

**When It Rains, It Pours:
Best Practices for Handling
Multiple Client Protection Fund
Claims Against One Attorney**

**Matthew J. Vogelsberg
Chief Deputy Disciplinary Administrator
Office of the Disciplinary Administrator
701 SW Jackson St., First Floor
Topeka, KS 66603-3729
Phone: 785-435-8200
Email: matthew.vogelsberg@kscourts.gov**

Synopsis: This CLE will discuss rules, processes, and procedures that have assisted the Kansas Office of the Disciplinary Administrator (ODA) in handling multiple client protection fund (CPF) claims filed against a single attorney. The presentation will discuss preemptive actions that can be taken to mitigate the claims ultimately paid out on behalf of a single attorney. The presentation will also discuss strategies for handling multiple claims when dealing with a time limitation for filing a CPF claim and/or a cap on the amount that can be paid out for claims against a single attorney. Finally, the presentation will discuss a recent real-life example of how these rules, processes, and procedures were applied by the ODA and the Kansas Client Protection Fund Commission in handling multiple claims against a single attorney. The audience members from other jurisdictions are encouraged to participate and share their best practices for handling multiple claims against a single attorney.

A Brief Overview of How Client Protection Fund Claims are Handled in Kansas

- Kansas Supreme Court Rule 241 governs how client protection fund claims are processed and evaluated. (See attachment 1.)
- The Kansas Client Protection Fund Commission determines whether claimants should be reimbursed for losses resulting from an attorney's dishonest conduct.
 - The Commission consists of seven members — four lawyers, 1 judge, and two nonlawyers
- The ODA receives, processes, and investigates CPF claims on behalf of the Commission.
 - As a condition precedent to filing a CPF claim, the claimant must file a disciplinary complaint against the attorney with the ODA.
 - The investigation of a CPF claim generally corresponds with the investigation of a disciplinary complaint.

- The Commission meets quarterly to review claims that were investigated by the ODA during the previous quarter.

Compensable Claims Under Supreme Court Rule 241

- A compensable claim must satisfy four factors:
 - The claimant must have suffered a demonstrable loss
 - Caused by the *dishonest conduct* of a member or former member of the Kansas bar.
 - For purposes of a client protection fund claim, dishonest conduct is defined as:
 - Acts committed by a lawyer in the wrongful taking or conversion of money, property, or other things of value
 - Refusal to refund unearned fees received in advance where the lawyer performed no services or such an insignificant portion of the service that the refusal to refund the unearned fees constitutes a wrongful taking or conversion of money
 - The borrowing of money from a client without an intention to repay it or with disregard of the lawyer's inability or reasonably anticipated inability to repay it; or
 - A lawyer's act of intentional dishonesty that proximately leads to the loss of money or property
 - NOTE: The CPF Commission may make a finding of dishonest conduct for purposes of determining a claim. The determination is not a finding of dishonest conduct for

purposes of disciplinary proceedings or for civil or criminal judgments and is inadmissible in any other proceeding.

- The loss must have arisen
 - In the course of a lawyer-client relationship between the lawyer and the claimant; and
 - In Kansas or as a result of the lawyer's federal practice based on the lawyer's Kansas license
- The claim must have been filed no later than one year after the claimant knew or should have known of the dishonest conduct of the lawyer
 - Exceptions: Claimant presents a case of extreme hardship or special or unusual circumstances or
 - The Fund previously received "unidentifiable property" from the attorney's trust account and the owner is identified after the one-year time period has passed. See Rule 241(l)(5).
- Claim Limits
 - Reimbursement to any single claimant cannot exceed \$125,000
 - Reimbursement for all claims against a single attorney cannot exceed \$350,000

Rules, Procedures, & Practices that Lessen Claims Against a Client Protect Fund

- A strong attorney trust account rule
 - Kansas Rule of Professional Conduct 1.15 (See attachment 2).

- Requires all monies advanced to a lawyer for legal services to be rendered in the future – regardless of the amount – to be placed in an attorney trust account.
- Lawyer is prohibited from commingling his or her funds in the trust account.
- The Dead Lawyer Problem: If a lawyer receives client or third-party money, fails to deposit the money into a trust account, as required by KRPC 1.15, and then dies before performing little to no services for the client, the CPF Commission will find dishonest conduct on the part of the deceased attorney based on the attorney's improper conversion of the money.

- **Random trust account audit program**

- Kansas Supreme Court Rule 236 (see Attachment 3) authorizes the ODA to perform random compliance examinations of lawyer trust accounts. The purpose of the random audits is to reduce the incidence of misappropriation and mishandling of clients' funds by monitoring compliance with the procedures and recordkeeping requirements established by KRPC 1.15.
- Attorneys are selected for random trust account audits by using random number generator. Each month, the ODA's trust account auditor (a CPA and licensed Kansas attorney) examines the trust accounts of three lawyers.
 - If any of the three lawyers selected have been audited (or their law firm's trust account audited) in the prior five years, another attorney is randomly selected.

