

# MARYLAND

## Maryland Client Protection Fund

(Title 19. Attorneys  
Chapter 600. Client Protection Fund, et seq.

AND

Regulations of the Client Protection Fund of  
the Bar of Maryland Currently Effective)

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**RULE 19-601. DEFINITIONS**  
West's Annotated Code of Maryland  
Maryland Rules

West's Annotated Code of Maryland  
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Title 19. Attorneys  
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MD Rules Attorneys, Rule 19-601

**RULE 19-601. DEFINITIONS**

Currentness

In Rules 19-601 through 19-611, the following definitions apply:

**(a) Client Protection Fund; Fund.** “Client Protection Fund” and “Fund” mean the Client Protection Fund of the Bar of Maryland created by Code, Business Occupations and Professions Article, § 10-311.

**(b) Local Bar Association.** “Local Bar Association” means (1) in Baltimore City, the Bar Association of Baltimore City, or (2) in each county, the bar association with the greatest number of members who are residents of the county and who maintain their principal offices for the practice of law in that county.

**(c) These Rules.** “These Rules” means Rules 19-601 through 19-611.

**Source:** This Rule is derived from former Rule 16-811.1 (2016).

**Credits**

[Adopted June 6, 2016, eff. July 1, 2016.]

MD R Attorneys, Rule 19-601, MD R ATTORNEYS Rule 19-601  
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MD Rules Attorneys, Rule 19-602

**RULE 19-602. PURPOSE**Currentness

**(a) Purpose.** The purpose of the Client Protection Fund is to maintain the integrity and protect the good name of the legal profession by reimbursing, to the extent authorized by these Rules and deemed proper and reasonable by the trustees of the Fund, losses caused by defalcations by members of the Bar of Maryland or out-of-state attorneys authorized to practice in this State under Rule 19-215 or 19-216, acting either as attorneys or, except to the extent they are bonded, as fiduciaries.

**(b) Fiduciary; Definition.** For purposes of this Rule, "fiduciary" means an attorney acting in a fiduciary capacity that is traditional and customary in the practice of law in Maryland, such as a personal representative of a probate estate, a trustee of an express trust, a guardian, a custodian acting pursuant to statute, or an attorney-in-fact by written appointment.

**Cross reference:** Regulations of the Client Protection Fund of the Bar of Maryland, subsection (a)(1).

**(c) Fiduciary Relationship Not Formed.** A fiduciary relationship is not formed between an attorney and a third party who has been assigned an interest in the proceeds of a civil award or settlement, including attorneys' fees, in consideration for the advancement of funds by the third party to the attorney or client.

**Committee note:** For purposes of this Rule, a fiduciary relationship is not formed between an attorney and a lawsuit cash advance lending company. Section (c) is not intended to apply to medical, healthcare, or other service providers that may be owed money for services rendered.

**Source:** This Rule is derived from former Rule 16-811.2 (2016).

**Credits**

[Adopted June 6, 2016, eff. July 1, 2016.]

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MD Rules Attorneys, Rule 19-603

**RULE 19-603. APPOINTMENT, COMPENSATION, MEETINGS OF TRUSTEES**Currentness

**(a) Number of Trustees.** The Court of Appeals shall appoint nine individuals to be the trustees of the Client Protection Fund. Eight of the trustees shall be members of the Maryland Bar. One individual shall not be an attorney.

**(b) Geographic Appointment.** One trustee who is a member of the Maryland Bar shall be appointed from each of the seven appellate judicial circuits. The other two trustees shall be appointed at large.

**(c) Term.** The term of each trustee is seven years. A trustee may be removed by the Court at any time. In the event of a vacancy, the Court shall appoint a successor trustee for the unexpired term.

**(d) Compensation; Expenses.** The trustees shall serve without compensation, but unless no other source of funds is available, shall be entitled to reimbursement from the Fund for their expenses reasonably incurred in the performance of their duties as trustees, including transportation costs.

**(e) Meetings.** Meetings of the trustees shall be held at the call of the chair or a majority of the trustees on reasonable notice. The trustees shall meet at least once each year.

**(f) Quorum.**

(1) Five trustees shall constitute a quorum. Except as otherwise provided by these Rules, a majority of the trustees present at a duly constituted meeting may exercise any powers held by the trustees.

(2) The trustees' powers under Rule 19-604 (a) may be exercised only by the affirmative vote of at least five trustees.

