

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 600 - CLIENT PROTECTION FUND

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Rule 19-601. DEFINITIONS

In this Chapter, the following definitions apply:

(a) Client Protection Fund; Fund

"Client Protection Fund" and "Fund" means the Client Protection Fund of the Bar of Maryland created by Code, Business Occupations 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 office for the practice of law in that county.

(c) These Rules

"These Rules" means the Rules in this Chapter.

Source: This Rule is new but is derived, in part, from former Rule 16-811.

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Rule 19-602. ~~CLIENT PROTECTION FUND OF THE BAR OF MARYLAND~~

PURPOSE

~~a. Name, Operation, and Purpose~~

~~1. Name.~~

~~Effective July 1, 2002, the name of the Clients' Security Trust Fund of the Bar of Maryland, promulgated pursuant to Chapter 779, Laws of Maryland (1965), shall be changed to the "Client Protection Fund of the Bar of Maryland (the "Fund").~~

~~Cross reference: See Code, Business Occupations and Professions Article, §§10-310 et seq.~~

~~2. Operation.~~

~~The Fund shall be operated and administered in accordance with this Rule by nine trustees, appointed as hereinafter provided. The trustees shall be known as the "Trustees of the Client Protection Fund of the bar of Maryland."~~

~~3. Purpose.~~

The purpose of the Client Protection Fund shall be is to maintain the integrity and protect the good name of the legal profession by reimbursing, to the extent authorized by ~~this Rule~~ these Rules and deemed proper and reasonable by the trustees of

the Fund, losses caused by defalcations of members of the Bar of ~~the State of~~ Maryland or out-of-state attorneys authorized to practice in this State under ~~Rule 15 of the Rules Governing Admission to the Bar~~ Rule 19-215, acting either as attorneys or, except to the extent they are bonded, as fiduciaries (~~except to the extent to which they are bonded~~).

Source: This Rule is derived from former Rule 16-811.

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Rule 19-603. APPOINTMENT, COMPENSATION, MEETINGS OF TRUSTEES

(a) Number of Trustees

~~There shall be nine trustees appointed by the Court of Appeals, eight to be members of the Bar of this State, and one who shall not be a member of the Bar. 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 a member of the Bar.~~

DRAFTER'S NOTE: The bolded language is taken verbatim from Rule 16-811 b.1. Is it intended that that individual not be a lawyer at all - a member of any Bar - or that he/she not be a member of the Maryland Bar?

(b) ~~Appointment~~ Geographic Apportionment

One trustee who is a member of the ~~Bar of this State~~ Maryland Bar shall be appointed from each of the seven appellate judicial circuits. ~~The eighth trustee who is a member of the Bar and the trustee who is not a member of the Bar~~ other two trustees shall be appointed at large.

(c) Term

~~Each appointment shall be for a term of seven years. The~~ term of each trustee is seven years. A trustee may be removed

by the Court at any time ~~in its discretion~~. ~~Vacancies shall be filled by appointment by the Court for the unexpired term.~~

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, ~~if no other source of funds is available~~, for their expenses reasonable 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 ~~and shall be held~~. The trustees shall meet at least once each year, ~~upon reasonable notice~~.

(f) Quorum

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, ~~except to the extent that this Rule provides otherwise~~.

Source: This Rule is derived from former Rule 16-811.

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Rule 19-604. POWERS AND DUTIES OF TRUSTEES; TREASURER

(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 bylaws 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 or assignment or otherwise.

(6) To invest the Fund, or any portion thereof, in such investments as they may deem appropriate, and to cause funds to be deposited in any bank, banking institution or federally insured savings and loan association in this State, provided however, that the trustees shall have no obligation to cause the Fund or any portion thereof to be invested.

(7) To employ and compensate consultants, agents, legal counsel and employees.

(8) 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 ~~section h (Claims) of this~~ Rule 19-608.

(9) To sue or be sued in the name of the Fund without joining any or all individual trustees.

(10) To comply with the requirements of Rules ~~16-713 (e)~~ 19-704 (e), ~~16-714 (b)~~ 19-705 (c), ~~16-724 (a)~~ 19-708 (a), and ~~16-753~~ 19-723.

(11) To designate an employee to perform the duties set forth in Rules ~~16-724 (a)~~ 19-708 (a) and ~~16-753~~ 19-723 and notify Bar Counsel of that designation.

(12) To perform all other acts necessary or proper for fulfillment of the purposes of the Fund and its efficient administration.

(13) ~~Arrange audit. The trustees shall arrange for auditing~~
To arrange for an audit of the accounts of the Fund by state or private auditors. The cost of ~~any such~~ the audit shall be paid by the Fund if not other source of funds is available.

(14) 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 moneys 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 ~~from time to time~~ by the trustees and with ~~such surety as may~~ one or more sureties approved by the trustees; and
- (4) comply with the requirements of Rule ~~16-714 (b)~~ 19-705

(c).