- The lawyer selected for the random audit does not have to be a signatory on the trust account or a partner in the law firm. All trust accounts associated with the attorney's firm will be examined during the random audit.
- Lawyers who do not maintain trust accounts (*e.g.*, judges, prosecutors, public defenders, corporate lawyers) are not selected for auditing.

○ Scope of Audit.

- Random audits will evaluate the internal controls, accounting policies, and other procedures of the law firm and include a substantive inquiry into a lawyer's (or lawyer's law firm's) handling of client funds.
- Trust account records for the past 12 months of activity are examined. The audit includes the examination of canceled checks, deposit slips, bank statements, ledger cards, and the bookkeeping/software system (*i.e.*, check stubs, receipts, disbursement journals, software registers, etc.).
- After the auditor has reviewed the results of the audit with the disciplinary administrator, a report from the auditor outlining any procedural deficiency is provided to the lawyer.
 - If the compliance examination report specifies deficiencies in the lawyer's or law firm's records or procedures, the lawyer must provide written assurance to the ODA within 14 days that the deficiencies will be corrected.

- In rare instances, if the audit uncovers serious violations of KRPC 1.15, a disciplinary complaint will be docketed for a full disciplinary investigation.

- Unidentifiable Property

- If the audit of the trust account reveals money within the account that cannot be unaccounted for (*i.e.*, the ownership of the funds cannot be determined), then the money will be transferred into the Client Protection Funds as “unidentifiable property.”

- **Educating the Bar**

- The ODA published the *Kansas Lawyer Trust Account Handbook* in September 2023 to assist Kansas lawyers with navigating the rules and processes associated with properly maintaining an attorney trust account.
- The ODA is currently in the process of developing a Trust Account School to be available by spring 2026.
- The ODA puts on CLEs throughout the state regarding trust account issues as well as the Client Protection Fund.
- The ODA routinely answers phone calls and emails from attorneys regarding trust account issues.

- **Appointment of Counsel to Protect Client Interests**

- Under Kansas Supreme Court Rule 235 (see Attachment 4), the chief judge of a judicial district may appoint counsel to protect the interests of an attorney's clients under the following circumstances:
 - The attorney has been transferred to disabled status
 - The attorney has disappeared or died
 - The Supreme Court has suspended or disbarred the attorney and the attorney has not provided notice to clients, courts, and opposing counsel as required by Supreme Court Rule 231.
 - The attorney has neglected client affairs (*e.g.*, the attorney has abandoned his or her practice)
- The chief judge may authorize the appointed counsel to take the following actions:
 - Review and inventory the attorney's client files
 - Access and audit the attorney's trust account. Identifiable funds within the trust account (*i.e.*, funds that are associated with a specific person) must be returned to the owner.
 - Take any other action necessary to protect the interests of the attorney and the attorney's clients
 - If identifiable funds are found in the trust account which have not been claimed by the owner, the appointing judge can authorize transfer of the funds to the Kansas State Treasurer's office under the Disposition of Unclaimed Property Act; and

- If unidentifiable funds are found in the trust account, the appointing judge can authorize transfer of the funds to the Client Protection Fund under Rule 241.
 - NOTE: Since January 2022 to August 2025, \$364,958.70 has been deposited into the Kansas Client Protection Fund as unidentifiable property as the result of random audits or audits performed by Rule 235 counsel (see below).
- **Educating the Bench and the Bar Regarding Rule 235**
 - In 2021, the ODA sent letters to chief judges, court clerks, and local service to the bar committees regarding Rule 235.
 - Some local bar associations (*e.g.*, Topeka Bar Association, Wichita Bar Association) have service to the bar committees that work to assist clients who have lost their attorney due to disappearance, disability, death, or other reason. The committee tries to assist clients with obtaining new counsel, acts as a liaison with the courts to obtain continuances, and assists lawyers if they need help wrapping up their law practice.
 - The ODA created a template order for chief judges to use in drafting a Rule 235 order.
 - ODA asked the chief judges and court clerks to provide us with copies of any Rule 235 orders that have been issued so we can direct former clients to contact appointed counsel.

Two Main Considerations when Handling Multiple CPF Claims Against a Single Attorney

- As mentioned above, Kansas requires claimants to file a CPF claim within 1-year from the time they knew or should have known about the lawyer's dishonest conduct.
- Kansas also caps all claims filed against a single attorney at \$350,000.
- Accordingly, when it becomes apparent that multiple claims will be filed against a single attorney, the ODA and the Kansas CPF Commission will take two things into consideration:
 - Ensuring that all eligible claimants receive at least a pro rata share of \$350,000
 - Determining a fair deadline for when the 1-year time period should be applied to all claimants.
 - If there is a high likelihood that the claims filed against a single attorney will be more than \$350,000, then the CPF Commission will place compensable claims on hold until it is confident that the \$350k limit will not be met or the 1-year time period has passed, whichever occurs first.