**Source:** This Rule is derived from former Rule 16-811.3 (2016).

**Credits**

[Adopted June 6, 2016, eff. July 1, 2016.]

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MD Rules Attorneys, Rule 19-604

**RULE 19-604. POWERS AND DUTIES OF TRUSTEES; TREASURER**Currentness

**(a) Trustees.** The trustees have the following powers and duties:

- (1) To elect, from among their membership, a chair, a treasurer, and such other officers as they deem necessary or appropriate.
- (2) To receive, hold, manage, and distribute, pursuant to this Rule, the funds raised hereunder, and any other monies that may be received by the Fund through voluntary contributions or otherwise.
- (3) To authorize payment of claims in accordance with this Rule.
- (4) To adopt regulations for the administration of the Fund and the procedures for the presentation, consideration, recognition, rejection and payment of claims, and to adopt procedures for conducting business. A copy of the regulations shall be filed with the Clerk of the Court of Appeals, who shall mail a copy of them to the clerk of the circuit court for each county and to all Registers of Wills. The regulations shall be posted on the Judiciary website.
- (5) To enforce claims for restitution arising by subrogation, assignment, or otherwise.
- (6) To deposit funds in any bank or other savings institution (A) that is chartered and whose financial activities are regulated under federal or Maryland law, and (B) whose deposits are insured by an instrumentality of the federal government.
- (7) To invest funds not needed for current use in such investments as they deem appropriate, consistent with an investment policy specified in regulations adopted by the trustees and approved by the Court of Appeals.
- (8) To employ and compensate consultants, agents, attorneys, and employees.
- (9) To delegate the power to perform routine acts which may be necessary or desirable for the operation of the Fund, including the power to authorize disbursements for routine operating expenses of the Fund, but authorization for payments of claims shall be made only as provided in Rule 19-609.
- (10) To sue or be sued in the name of the Fund without joining any or all individual trustees.
- (11) To comply with the requirements of Rules 19-704 (e), 19-705 (c), 19-708 (a), and 19-723 and all other applicable laws.
- (12) To designate an employee to perform the duties set forth in Rules 19-708 (a) and 19-723 and notify Bar Counsel of that designation.
- (13) To file with the Court of Appeals an annual report of the management and operation of the Fund and to arrange for an annual audit of the accounts of the Fund by state or private auditors. The cost of the audit shall be paid by the Fund if no other source of funds is available.
- (14) To file additional reports and arrange for additional audits as the Court of Appeals or the Chief Judge of that Court may order.
- (15) To perform all other acts authorized by these Rules or necessary or proper for the fulfillment of the purposes of the Fund and its efficient administration.

**(b) Treasurer.** The treasurer shall:

- (1) maintain the Fund in a separate account;

- (2) disburse monies from the Fund only upon the action of the trustees pursuant to these Rules;
- (3) file annually with the trustees a bond for the proper execution of the duties of the office of treasurer of the Fund in an amount established by the trustees and with one or more sureties approved by the trustees; and
- (4) comply with the requirements of Rule 19-705 (b).

**Source:** This Rule is derived from former Rule 16-811.4 (2016).

### **Credits**

[Adopted June 6, 2016, eff. July 1, 2016.]

MD R Attorneys, Rule 19-604, MD R ATTORNEYS Rule 19-604  
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MD Rules Attorneys, Rule 19-605

**RULE 19-605. OBLIGATION OF ATTORNEYS**Currentness**(a) Conditions Precedent to Practice.**

(1) *Generally.* Except as otherwise provided in subsection (a)(2) of this Rule or Rule 19-215 (h), each attorney admitted to practice law in Maryland or issued a certificate of special authorization under Rule 19-215 or Rule 19-216, as a condition precedent to the practice of law in Maryland, shall (A) provide to the treasurer of the Fund the attorney's social security number if the social security number has not already been provided to the Board of Law Examiners, (B) provide to the treasurer of the Fund the attorney's federal tax identification number or a statement that the attorney has no such number, and (C) no later than September 10 of each year, pay to the treasurer of the Fund the sum set by the Court of Appeals, and in the event of delinquent payment of that sum, pay all applicable late charges, as set by the trustees. Late charges set by the trustees are subject to the approval of the Court of Appeals.

