to share the document at a public meeting. Try not to share documents that contain personal information.

- Clear marking of **confidential** information (see sample Confidential Report of Investigation)

Do **not** share confidential documents in a public meeting. You will know which documents are confidential if they are marked as confidential with a brightly-colored "Confidential" watermark or stamp, as in the attached example.

MEMORANDUM

TO: Assistant Bar Counsel

FROM: Cam Moffatt
Chief Investigator

RE: In the Matter of [REDACTED]
Complainant: [REDACTED]

DATE: June 30, 2015

REPORT OF INVESTIGATION

A. Concise Description of the Alleged Misconduct

Complainant contends that she paid respondent \$1000 to represent her at a child custody hearing scheduled in Richmond J&DR Court on April 1, 2015. Respondent showed up one hour late. The Judge continued the case until May 11th. Complainant claims that respondent was speaking unintelligibly and was disheveled in appearance. Respondent claimed a medical issue. Complainant flew in from Colorado for the hearing at a cost of \$700. On April 3rd, respondent called complainant but left no message. Complainant spoke to respondent on April 6 and respondent told complainant he was prepared for the May 11th hearing. On May 15, 2015 complainant received a call from respondent's assistant stating respondent had been in the hospital and that his license to practice had been suspended for 4 months. Complainant claims that respondent lied to her on April 6th when he stated that he was okay and would be prepared for the hearing on May 11th.

B. Investigation Conducted

[REDACTED] was interviewed by telephone on May 15, 2015.
Address: [REDACTED] Applewood Drive, #100, Aurora, CO 80016
[REDACTED]

[REDACTED] was interviewed by telephone on May 15, 2015.
Address: [REDACTED], Richmond, VA 23219
[REDACTED]

[REDACTED] was interviewed by telephone on June 4, 2015.
Address: Richmond Juvenile & Domestic Relations District Court, The Oliver Hill Courts Building, 1600
[REDACTED], Richmond, VA 23219-1214
[REDACTED]

Confidential

POLICY ON PARTICIPATION
PURSUANT TO VA CODE 2.2-3708.2

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

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

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

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

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

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

Fundamentals of the Clients' Protection Fund Process

Fundamentals of the Clients' Protection Fund Process

HISTORY

The Virginia State Bar Clients' Protection Fund (the Fund) was established in 1976 by the Bar Council to make 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 involved.

Why was the fund created?

The lawyers of Virginia recognize that, despite the high standards of ethical conduct required of members of the Virginia State Bar, there are a small number of lawyers who are not worthy of the trust that others place in them. The state bar has a strong disciplinary system for the purpose of reprimanding, suspending or disbaring lawyers who violate the strict standards of Virginia's ethics rules. Recognizing that a disciplinary system alone is not enough, the VSB maintains a Clients' Protection Fund to protect the public from lawyers who mishandle funds.

How is it funded?

The Fund originally was established with a portion of the mandatory dues paid by all licensed lawyers in Virginia. For many years, the fund relied on as-needed transfers authorized by the Bar Council to pay claims. To ensure a more reliable income stream, effective July 1, 2007, the Supreme Court of Virginia authorized a \$25 assessment for the Clients' Protection Fund in addition to active members' regular bar dues. The assessment originally was scheduled to expire on June 30, 2015, but the legislature authorized this assessment through June 30, 2020.

In 2018, the Supreme Court of Virginia reduced the required annual payment to the Clients' Protection Fund from \$25 to \$10. During the 2018 legislative session, the Supreme Court's authority to assess members an annual fee of up to \$25 was extended from July 1, 2020, to July 1, 2023, by an amendment to Virginia Code Section 54.1-3913.1.

The monies in the fund are invested conservatively to maintain an adequate reserve to pay all reimbursable claims.

How is the Fund administered?

Claims for reimbursement from the Fund are decided by a 14-member board appointed by the Virginia State Bar's governing council. The Board includes 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. Members of the Board investigate each claim and recommend approval or denial. The decision whether to pay a claim is entirely within the discretion of the Board.

The Board is assisted administratively by bar staff members, including the Client 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.

SOURCE OF AUTHORITY

- **Where to find governing rules regarding CPF matters:**

In the Professional Guidelines on the Virginia State Bar website, on the Clients' Protection Fund page, www.vsb.org/site/public/clients-protection-fund.

Changes in these rules can be made by the Clients' Protection Fund Board, subject to approval by the Bar Council governing body. The CPF Board last recommended comprehensive revisions of the rules in 2016, and the Bar Council approved the revisions in February 2017.¹

NUTS AND BOLTS

- **Threshold Requirements for CPF Petition (See Paragraph 4 of CPF Rules):**

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

¹ As of September 2019, the Clients' Protection Fund Board will be considering whether to recommend to Bar Council additional rule changes to reorganize the rules for clarity and to accommodate changes in the rules governing lawyer discipline.

