

REGULATIONS OF THE CLIENT PROTECTION FUND **MAY 29 2019**
OF THE BAR OF MARYLAND CURRENTLY EFFECTIVE Euzanne C. Johnson, Clerk
Court of Appeals
of Maryland

To carry out the purposes of the Order of the Court of Appeals of Maryland, passed on March 28, 1966, establishing the Client Protection Fund, the Trustees have adopted the following regulations pursuant to Md. Rule 19-604(a)(4).

The Trustees will be guided, but not necessarily bound, by such regulations.

a. ELIGIBILITY

1. Attorney-client or fiduciary relationship.

No claim will be recognized by the Trustees unless an attorney-client or fiduciary relationship existed with a member of the Bar of the Court of Appeals of Maryland when the loss was incurred as a result of a defalcation by the said Maryland attorney. The Trustees consider that a "fiduciary relationship" means, for example, a lawyer acting in a fiduciary capacity traditional and customary in the practice of law in Maryland, such as a court appointed lawyer, a personal representative of a probate estate, a trustee of an express trust, a guardian, a custodian acting per statute, or an attorney-in-fact by written appointment.

2. Businesses with ten or more employees.

Notwithstanding the existence of a fiduciary or client-attorney relationship with a Maryland attorney and the occurrence of defalcation(s) by said Maryland attorney, no claim by a corporation, limited liability company, proprietorship, partnership, business trust or similar entity will be recognized by the Trustees unless the claimant proves to the satisfaction of the Trustees that at the time of the loss and the filing of the claim it (i) had fewer than ten (10) employees, (ii) took reasonable steps to discover, limit and recover its loss, and (iii) had no source of recovery other than this Fund. The Trustees consider that entities having ten (10) or more employees generally have the ability and capacity to protect themselves, with insurance, fidelity bonds, etc. and do not need protection from this Fund.

3. Profit making businesses.

The Trustees further consider that the fundamental purposes of the Fund do not include the guaranty of profit-making business such as small loan companies, title insurance companies, banks and similar enterprises, and that the Fund is not, and will not act as, a collection agency for all claims against Maryland lawyers.

4. Persons in close relationship to the defaulting attorney.

The spouse, law partner of, or conspirator with any defaulting attorney shall not have any right to file claims for reimbursement from the Fund.

5. Investment losses.

With regard to claims for investment losses or investment-type claims, the Trustees will consider for payment only those claims arising out of an attorney-client or attorney-fiduciary relationship. Investment advice given by the claimant's attorney is not, in and of itself, a ground for seeking reimbursement from the Fund, even though such advice may result in the loss of claimant's money. In considering such claims, the Trustees will consider, in addition to all other factors, (i) the circumstances under which the claim arose; and (ii) whether the attorney came into possession of the claimant's money by virtue of an attorney-client relationship with the claimant and thereafter retained the money for investment during the course of which he misappropriated claimant's money for his own use. Additionally, in evaluating losses resulting from loan and investment transactions with attorneys, the Trustees will consider any disparity in bargaining power between the attorney and the claimant; their respective educational backgrounds and business experiences; whether the attorney became privy to the client's financial affairs while representing the claimant; whether the attorney initiated the transaction; and whether the attorney provided the claimant with necessary financial disclosure and independent counsel. In no event will lost interest or other profit on investments be reimbursed. All payments on the investment, representing principal or interest received by the claimant, will be deducted from the claimant's initial investment in order to determine, for Fund purposes, the eligible amount of the loss.

b. FILING CLAIMS

1. Time.

Claims for losses must be presented to the Trustees within six (6) months after the discovery by the claimant of the defalcation, or at a later date in the discretion of the Trustees.

2. Form.

The Trustees shall require that claims be submitted in writing upon the official claim form of the Fund. Claim forms may be obtained from any one of the Trustees or from the office of the Fund.