(2) *Exceptions.* An attorney is exempt from payment of the mandatory assessment but may contribute voluntarily to the Fund if:

(A) the attorney is a federal or Maryland judge, including a senior judge, or full-time magistrate and is not permitted to practice law otherwise in Maryland;

(B) the attorney is a full-time federal or Maryland administrative law judge or hearing examiner and is not permitted to practice law otherwise in Maryland;

(C) the attorney is on inactive/retired status pursuant to subsection (b)(2) of this Rule; or

(D) the attorney is a full-time judicial law clerk and is not permitted to practice law otherwise in Maryland.

**Cross reference:** See Rule 19-705 (Disciplinary Fund).

(3) *Method of Payment.* Payments of amounts due the Fund shall be (A) by check or money order, or (B) transmitted electronically. Firms, agencies, and other entities with more than one attorney may submit payment for all attorneys by one check or money order, provided that a list of all attorneys for whom payment is made shall be included.

**Committee note:** AIS currently is unable to accept a single credit card payment applicable to the payment obligations of multiple attorneys.

**(b) Attorneys on Inactive/Retired Status.**

(1) The trustees of the Fund may approve attorneys, other than attorneys on permanent retired status pursuant to Rule 19-740, for inactive/retired status, and, by regulation, may provide a uniform deadline date for seeking approval of inactive/retired status.

(2) An attorney on inactive/retired status may engage in the practice of law without payment to the Fund or to the Disciplinary Fund if (A) the attorney is on inactive/retired status solely as a result of having been approved for that status by the trustees of the Fund and not as a result of any action against the attorney pursuant to the Rules in Chapter 700 of this Title, and (B) the attorney's practice is limited to representing clients without compensation, other than reimbursement of reasonable and necessary expenses, as part of the attorney's participation in a legal services or pro bono publico program sponsored or supported by a local bar association, the Maryland State Bar Association, an affiliated bar foundation, or the Maryland Legal Services Corporation.

**(c) Invoice for Assessment or Contribution.** On or before July 10 of each year, from information supplied by the Fund, AIS shall generate and send electronically to each attorney who is responsible for an assessment for the next ensuing fiscal year or who has volunteered to contribute to the Fund, an invoice for the amount due, along with notice that (1) payment thereof is due within 60 days, and (2) payment may be made electronically or by check or money order payable to the Fund.

**(d) Notice of Payment.** AIS shall notify the Fund of all electronic payments received and the Fund shall record in AIS all checks and money orders received.

Source: This Rule is derived in part from former Rule 16-811.5 (2016), and is in part new.

### **Credits**

[Adopted June 6, 2016, eff. July 1, 2016. Amended Dec. 4, 2018, eff. Jan. 1, 2019.]

### **Editors' Notes**

#### **HISTORICAL NOTES**

##### **2018 Orders**

The December 4, 2018 order amended this Rule to accommodate implementation of the Attorney Information System, to modify the dates when certain notices and responses are due, and to make certain style changes.

MD R Attorneys, Rule 19-605, MD R ATTORNEYS Rule 19-605  
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MD Rules Attorneys, Rule 19-606

**RULE 19-606. ENFORCEMENT OF OBLIGATIONS**Currentness**(a) Notice of Default.**

(1) *Generally.* As soon as practicable after February 10 of each year, the Fund shall send electronically a Notice of Default to each attorney who has (1) failed to pay in full (A) the amount due as stated in the invoice, (B) any penalty for late payment, or (C) any charge for a dishonored check or money order, or (2) failed to supply to the Fund a required social security number or federal tax identification number or statement that there is no such number.

(2) *Form and Content.* The Notice of Default shall (1) be on a form created by the State Court Administrator and approved by the Court of Appeals, (2) identify the nature of the default and the amount, if any, owed to the Fund, and (3) warn that failure to cure the default will result in the entry of an order by the Court of Appeals prohibiting the attorney from practicing law in Maryland.

**(b) Temporary Suspension.**

(1) *Proposed Order.* As soon as practicable after February 10 of each year but no later than March 10, the Fund shall transmit to the Court of Appeals a proposed Temporary Suspension Order stating the names and Fund account numbers of those attorneys who failed to cure the default stated in the Notice of Default. The Fund shall furnish to the Court such additional information from its records as the Court directs.

(2) *Entry of Order.* If satisfied that the Fund has given the required Notice of Default, the Court of Appeals shall enter a Temporary Suspension Order prohibiting the attorneys who are in default from practicing law in Maryland. The Court shall send electronically a copy of the Order to (A) each suspended attorney named in the Order, (B) the clerks of the Court of Special Appeals, each circuit court, the District Court of Maryland, the United States Supreme Court, the U.S. Court of Appeals for the Fourth Circuit, and the U.S. District Court for the District of Maryland and post notice of the Order on the Judiciary website.