Source: This Rule is derived from former Rule 16-811.

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Rule 19-605. OBLIGATIONS OF ATTORNEYS

(a) Payment to Fund

(1) Generally

Except as otherwise provided in this section, each ~~lawyer~~ attorney admitted to practice before the Court of Appeals or issued a certificate of special authorization under Rule ~~15~~ 19-215 ~~of the Rules Governing Admission to the Bar of Maryland~~ ~~shall~~ , as a condition precedent to the practice of law ~~(as from time to time defined in Code, Business Occupations and Professions Article)~~ in this State, shall pay annually to the treasurer of the Fund the sum, ~~including~~ and all applicable late charges, ~~the Court may fix~~ set by the Court of Appeals.

(2) Exception

Upon timely application by an attorney, the trustees of

the Fund may approve an attorney for inactive/retired status.
By regulation, the trustees may provide a uniform deadline date
for seeking approval of inactive/retired status. A ~~lawyer~~ An
attorney on inactive/retired status may engage in the practice
of law without payment to the Fund ~~is~~ if (A) the ~~lawyer~~ 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 ~~Title 16~~
Chapter 700 of ~~these Rules~~ this Title, and (B) the ~~lawyer's~~
attorney's practice is limited to representing clients without
compensation, other than reimbursement of reasonable and
necessary expenses, as part of the ~~lawyer's~~ 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, Inc., an affiliated bar foundation, or
the Maryland Legal Services Corporation.

(3) Due Date

Payment for any fiscal year ~~shall be~~ is due on July ~~1st~~ 1
of ~~each such~~ that year.

DRAFTER'S NOTE: Paragraph (3), with the changes noted, is taken
from Rule 16-811 e. 4. Rule 16-811 e. 2. permits the trustees,
by regulation, to provide "reasonable and uniform deadline dates
for receipt of payments of assessments or applications for
change to inactive/retired status." At least with respect to
payment of assessments, that discretion appears to be
inconsistent with the requirement that payments are due on July
1.

~~5. Dishonor. If any check to the Fund in payment of an annual assessment is dishonored, the treasurer of the Fund shall promptly notify the attorney of the dishonor. The attorney shall be responsible for all additional charges assessed by the trustees.~~

DRAFTER'S NOTE: This provision, with style changes, is moved to Rule 19-607.

Source: This Rule is derived from former Rule 16-811.

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Rule 19-606. ENFORCEMENT - UNPAID ASSESSMENTS GENERALLY

(a) List ~~by Trustees~~ of Unpaid Assessments

As soon as ~~practical~~ practicable after January 1, but no later than February 15 of each calendar year, the trustees shall prepare, certify, and file with the Court of Appeals a list showing:

(1) the name and account number, as it appears on their records, of each ~~lawyer~~ attorney who, to the best of their information, is engaged in the practice of law and, without valid reason or justification, has failed ~~or refused~~ to pay ~~(a)~~ (A) one or more annual assessments, ~~(b) penalties~~ a penalty for late payment, ~~(c)~~ (C) any charge for a dishonored check, or ~~(d)~~ reimbursement for publication charges; and

(2) the amount due from that ~~lawyer~~ attorney to the Fund.

(b) Required Notice of Default ~~by Trustees~~

(1) The trustees shall give notice of delinquency promptly to each ~~lawyer~~ attorney on the list by first class mail addressed to the ~~lawyer~~ attorney at the ~~lawyer's~~ attorney's last address appearing on the records of the trustees. The notice shall state the amount of the obligation to the Fund, that

payment is overdue, and that failure to pay the amount to the Fund within 30 days following the date of the notice will result in the entry of an order by the Court of Appeals prohibiting the ~~lawyer~~ attorney from practicing law in the State.

(2) The mailing by the trustees of the notice of default ~~shall constitute~~ constitutes service of the notice on the attorney.

(c) Additional Discretionary Notice

(1) In addition to the mailed notice, the trustees may give any additional notice to the ~~lawyers~~ attorneys on the delinquency list as the trustees ~~in their discretion~~ deem desirable. Additional notice may ~~include~~ be in the form of:

(A) publication in one or more newspapers selected by the trustees;

(B) telephone, facsimile, e-mail, or other transmission to the named ~~lawyers~~ attorneys;

(C) dissemination to local bar associations or other professional associations;

(D) posting in one or more State court houses of the State; or

(E) any other means ~~deemed appropriate by~~ the trustees deem appropriate.

(2) The additional notice may be statewide, regional, local, or personal to a named ~~lawyer~~ attorney as the trustees ~~may~~

direct.

