

# **RULES OF THE CLIENTS' PROTECTION FUND OF THE VIRGINIA STATE BAR**

**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.**

DRAFT

## PREAMBLE

### Section 1 PURPOSE AND FUNDING

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 Board rules and Council oversight ~~the procedures established by Council~~, as set forth herein. Only Council may amend the provisions of Sections 1 – 5 of the Preamble.

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. 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 2 THE CLIENTS' PROTECTION FUND BOARD**

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 3 POWERS OF BOARD**

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.
5. To pay a loss to any one Petitioner not to exceed \$100,000 for losses incurred on or after July 1, 2021, or \$75,000 for losses incurred on or after July 1, 2015 and prior to July 1, 2021, 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.
6. To pay as a total amount of losses reimbursable 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) up 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.

7. To establish and revise rules for the administration of the Fund-, subject to the oversight of the Council of the Virginia State Bar as prescribed in Section 5 of the Preamble.

#### **Section 4 ELIGIBLE CLAIMS**

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:
1. 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 or has transferred to a class of membership and affirmed that the member will not seek a further transfer to any other class of membership under Paragraph 3 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 whereabouts are unknown to the Petitioner after reasonable efforts to locate the member.
- 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 5 DUTIES AND RESPONSIBILITIES OF BOARD**

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 ~~amend~~ establish and revise administrative rules and supervisory ~~make recommendations to Council regarding~~ policies and procedures involving the Fund, following the advice and comment of Council. The effective date of any amendments to administrative rules and supervisory policies and procedures adopted

by the Board shall be as prescribed by the Board, but in no event earlier than one hundred twenty (120) days following such adoption. The Council may reject any amendments adopted by the Board by a 2/3 vote of those members of Council present and voting. Council's rejection of any amendments shall have the effect of revoking the amendments effective as of on the date of Council's rejection, 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 6 BOARD MEETINGS**

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

## **Section 7 NOTICE OF MEETINGS**

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 8 QUORUM**

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

## **Section 9 OFFICERS AND TERMS**

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 10 CONFLICT OF INTEREST**

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

### 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, including from the Lawyer after the exercise of reasonable efforts proportional to the value of the case. The Fund does not cover malpractice or the inadequate, insufficient, ineffective, 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.

### II. 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 tests, and not otherwise excluded in these Rules.
  - 1. There is a lack of recourse to the Lawyer because the Lawyer:
    - a. 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 or has transferred to a class of membership and affirmed that the member will not seek a further transfer to any other class of membership under Paragraph 3 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
  - 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;
  - f. whose whereabouts are unknown to the Petitioner after reasonable efforts to locate the Lawyer; and
2. The loss was caused by the dishonest conduct of the Lawyer and arose out of, and by reason of, a lawyer-client or fiduciary relationship; and
3. The loss had a nexus to the Commonwealth of Virginia.

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 fees constitutes a wrongful taking or conversion.

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.

### **III. BOARD’S DISCRETION AND FACTORS TO CONSIDER IN EVALUATING PETITION**

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. PETITION FOR REIMBURSEMENT**

- 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.

## **V. PROCESSING PETITIONS**

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:

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.
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.
4. In the event the investigator or Board discovers that Petitioner's loss exceeds the amount sought in the petition, the Petitioner may amend his or her petition, or proceed with petition limited to original amount claimed. If the Petitioner submits an amended Petition the Lawyer may respond to the amended petition within thirty (30) days of the date of the letter transmitting the amended petition to him or her.

~~5. The loss to be paid to any one Petitioner shall not exceed \$100,000 for losses incurred on or after July 1, 2021, or \$75,000 for losses incurred on or after July 1, 2015~~

~~and prior to July 1, 2021, 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.~~

~~6. 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.~~

~~7.5.~~ The total amount of Reimbursable Losses in previous years for which payment has not been made, the jurisdictional limits on Fund reimbursements set forth in Section 3 of the Preamble, and the total assets of the Fund.

~~8.6.~~ 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.

~~9.7.~~ 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.

~~10.8.~~ 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 pursuant to any provision of Paragraph 13 of Part 6, Section IV of the Rules of the Supreme Court of Virginia or has transferred to a class of membership and affirmed that the member will not seek a further transfer to any other class of membership under Paragraph 3 of Part 6, Section IV of the Rules of the Supreme Court of Virginia; or
- b. the Lawyer has voluntarily resigned from the practice of law in Virginia; or
- c. the Lawyer has been adjudicated incompetent; or
- d. the Lawyer has been the subject of a bankruptcy that would stay, reduce or discharge the claims.

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**

The Petitioner may request only one reconsideration of a denial decision or the amount of an approved reimbursement. The Lawyer may request only one reconsideration of an approval decision, if the Lawyer has not previously requested a reconsideration in the matter. Any request for reconsideration must be in writing and received by the Virginia State Bar within thirty (30) days of the Board's decision.

When the Petitioner and the Lawyer have been accorded the reconsideration(s) under this rule, or if the Petitioner and Lawyer fail to request a reconsideration under this rule, the Board's decision is final, and the Board will not consider any additional requests for reconsideration or appeals.

## **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. 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.

## **X. 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**

The Board may establish and revise 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. ~~subject to the oversight of the Council of the Virginia State Bar as prescribed in Section 5 of the Preamble.~~

Rev. 2/27/09

Rev. 3/3/2006

Rev. 2/23/2013

Rev. 10/24/2014

Rev. 2/25/2017

Rev. 10/25/2019 – Approved by Virginia State Bar Council October 25, 2019

Rev. 10/29/2021 – Approved by Virginia State Bar Council October 29, 2021