(3) *Effect of Order.* An attorney who has been served with a copy of the Temporary Suspension Order and has not been restored to good standing may not practice law in Maryland and shall comply with the requirements of Rule 19-742 (c) and (d). In addition to any other remedy or sanction allowed by law, an action for contempt may be brought against an attorney who practices law in violation of a Temporary Suspension Order.

An attorney who has been served with a copy of the Temporary Suspension Order and has not been restored to good standing may not practice law in Maryland and shall comply with the requirements of Rule 19-742 (c) and (d). In addition to any other remedy or sanction allowed by law, an action for contempt may be brought against an attorney who practices law in violation of a Temporary Suspension Order.

**(c) Termination of Temporary Suspension Order.**

(1) *Duty of Trustees.* Upon receipt of the attorney's social security number, federal tax identification number or statement that the attorney has no such number, and all amounts due by the attorney, including all related costs prescribed by the Court of Appeals or the trustees, the trustees shall:

(A) remove the attorney's name from the list of attorneys in default;

(B) if a Temporary Suspension Order has been entered, inform the Court of Appeals that the social security number, federal tax identification number or statement that the attorney has no such number, and full payment have been received and request the Court to enter an order terminating the attorney's suspension; and

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MD Rules Attorneys, Rule 19-607

**RULE 19-607. DISHONORED CHECKS**Currentness

**(a) Notice by Treasurer.** If a check to the Fund is dishonored, the treasurer of the Fund shall notify the attorney immediately by the quickest available means.

**(b) Duty of Attorney.** Within seven business days following the date of the notice, the attorney shall pay to the treasurer of the Fund the full amount of the dishonored check plus any additional charge that the trustees shall prescribe. Payment shall be by certified check or money order.

**(c) Temporary Suspension Order.**

(1) *Notice by Treasurer.* The treasurer of the Fund promptly (but not more often than once each calendar quarter) shall submit to the Court of Appeals a proposed interim Temporary Suspension Order stating the name and account number of each attorney who remains in default of payment for a dishonored check and related charges.

(2) *Entry and Service of Order.* The Court of Appeals shall enter an Interim Temporary Suspension Order prohibiting the practice of law in the State by each attorney as to whom the Court is satisfied that the treasurer has made reasonable efforts to give notice concerning the dishonored check. The treasurer shall mail by first class mail a copy of the interim Temporary Suspension Order to each attorney named in the order at the attorney's last address as it appears on the records of the trustees. The mailing by the treasurer of the copy constitutes service of the order on the attorney.

**(d) Payment; Termination or Replacement of Interim Order.**

(1) *Procedure Upon Payment.* Upon payment of the full amount due by the attorney, the trustees and the Court shall follow the procedure set forth in Rule 19-605 (a)(4).

(2) *If No Payment.* If the full amount due is not paid by the time the Court enters its next Temporary Suspension Order under Rule 19-606 and, as a result, the attorney is included in that order, the interim order shall terminate and be replaced by the Temporary Suspension Order.

**Source:** This Rule is derived from former Rule 16-811.7 (2016).

**Credits**

[Adopted June 6, 2016, eff. July 1, 2016.]

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**WESTLAW** Maryland Code and Court Rules

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MD Rules Attorneys, Rule 19-608

**RULE 19-608. NOTICES CONCERNING TEMPORARY SUSPENSIONS**Currentness

Upon entry of each Temporary Suspension Order and each order that terminates a temporary suspension and restores the attorney to good standing entered pursuant to the Rules in this Chapter, the Clerk of the Court of Appeals shall comply with Rule 19-761.

**Source:** This Rule is derived from former Rule 16-811.8 (2016).

**Credits**

[Adopted June 6, 2016, eff. July 1, 2016.]

MD R Attorneys, Rule 19-608, MD R ATTORNEYS Rule 19-608  
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(C) if requested by the attorney, confirm that the trustees have complied with the requirements of subsections (c)(1)(A) and (B) of this Rule.

(2) *Duty of Court.* Upon receipt of the notice and request provided for in subsection (c)(1)(B) of this Rule, the Court of Appeals shall enter an order terminating the temporary suspension of the attorney and post notice of the Order on the Judiciary website.