- 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 a **lawyer-client relationship** or **fiduciary relationship** between the lawyer and the claimant.
- 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.

“**DISHONEST CONDUCT**” is defined in **Rule of Procedure I.G.** Whether this requirement is met will be a consideration in all petitions.

Examples of dishonest conduct include, but are not limited to:

- ❖ Theft, conversion or embezzlement of money or property that is earmarked for the client or for payment to other persons or entities on the client’s behalf;
- ❖ Failure, refusal or inability to refund unearned fees clients pay to the lawyer for work that is not performed;
- ❖ Doing “sham” work that does little to advance the client’s goals but gives the appearance of the lawyer earning the fee;
- ❖ Performing work that involves dishonesty, misrepresentation, fraud or other unethical acts, such as preparing documents the lawyer knows contain false information;
- ❖ Forging client’s name to personal injury settlement checks and releases of liability;
- ❖ Failing to remit settlement proceeds to client or medical care providers;
- ❖ Failing to pay off lender of seller of real estate;
- ❖ Failure to pay court costs or other costs of litigation from advanced funds from client; and
- ❖ Failure to purchase owner’s title insurance policy for buyer in real estate sale.

PRACTICAL CONSIDERATIONS IN INVESTIGATING AND DECIDING PETITIONS

1. 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.

Practice Point: The date of the event giving rise to the claim or the time the Claimant knew or should have known of the Dishonest Conduct is often unclear and must be determined by the Clients' Protection Fund Board.

2. Petitioner must agree to **assignment** of any claims he has against the lawyer, lawyer's assets or estate. **Rule of Procedure VII.**
3. **Investigations** must be conducted by a Board member and reported to a **quorum** (6 members) at a meeting of the Board. **Rule of Procedure IV.D. , Paragraph 8 of Client Protection Fund Rules.**
4. The board must meet at least one time per fiscal year (July 1- June 30). **Paragraph 6 of Client Protection Fund Rules.**
5. Board meetings must comply with Virginia law regarding open meetings law. **Paragraph 6 of Client Protection Fund Rules**
6. The meetings of the Clients' Protection Fund Board are informal administrative meetings, not evidentiary hearings. The Lawyer or the Petitioner may request to address the board. These requests must be made to the chairperson of the board, who may place restrictions and/or limitations on the length or subject matter of any statements allowed. **Rule of Procedure IV.E.**

7. 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.
8. 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.**

Upon reconsideration, the investigating board member submits a new report and recommendation, discussing any new evidence or information that arose since the prior decision.

Except for requesting a reconsideration by the board, there is no further right of appeal from a decision by the Clients' Protection Fund Board.
Rule of Procedure V.

9. 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.

10. 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.² **Rule of Procedure IV.F.3.**
11. **Conflicts of interest of CPF Board Members: See Paragraph 10 of CPF Rules.**

- A Board member who has or has had **a lawyer-client relationship** or **a financial relationship** with the petitioner or lawyer against whom the claim is made may not investigate or participate in the processing of the claim involving such person.
- A Board member who has **any other type of relationship** with the Petitioner or lawyer against whom the claim is made must disclose the relationship to the Board. The Board decides whether the member may participate in deciding the claim.

² This amount was increased from 10% of the net worth of the fund by a rule revision approved by the Virginia State Bar Council in October 2014.

Practice Point: Board members who know that they have a conflict of interest or have a relationship that *may* indicate a conflict of interest should disclose the situation during the public board meeting and state that he or she will not take part in the matter in which he or she has a conflict of interest. The chairperson of the board will usually confirm on the record that the affected board member did not take part in that portion of the meeting.

RELATIONSHIP TO DISCIPLINARY RULES AND PROCEDURES

Ethics issues frequently seen in claims:

- Whether the attorney earned the fee by doing work as outlined in the fee agreement or by an independent review of the work done in the case;
- Whether the attorney performed “sham” or fraudulent work to make it appear that she earned the fee, but the work had no real value to the client and had to be re-started or duplicated by the client’s successor attorney;
- Whether the attorney diverted funds that should have been paid to the Petitioner or a third-party (medical care provider, mortgage company, etc.) on Petitioner’s behalf.

Miscellaneous Information regarding relationship of Clients' Protection Fund to VSB Discipline System:

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

- ❖ CPF staff reviews all disciplinary files that relate to a CPF Petition and sends relevant information contained in the file with a Memorandum to the Investigator.
 - ❖ Investigating Board members may have access to otherwise confidential information relevant to the investigation. Because much information obtained from a discipline file is confidential as required by the Supreme Court of Virginia, the information obtained from these files shall be used solely by or for the Clients' Protection Fund Board. **Investigating Board member should protect the confidentiality of these documents and destroy them in a secure manner after the investigation is final. Furthermore, confidential information should not be included in the CPF Investigator's report or discussed in a public meeting. The materials should be used as a resource to assist the CPF Investigator in obtaining information from another source that is not a confidential source, if possible. The Bar Counsel staff attorney is a good source of information regarding the underlying discipline file and/or subject attorney's status or situation. If it is not clear from the materials the Investigator receives with the Petition who the staff attorney is, contact CPF Counsel Jane A. Fletcher (Direct Dial Phone 804/775-0567 or fletcher@vsb.org).**
 - ❖ Sometimes a **Receiver** will be appointed by a Circuit Court to close out a lawyer's law practice and/or to disburse funds previously under the lawyer's control in an equitable manner under the court's supervision and direction. The Receiver is often a valuable source of information regarding claims. The Receiver may have the client's file, for example. If the Receiver pays a monetary claim, that information is often helpful to provide documentation and facts regarding whether the CPF claim should be paid. Bar Counsel staff attorney and/or CPF staff can provide information about Receiverships in a particular case.
 - ❖ 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.
-

Investigating a CPF Claim

Investigating a CPF Claim

1. Review petition and CPF memo. Obtain necessary documentation as required by CPF Rules of Procedure. Ask petitioner for copies of proof of payment to CPF attorney (checks, money orders, receipts from attorney's office) and documents relating to the representation (employment agreement, correspondence, pleadings, court orders, financial records showing payments made by petitioner, billing records).
2. If necessary, contact CPF counsel and/or Assistant Bar Counsel who prosecuted the underlying misconduct case for any file or materials.
3. Obtain the court file(s) in the underlying representation if useful.

Tips

4. Interview CPF attorney and petitioner and/or their attorneys re: claim.
5. Request from CPF attorney any files relating to representation of the petitioner.
6. If an attorney represented petitioner after the CPF attorney, and the issue is the amount and quality of the work done by the CPF attorney, contact the successor attorney to ascertain the nature of the work needed to complete the case.
7. Interview any other attorney involved in litigation re: the amount and quality of work done by the CPF attorney.
8. In claims involving the embezzlement of personal injury or Workers' Compensation settlement proceeds, or if otherwise warranted, contact the insurance carrier to ascertain if settlement funds were issued to the CPF attorney.
9. In claims involving the embezzlement of real estate loan proceeds, contact lenders and parties to the transaction to ascertain flows of funds.
10. Contact the receiver, if one was appointed to wind down the CPF attorney's law practice, to obtain access to the CPF attorney's financial records, computers, or client files.

Submitting Reports/Questions

11. Two weeks prior to the Board meeting, submit recommendation to Vivian R. Byrd, CPF Administrator, Client Protection Fund, at cpf@vsb.org.
Questions should be addressed to Vivian R. Byrd at Byrd@vsb.org or call (804) 775-0572.



Virginia State Bar

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

TDD (804) 775-0502

CLIENTS' PROTECTION FUND BOARD

MEMORANDUM

TO: Clients' Protection Fund Board Investigator

FROM: Jane A. Fletcher, CPF Counsel
Vivian R. Byrd, CPF Administrator

RE: CPF Docket #
Petitioner:
CPF Attorney:

DATE:

Information from the Petition and/or VSB Records

Amount of Claim:

Basis of claim: [REDACTED]

Discipline Complaint filed? ☐ yes ☐ no Discipline Complaint Docket # [REDACTED]

Outcome/Status of Discipline Complaint: [REDACTED]

VSB Discipline Staff Contact Information

Option: <name> did not file a discipline complaint against <name>. The staff attorney who handled the other discipline matter(s) regarding <name> was <name>, whose contact information is:

Option: (new language from Renu Brennan eff. 8/6/18)

The bar counsel who handled the matter is [REDACTED] and may be contacted at [REDACTED], e-mail [REDACTED]. If there are no concerns about confidentiality, <name>, will discuss the case with you and may be a good starting point and resource. With sufficient advance notice, and if <he/she> has no other concerns, <he/she> may also be able to attend the CPF Board meeting at which the matter will be presented, if necessary or useful. As always, please continue to contact Jane A. Fletcher, CPF Counsel, for guidance.

VSB Staff Investigator:

Phone #:

E-mail:

Other Information About the Claim (optional)

Attorney's Status

Information Needed

The CPF Investigator should obtain the following information, in addition to any other information the CPF Investigator believes is relevant to the claim:

Attachment(s): Petition

Discipline Suspension/Revocation Order

Confidential Discipline Documents [if applicable]



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

☐ Initial Report

☐ Supplemental Report

Investigating Board Member:

Petition #

Petitioner

CPF Attorney

CPF Attorney's Status

Amount Requested \$

Amount Recommended* \$

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:

Investigating Board Member:

Date of Report:

* 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



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CLIENTS' PROTECTION FUND BOARD INVESTIGATING BOARD MEMBER'S REPORT

☐ Initial Report

☐ Supplemental Report

Investigating Board Member:

Petition #

Petitioner

CPF Attorney

CPF Attorney's Status

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