3. With whom filed.

All claims shall be filed with the Administrator of the Fund whose name and address shall appear on the claim form.

c. PREREQUISITES TO CONSIDERATION

1. Attorney Grievance Commission.

Prior to consideration, the Trustees shall refer or require the claimant to refer the matter to the Attorney Grievance Commission of Maryland. As a condition precedent to the payment of any claim, it shall, whenever practicable, be required that final action be taken on the grievance by said Commission.

2. Civil Remedies.

The Trustees have established, as a general policy, that no claim shall be recognized by the Trustees until the claimant has exhausted all other remedies reasonably available to the claimant for payment of part or all of his claim from sources other than the Client Protection Fund. Claimants are cautioned, however, that since settlements of claims against third parties usually foreclose the Fund's subrogation rights, the Fund will generally not pay any amounts over and above the amount for which the claimant has settled.

Notwithstanding the foregoing, the Trustees reserve the right in their sole and absolute discretion to recognize exceptions to their usual requirement of exhaustion of other remedies in cases presenting unusual circumstances or extreme hardship. In exercising such

discretion, the Trustees shall consider all relevant facts including the following: (i) the amount of the claim; (ii) the age, education and experience or sophistication of the claimant; (iii) the extent to which the claimant has or has not acted to help himself; (iv) the probable expense of self-help, relative to the amount claimed; (v) the likelihood of a monetary recovery from self-efforts; (vi) the possible application of limitations or laches; and (vii) the self-help experience of other claimants in like situations.

d. PROCEDURE

1. Procedure.

Upon receipt of a claim, the staff will give it a number and docket it. The staff will then advise the claimant of any additional documents or information required, and will mail, by regular mail, a copy of the claim to the alleged defalcating attorney (hereinafter in this regulation d, the "Attorney") at the Attorney's last known address as such address appears from the records of the Fund, along with a request for the Attorney's comments on the claim and a warning to the Attorney that any amount awarded to a claimant must be repaid to the Fund as a condition precedent to readmission to good standing with the Court of Appeals and a warning that a failure to respond to the claim constitutes a waiver of any further notice of any development in the matter. A Trustee will be assigned to review the claim with the assistance of the administrator and to investigate the statements in the claim and report on it to the Trustees. When review of the claim is complete, a report will be prepared, complete with all documentation available and forwarded to each Trustee.

2. Decision.

The Trustees will decide claims based on the evidence in the claim file, including the statements contained in the claim form, any other written statements by the claimant or other witness (including the Attorney), and any other information obtained. The Trustees may in their discretion request appearance by any person or the production of additional information. The Trustees shall promptly notify each claimant of the decision on the claim and of the right to request reconsideration if such claimant is dissatisfied with the decision. The decision and notice of right to reconsider must be mailed, by regular mail, to the claimant and

the Attorney unless the Attorney has waived notice of any development as provided above in (d)(1).

3. Payment of Statutory and Contract Liens.

(a) The Trustees may pay a lien in accordance with this Regulation.

(b) The Trustees may pay all or part of a lien directly to the lienholder from the amount otherwise reimbursable to a claimant in a claim arising from the defalcation of funds that are the proceeds of a tort claim or a worker's compensation claim.

(c) The Trustees are not obligated under this Regulation to perform a search to confirm whether any liens exist, but the Trustees will consider a lien if it appears in the Fund's record at the time a claimant's request for reimbursement is considered.

(d) Before paying a lien, the Trustees shall confirm the unpaid amount of the lien. The Trustees, in their sole discretion, are authorized to negotiate the amount necessary to satisfy the lien whenever such a compromise will benefit the Fund. A claimant has no right in the amount of any such reduction because such amount is not a loss suffered by the claimant.

(e) CONTRACT LIEN means a lien created by contract, including an assignment of benefits, between a claimant and his/her insurer or a provider of any kind of medical goods or services.

CLAIMANT means an individual who has filed a claim with the Fund.

LIEN means a contract or statutory lien.

STATUTORY LIEN means liens created by a federal or state statute, and includes medicare/medicaid and hospital liens where the amount and applicability of the lien has been established a notice of lien and proof thereof.