**Committee note:** Subsection (c)(2) does not affect any other suspension of the attorney.

**Source:** This Rule is derived from former Rule 16-811.6 (2016).

### Credits

[Adopted June 6, 2016, eff. July 1, 2016. Amended Dec. 4, 2018, eff. Jan. 1, 2019.]

### Editors' Notes

## HISTORICAL NOTES

### 2018 Orders

The December 4, 2018 order amended this Rule to accommodate implementation of the Attorney Information System and to make certain style changes.

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MD Rules Attorneys, Rule 19-609

**RULE 19-609. CLAIMS**Currentness

**(a) Method of Making Claim.** A claim against the Fund shall be made in conformance with regulations adopted by the trustees.

**(b) Review by Trustees.**

(1) *Generally.* The trustees shall determine whether a claim merits reimbursement from the Fund and, if so:

- (A) the amount of such reimbursement;
- (B) the time, place, and manner of payment;
- (C) any conditions upon which payment will be made; and
- (D) the order in which payments will be made.

(2) *No Rights in Fund.* No claimant or other person has any right in the Fund, as beneficiary or otherwise.

(3) *Assistance in Investigation.* The trustees may request bar associations, Bar Counsel, other organizations of attorneys, individual attorneys, and other individuals selected by the trustees to assist the trustees in the investigation of claims.

**(c) Factors to be Considered.** In exercising their discretion, the trustees may consider:

- (1) The amounts available and likely to become available to the Fund for the payment of claims;
- (2) The amount and number of claims likely to be presented in the future;
- (3) The total amount of losses caused by defalcations of any one attorney or associated groups of attorneys;
- (4) The unreimbursed amounts of claims recognized by the trustees in the past as meriting reimbursement, but for which reimbursement has not been made in the total amount of the loss sustained;
- (5) The amount of the claimant's loss as compared with the amount of the losses sustained by other claimants who may merit reimbursement from the Fund;
- (6) The degree of hardship the claimant has suffered by the loss; and
- (7) Any other factor the trustees deem appropriate.

**(d) Conditions to Payment.** In addition to other conditions and requirements, the trustees may require claimants, as a condition of payment, to take such action and to enter into such agreements and execute such instruments as the trustees find appropriate, including assignments, subrogation agreements, trust agreements, and promises to cooperate with the trustees in making and prosecuting claims or charges against any person.

**Source:** This Rule is derived from former Rule 16-811.9 (2016).

**Credits**

[Adopted June 6, 2016, eff. July 1, 2016.]

MD R Attorneys, Rule 19-609, MD R ATTORNEYS Rule 19-609

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MD Rules Attorneys, Rule 19-610

**RULE 19-610. JUDICIAL REVIEW**Currentness

**(a) Generally.** A person aggrieved by a final determination of the trustees may seek judicial review of the determination pursuant to Title 7, Chapter 200 of the Maryland Rules.

**(b) Standard of Review.** In the action for judicial review, the decision of the trustees shall be deemed prima facie correct and shall be affirmed unless the decision was arbitrary, capricious, unsupported by substantial evidence on the record considered as a whole, beyond the authority vested in the trustees, made upon unlawful procedure, or unconstitutional or otherwise illegal. Any party, including the Fund, aggrieved by the judgment of the circuit court may appeal the judgment to the Court of Special Appeals.

**Source:** This Rule is derived from former Rule 16-811.10 (2016).

**Credits**

[Adopted June 6, 2016, eff. July 1, 2016.]

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MD Rules Attorneys, Rule 19-611

**RULE 19-611. SUPERVISORY AUTHORITY OF COURT OF APPEALS**Currentness

**(a) Audit.** In addition to the authority of the trustees under Rule 19-604, the Court of Appeals may at any time arrange for an audit of the accounts of the Fund to be made by State or private auditors. The cost of any such audit shall be paid by the Fund if no other source of funds is available.

**(b) Administrative Advice.** The trustees may apply to the Court of Appeals, in its non-adjudicatory, supervisory capacity, for interpretation of these Rules and for advice as to their powers and as to the proper administration of the Fund. Any final order issued by the Court in response to any such application shall determine all rights with respect to the matters covered and shall be binding.

**(c) Dissolution.** The Court of Appeals may provide for the dissolution and winding up of the affairs of the Fund.

**Source:** This Rule is derived from former Rule 16-811.11 (2016).

**Credits**

[Adopted June 6, 2016, eff. July 1, 2016.]

MD R Attorneys, Rule 19-611, MD R ATTORNEYS Rule 19-611  
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**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.