(d) ~~Certification of Default by Trustees; order of~~ Temporary Suspension ~~by the Court of Appeals~~

(1) Proposed Order

Promptly after expiration of the deadline date stated in the mailed notice, the trustees shall submit to the Court of Appeals a proposed Temporary Suspension Order stating the names and account numbers of those ~~lawyers~~ attorneys whose accounts remain unpaid. The trustees shall furnish additional information from their records or give further notice as the Court of Appeals may direct.

(2) Entry of Order

If satisfied that the trustees have given the required notice to the attorneys remaining in default, the Court of Appeals ~~,on being satisfied that the trustees have given the required notice to the lawyers remaining in default,~~ shall enter a Temporary Suspension Order prohibiting each of them from practicing law in the State. The trustees shall mail by first class mail a copy of the Temporary Suspension Order to each ~~lawyer~~ attorney named in the order at the ~~lawyer's~~ attorney's last address as it appears on the records of the trustees. The mailing by the trustees of the copy ~~shall constitute~~ constitutes service of the order on the attorney.

(3) Effect of Order

(A) ~~A lawyer~~ An attorney who has been served with a copy of a Temporary Suspension Order and has not been restored to good standing may not practice law and shall comply with the requirements of Rule ~~16-760 (e)~~ 19-742 (a) and (b).

~~In accordance with the provisions of Title 15, Chapter 200 (Contempt) and any other applicable provision of law or as the Court Of Appeals shall direct,~~ In addition to any other remedy or sanction allowed by law, an action for contempt may be brought against a ~~lawyer~~ attorney who practices law in violation of a Temporary Suspension Order.

(B) Upon written request from any ~~Maryland lawyer, judge, or litigant~~ judge, attorney, or member of the public ~~to confirm whether a Maryland lawyer named in the request has been temporarily suspended and has not been restored to good standing~~ the trustees shall furnish confirmation promptly, by informal means and, if requested, ~~by written confirmation~~ in writing, shall promptly confirm whether a Maryland ~~lawyer~~ attorney named in the request has been temporarily suspended and has not been restored to good standing.

DRAFTER'S NOTE: The current Rule appears to apply only to a Maryland judge, a Maryland attorney, and a Maryland litigant. As a practice, the CPF responds to requests from anyone, and, as the information is a matter of public record, there appears to be no reason not to do so. At the very least, Federal judges and litigants in Federal cases in Maryland should be permitted to seek confirmation.

(C) On receiving confirmation by the trustees that a

Maryland ~~lawyer~~ attorney attempting to practice law has been and remains temporarily suspended, a Maryland judge shall not permit the ~~lawyer~~ attorney to practice law in the State until the Court of Appeals enters an order that terminates the Temporary Suspension Order with respect to that attorney and restores the ~~lawyer~~ attorney to good standing.

DRAFTER'S NOTE: This provision does not indicate how the judge is to prevent the attorney from practicing. Is it intended that the judge, *sua sponte* issue an injunction or a temporary restraining order to be followed by an injunction? May the attorney contest such an injunction by showing that the confirmation was incorrect - that he/she is not under a Temporary Suspension Order or that such an order was terminated? There appears to be no procedural due process for the attorney. One solution is to permit a temporary restraining order coupled with an order to show cause within two or three days why an injunction should not issue and a mandatory hearing if a response showing cause is timely filed.

(e) Payment; Termination of Temporary Suspension Order

(1) Method of Payment

~~Upon payment in cash or by certified or bank official's check to the Fund by a lawyer of all amounts due by the lawyer, including all related costs that the Court of Appeals or the trustees may prescribe from time to time, the trustees shall remove the lawyer's name from their list of delinquent lawyers and, if a Temporary Suspension Order has been entered, request the Court of Appeals to enter an order that terminates the temporary suspension and restores the lawyer to good standing. If requested by a lawyer affected by the action, the trustees~~

~~shall furnish confirmation promptly.~~ Payment of amounts due the Fund shall be by certified or bank check.

DRAFTER'S NOTE: As a matter of policy, the current Rule does not allow payment by personal check. It is questionable whether the Fund should be handling cash, however, and it is not clear what is meant by a "bank official's check."

(2) Duty of Trustees

Upon payment of 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 delinquent attorneys;

(B) if a Temporary Suspension Order has been entered, inform the Court of Appeals that full payment has been received and request the Court to enter an order terminating the attorney's suspension; and

(C) if requested by the attorney, confirm that the trustees have complied with the requirements of subsection (e)(2)(A) and (B) of this Rule.

(3) Duty of Court

Upon receipt of the notice and request provided for in subsection (e)(2)(B) of this Rule, the Court of Appeals shall enter an order terminating the temporary suspension of the attorney.

Committee note: Subsection (e)(3) does not affect any other suspension of the attorney.

DRAFTER'S NOTE: The current Rule requires the trustee to request the Court to terminate the temporary suspension but does not require the Court to do so.

Source: This Rule is new but is derived in part from former Rule 16-811.