See Conduct Rule 1.15(d); *Advance Finance Co., Inc. v. Trustees*, 337 Md. 195, 208 (1995) (when attorney disburses client funds from the attorney's trust account to a non-client, at the instructions of the client and pursuant to the obligations recognized in Conduct Rule 1.15, the attorney acts as a fiduciary for that non-client; such non-client may file a claim with the Fund).

4. Reconsideration.

The decision of the Trustees on the claim becomes final unless the claimant files a request for reconsideration with the Trustees. The request for reconsideration must be in writing and postmarked within 30 days from the date of the decision. The request for reconsideration shall contain such additional information the claimant wants the Trustees to consider. A request for hearing may be included with the request for reconsideration.

Any evidence submitted in connection with the request for reconsideration, including any sworn statements made at a hearing, shall be considered in addition to evidence used to make the original decision.

A hearing on reconsideration will take place at a location that the Trustees, in their discretion, determine. Generally, the claimant may personally appear before the Trustees at such a hearing, but the Trustees, in their discretion, may determine otherwise if a claimant is unable to appear or chooses not to appear. By way of example, and not limitation, when a claimant cannot (or chooses not to) appear personally, the Trustees may, in their discretion defer such a hearing and disposition of the claim until the claimant is able to personally appear, or allow an agent, designated in writing, to appear for the claimant or resolve the issue in any other manner. In such a case, the notice of hearing shall require the claimant to elect in writing, within 30 days of the notice of the hearing, the form of hearing from amongst the choices offered by the Trustees. If the claimant elects to defer the hearing until the claimant is able to personally appear, the claimant shall be advised to supply the Fund with any subsequent change of address and to advise the Fund of the approximate date when the claimant will be able to personally appear.

The hearing on reconsideration shall be recorded and the statements of the claimant (or anyone appearing on the claimant's behalf) and any witnesses, will be under oath or affirmation.

Disposition of the request for reconsideration results in a final decision and must be in writing and contain findings of fact.

5. Judicial Review.

The final decision must be sent to the claimant by certified mail. If the claim is denied, in whole or part, a notice of a right to judicial review of the final decision of the Trustees pursuant to Md.R. 19-610 and Md.R. 7-200 et seq. shall be mailed with the final decision.

A claimant aggrieved by the final decision may petition for judicial review. A petition for judicial review must be filed with the Clerk of the appropriate Circuit Court within 30 days of the date the Fund mails the final decision.

e. EXPEDITED PROCEDURE

The Trustees hereby establish the following expedited procedures for preliminary decision of certain classes of claim, and direct the Chair and Secretary to implement such expedited in the interval between meetings of the Trustees:

1. The Chair and Secretary shall act hereunder only by their joint concurrence and agreement.

2. The Chair and Secretary hereby are authorized to recommend preliminary approval of the following two classes of claims: (i) claims for refunds of collected but unearned retainers and (ii) claims for amounts less than Twenty-five Hundred Dollars (\$2,500). Every such recommendation, together with a brief synopsis of the pertinent facts, shall be submitted by them to the other Trustees for their concurrence or ratification, either by mail between meetings or at the next regular Trustees' meeting. Upon concurrence or ratification by at least five (5) Trustees, including the Chair and Secretary, such claims may be paid.

3. The Chair and Secretary hereby are authorized to recommend preliminary denial of those claims which are, in their joint opinion, either (i) clearly ineligible for payment from the Fund or (ii) fee disputes as opposed to defalcations. They shall in every such case promptly notify each claimant of such preliminary denial of his claim, and simultaneously shall notify such claimant that he has the right within thirty (30) days to submit such additional written documents or argument as the claimant desires to submit. Every such preliminary denial, together with a brief synopsis of the pertinent facts and copies or summaries of any timely additional information/argument submitted by the claimant, shall be submitted by them to all the Trustees for their concurrence and

approval, either by mail between meetings or at the next regular Trustees' meeting. Upon concurrence and approval by at least five (5) Trustees, including the Chair and Secretary, the denial of such claims shall be final, subject however, to reconsideration pursuant to Regulation d.4.