Real Life Example: High Volume Criminal Defense Attorney

- Attorney maintained a high-volume criminal defense and traffic practice, representing clients in the Sedgwick County District Court and in municipal courts throughout the Wichita metropolitan area.
 - Attorney charged a flat fee for his services. Fee generally ranged between \$1,000 to \$10,000 depending on the complexity of the matter.

- Late October 2022 – the ODA received a complaint from a Sedgwick County District Court Judge that Attorney had not been seen or heard from for approximately two months, resulting in him missing court appearances without notice.
 - At that time, the ODA requested that the Chief Judge for the District Court entered an order under Rule 235 to appoint counsel to take over Attorney's firm to protect his clients' interests. The Chief Judge agreed to do so.
 - About the time the chief judge agreed to enter the order, the Attorney reappeared. He returned to his law office and resumed his practice. Accordingly, no order was entered.
- December 2022 – the ODA was contacted by a district court judge, reporting that Attorney had again stopped appearing in court. At the same time, the ODA started receiving calls and complaints from clients, reporting that Attorney had stopped communicating with them, had stopped going to his office, and had failed to appear for court.
 - Notes are being taped to the office door from clients and delivery drivers.
- Late December 2022 to January 2023 – ODA begins communicating with the Chief Judge in Sedgwick County about appointing Rule 235 counsel to take over attorney's practice. At the same time, the ODA is communicating with the Wichita Bar Association's (WBA) Service to the Bar Committee, asking them to direct clients to the ODA for information about filing a disciplinary complaint and CPF claim against Lawyer.
- January 9, 2023 – Local media start reporting about the Lawyer abandoning his practice. Media also provides info (given to it by the ODA and the WBA) about filing a disciplinary complaint and CPF claim against lawyer.

- NOTE: CPF Commission later uses end of January 2023 as the general time when claimants first knew or should have known of Attorney's misconduct for purposes of applying the 1-year time period. See Rule 241(l)(2).
- January 12, 2023 – with the assistance of the ODA, the Chief Judge issues a Rule 235 order, appointing two local attorneys to take over lawyer's practice. (See Attachment 5.)
 - Chief Judge entered subsequent orders on January 19 and January 23, 2023, supplementing and expanding on the authority granted under the initial order (*i.e.*, authorizing the WBA to assist Rule 235 counsel with inventorying the files; giving the Rule 235 attorneys exclusive access to and control of Attorney's trust account). (See Attachments 6 & 7)
 - ODA is in contact with Rule 235 counsel, providing them with information to share with claimants about filing disciplinary complaints and CPF claims against the Attorney.
- February 17, 2023 – based on a motion filed by the ODA (see attachment 8), the Kansas Supreme Court temporarily suspended the attorney's license to practice law. (See Attachment 9.)
 - Kansas Supreme Court Rule 213 – for good cause, the Supreme Court may temporarily suspend an attorney's license to practice law. (See Attachment 10.)
 - "Good cause" is defined as
 - the attorney failed to file an answer to a formal complaint in a disciplinary proceeding or

- the attorney poses a substantial threat of harm to clients, the public, or the administration of justice.
- Mid-January to April 2023 – Rule 235 counsel, with the assistance of the ODA’s Trust Account Auditor, audited Attorney’s files and trust account records.
 - When Rule 235 counsel took over Attorney’s trust account, the account had a balance of \$115,713.50
 - Cross-referencing notations on client files (*e.g.*, hand-written notes indicating when money was received from clients and what account(s) the money was deposited into) with trust account records showing when money was deposited into the account), Rule 235 counsel and the Trust Account Auditor were able to identify \$87,000.00 within the trust account belonging to 27 clients. This money was ultimately returned to those individuals.
 - \$28,717.43 was transferred from the trust account into the Client Protection Fund as unidentifiable funds.
- August 24, 2023 – ODA files a formal disciplinary complaint against Attorney. Attorney fails to file an answer.
- October 25, 2023 – Attorney’s disciplinary hearing takes place. Attorney fails to appear at the hearing. ODA puts on evidence of rule violations.
- November 29, 2023 – Disciplinary Hearing Panel issues its report, finding numerous rule violations and recommending that Attorney be disbarred. (See Attachment 11.)
- From January 2023 to spring of 2025, CPF Commission received a total of 26 claims; 19 were found to be compensable; paid out a total of \$39,000.

- Based on the number of claims and the amounts being paid out by the Rule 235 counsel from Attorney's trust account, the CPF Commission felt confident early on that the \$350k cap would not be met. Accordingly, compensable claims were paid out without delay, starting in April 2023.