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Rule 19-607. DISHONORED CHECKS

(a) Notice by Treasurer

If a check to the Fund is dishonored, the treasurer of the Fund shall notify the ~~lawyer~~ attorney immediately by the quickest available means.

(b) Duty of Attorney

Within ~~7~~ seven business days following the date of the notice, the ~~lawyer~~ attorney shall pay to the treasurer of the Fund, ~~in cash or by certified or bank official's check,~~ the full amount of dishonored check plus any additional charge that the trustees ~~in their discretion~~ shall prescribe ~~from time to time~~. Payment shall be by certified or bank check.

DRAFTER'S NOTE: See DRAFTER'S NOTE to Rule 19-606 (e)(1).

(c) Temporary Suspension Order

(1) Notice by Treasurer

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

charges.

(2) Entry and Service of Order

The Court of Appeals enter an Interim Temporary Suspension Order prohibiting the practice of law in the State by each ~~lawyer~~ attorney as to whom ~~it~~ the Court is satisfied that the treasurer has made reasonable ~~and good faith~~ 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 ~~lawyer~~ attorney named in the order at the ~~lawyer's~~ attorney's last address as it appears on the records of the trustees, ~~and the~~ The mailing by the treasurer of the copy ~~shall constitute~~ 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 19-606 (e).

(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.

DRAFTER'S NOTE: The current Rule doesn't seem to cover what happens after an interim order is issued. Presumably, either the attorney will make good on the check, in which event, there has to be a procedure for terminating the interim order or, if payment is not made, continuing the suspension in the next temporary suspension order.

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Rule 19-608. CLAIMS

(a) Method of Making Claim

A claim against the Fund shall be made in conformance with regulations adopted by the trustees.

(b) ~~1. Power of trustees~~ Review by Trustees

(1) Generally

The trustees ~~are invested with the power to~~ 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 ~~its~~ payment;

(C) ~~the~~ any conditions upon which payment ~~shall~~ will be made; and

(D) the order in which payments ~~shall~~ will be made.

(2) No Rights in Fund

No claimant or other person ~~or organization~~ has any right in the Fund, as beneficiary or otherwise.

~~5. Investigation of claims - Assistance~~ (3) Assistance in Investigation

The trustees may request ~~individual lawyers~~ bar

associations, ~~and~~ other organizations of ~~lawyers~~ attorneys, and individual attorneys to assist the trustees in the investigation of claims.

(c) Exercise of discretion Factors to be Considered

In exercising their discretion, the trustees may consider, ~~together with such other factors as they deem appropriate, the following:~~

~~(i)~~ (1) The amounts available and likely to become available to the Fund for the payment of claims;

~~(ii)~~ (2) The ~~size~~ amount and number of claims ~~which are~~ likely to be presented in the future;

~~(iii)~~ (3) The total amount of losses caused by defalcations of any one attorney or associated groups of attorneys;

~~(iv)~~ (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;

~~(v)~~ (5) The amount of the claimant's loss as compared with the amount of the losses sustained by ~~others~~ other claimants who may merit reimbursement from the Fund;

~~(vi)~~ (6) The degree of hardship the claimant has suffered by the loss; and

(7) Any other factor the trustees deem appropriate.

~~4. Additional powers of trustees.~~ (d) Conditions to Payment

In addition to other conditions and requirements, the trustees may require ~~each claimant~~ claimants, as a condition of payment, to take such action, and to enter into such agreements as the trustees ~~may desire~~ 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.

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Rule 19-609. JUDICIAL REVIEW

(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 ~~these Rules~~ the Maryland Rules.

(b) Standard of Review

~~On any~~ 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.

DRAFTER'S NOTE: The first sentence, which is taken directly from the current Rule, is probably unnecessary, and it expresses the same standard that is applicable to judicial review generally.

Source: This Rule is derived from former Rule 16-811.

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Rule 19-610. SUPERVISORY AUTHORITY OF COURT OF APPEALS

~~1. To change rule. The Court of Appeals may amend, modify, or repeal this Rule without prior notice, and may provide for the dissolution and winding up of the affairs of the Fund.~~

DRAFTER'S NOTE: To a large extent, this provision is unnecessary. The Court has the Constitutional authority to amend and repeal any of its Rules. By Rule, the Court regards the exercise of its Rule-making authority as subject to open meeting requirements, which would preclude the repeal or modification of these Rules without prior notice. When necessary, the Court may adopt Rules changes on an emergency basis, but it has always provided some notice.

(a) Audit

In addition to the authority of the trustees under Rule 19-604, the Court of Appeals may at any time arrange for ~~such 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 nonadjudicator, supervisory capacity, for interpretation of ~~this~~

~~Rule~~ 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 ~~finally bind~~ and determine all rights with respect to the matters covered ~~therein~~ and shall be binding.

Source: This Rule is derived from former Rule 16-811.