f. LIMITS ON PAYMENTS

The maximum amount payable to reimburse one or multiple claims by a single claimant related to the same attorney shall not exceed 5% of the net fund balance as of the close of the month preceding the meeting of the Trustees in which the claim was approved. As used in this Regulation, "claim(s)" means a claim otherwise eligible for reimbursement under Md. R. 19-601 *et seq.* and these Regulations, either as amended from time to time.

If at any time, in the opinion of the Trustees, there are not sufficient funds on hand to pay all claims (filed with the Fund or reasonably expected to be so filed) in full, the Trustees may, in their discretion, pay the approved claims pro rata or defer payment until such time as adequate funds are on hand.

g. SUBROGATION

When a claim is allowed by the Trustees, the Fund shall be subrogated in writing to the amount paid on such claim. The Fund shall give written notice of subrogation to the alleged defalcating attorney (hereinafter in this regulation g, "Attorney") and the notice shall direct the Attorney to make all future payments to the Fund instead of the claimant. The Fund shall warn the Attorney that if the Attorney has been disbarred or suspended, re-payment of all money paid by the Fund to any claimant of the Attorney is a condition precedent to readmission. If the Attorney is associated with a law firm, the Fund shall send a copy of the notice to the law firm and advise the firm that it and any of the Attorney's partners may have liability for the amount paid to the claimant.

h. ATTORNEY FEES

No attorney's fees shall be paid by a claimant in connection with any allowance made by the Trustees, and any attorney representing a claimant shall be required to give the Trustees a written statement that he will accept no fee from the claimant for services rendered in connection with any recovery from the Fund.

i. ASSESSMENTS

1. A lawyer who holds himself out as a Maryland practicing lawyer is subject to mandatory payment to the Fund. "Holding out" includes but is not limited to: (i) listing on a law firm's letterhead as being "of counsel" or "partner emeritus" or the like; (ii) listing in the telephone directory; (iii) listing in Martindale-Hubbell or any similar regional or national directory of lawyers, or other media including print or electronic publications.

2. A lawyer's connection with Maryland requiring such mandatory payment applies when the lawyer (i) has an out of state practice but relies on Maryland bar admission; or (ii) relies on Maryland bar admission as a condition of employment.

3. A lawyer who is a full time employee of a federal or state agency or government is subject to mandatory contribution to the Fund even though prohibited from private practice if; (i) admission to a state bar is a condition of employment and (ii) Maryland is the only bar admission on which the lawyer relies.

4. Lawyers admitted before December 31 of any fiscal year shall be charged the full fiscal year assessments, but shall not be charged any late fee if payment is received by March 31; lawyers admitted after January 1 of any fiscal year shall not be charged any part of the assessment for such fiscal year, but shall be billed assessments beginning July 1 of the succeeding fiscal year.

5. The Fund shall maintain a status of "Inactive/Retired". An affidavit of inactive/retired status must be completed, notarized and received in compliance with date restrictions as indicated on the affidavit form. Those lawyers approved for this status shall not be charged assessments or late fees for any fiscal year once they are approved.

6. Any lawyer wishing to resume the active practice of law, may do so upon written notice to the Fund of their intent, along with payment of the current year's assessment.

7. Any claim for refund of any amount paid to the Fund will not be honored retroactively, and the honoring of prospective claims for refund shall be in the complete discretion of the Chair and/or Administrator.

8. A lawyer who seeks reinstatement to good standing, after suspension, disbarment, or decertification shall pay to the Fund, as a precondition to reinstatement to good standing, all sums paid out by the Fund as a result of such lawyer's defalcation and all sums due the Fund for its current fiscal year and in addition such amount (not exceeding \$50) as the Trustees by resolution fix from time to time as the estimated cost to the Fund of handling, processing and recording the requested reinstatement.

9. The Trustees may fix in their discretion, from time to time, subject to the approval of the Court of Appeals, reasonable charges for late payment of mandatory assessments to the Fund; all disputes concerning late charges or penalties shall be resolved by the Chair and/or Administrator in their discretion.

10. Payment of mandatory assessments must be received by the Fund on or before the due date. No late fee will be assessed until after August 31. To avoid an additional late fee, any balance due must be received by December 31. December admittees who are billed for the full fiscal year assessments are allowed a due date of March 31 of the following year to avoid a late fee.

The Trustees do not accept any excuses for non-payment of the yearly mandatory assessments and/or late fees.

11. The Trustees may fix in their discretion, from time to time, a reasonable penalty for bad checks tendered to the Fund for payment of any assessments and/or late fees. This penalty shall be in addition to every other charge or penalty applicable on account of such bad check.

12. The following lawyers are exempt from payment of the mandatory assessment, but may voluntarily contribute to the Fund: (i) those performing judicial or quasi-judicial functions on a full time basis and who are prohibited from private practice such as: Federal and Maryland Judges, Maryland Masters in Chancery, Maryland Juvenile Masters, Maryland Orphan's Court

Judges, Administrative Agency Hearing Officers, Administrative Law Judges with the MD Office of Administrative Hearings and U.S. Magistrates; (ii) Judicial Law Clerks who provide the Fund with a letter, on their respective Judge's letterhead, indicating the term of the clerkship.

j. ADMINISTRATION

1. Fiscal year - The Trustees will operate on a fiscal year beginning July 1 and ending June 30.

2. Records - The Trustees shall keep accurate records of their actions, which records shall be open to inspection at any and all times by any Trustee or by any person or persons designated in writing by the said Court to inspect such records. Nothing set forth in this Regulation shall preclude the inspection of such records by any person or persons designated as auditors of the Fund. No person other than those heretofore referred to shall have any right to inspect the records of the Trustees, but the Trustees in their discretion may disclose information from their records to any person employed by the Trustees for the purpose of seeking restitution of any claim paid by the Fund.

3. Disbursements - No disbursements on account of a claim shall be made by the Trustees of the Fund unless the same is approved by at least five (5) Trustees.

4. Meetings - Meetings of the Trustees shall be subject to the call of the Chair or the call of a majority of the Trustees. The Trustees shall meet at least annually for the consideration of claims.

5. Unavailability of Chair or Secretary - In case either the Chair or Secretary shall be unavailable for a protracted period of time, a majority of the Trustees, by informal action and agreement, may designate another Trustee to act for the unavailable person during his or her absence.

k. INTERPRETATION

Use of words such as "he", "his", "himself", "herself" and similar words in these Regulations is for brevity and clarity only and shall not disqualify any person; all persons whether male, female or entities (such as corporations or partnerships) shall be considered equally unless they are entities having ten (10) or more employees.

l. FEES FOR SEARCH, PREPARATION AND COPYING OF DOCUMENTS

A twenty-five cent per page charge shall be imposed for documents produced by the Fund pursuant to a subpoena or public information act request. A reasonable fee shall be charged for the search and preparation of such documents, such fee to be the cost to the Fund of the Administrator's time spent on such search and preparation as measured by the Administrator's annual salary and by the cost to the Fund of reasonable counsel fees incurred in relation to such search and preparation.

No search and preparation fee shall be charged for the first two hours of the Administrator's time nor for the first two hours of counsel's time. The Fund shall prepare an invoice for the search, preparation, and/or copying fees. The invoice must be paid by cash, money order, cashier's check or travelers check prior to the release of the documents by the Administrator.

If the applicant, in a public information act request, asks for a waiver of the fees described in this Regulation, the Administrator may waive such fees after consideration of the ability of such applicant to pay such fees along with any other relevant factors.

m. AMENDMENTS

The foregoing regulations may be amended at any time and from time to time by the Trustees.