

When It Rains, It Pours

Best Practices for Handling Multiple Client
Protection Claims Against One Attorney

Presentation Overview

- Provide a Brief Summary of Rules Governing How Client Protection Fund Claims are Processed and Evaluated in Kansas.
- Discuss Rules, Practices, and Procedures that have worked in Kansas to minimize the amounts paid from the Client Protection Fund
- Discuss Factors that Need to Be Taken into Consideration when Handling Multiple Claims Against a Single Attorney
 - Cap on Claims made against a Single Attorney
 - Time Limit for filing a claim against an Attorney
- Case study on how Kansas handled a recent situation where a high-volume criminal defense attorney abandoned his practice
- Lessons or Tips from Other Jurisdictions



An Overview of the Kansas Client Protection Fund System

Kansas' Client Protection Fund: Main Rules

- Kansas Supreme Court Rule 241
- CPF Claims are received, processed, and investigated by the Kansas Office of the Disciplinary Administrator
- As a condition precedent to filing a claim, the claimant must file a complaint with the ODA.
- The investigations of a CPF claim and disciplinary complaint generally occur at the same time.

Kansas' Client Protection Fund: Main Rules

The Client Protection Fund Commission meets on a quarterly basis to review claims that have been investigated during the prior quarter.

The CPF Commission consists of 7 members appointed by the Kansas Supreme Court: 4 lawyers, 1 judge, and 2 nonlawyers

Compensable Claim under Kansas' Client Protection Fund Rule

Compensable Claim Must Satisfy Four Factors:

- Claimant Must have Suffered a *Demonstrable Loss*
- Caused by the *dishonest conduct* of a member or former member of the Kansas bar
- 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 to 1-year filing period

- 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 filing period has passed.

Dishonest Conduct

“Dishonest Conduct” means any of the following:

- 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

Caps on Claims

\$125,000 cap on
reimbursement to any one
claimant

\$350,000 cap for all claims
against one attorney



Rules, Practices &
Procedures that
Mitigate Claims Paid
out from the Client
Protection Fund

A Strong Trust Account Rule:

Kansas Rule of Professional Conduct 1.15

If a client or third-party advance money to a lawyer for the purpose of paying for legal services to be rendered in the future, that money must be placed in an attorney trust account.

- Must be placed in the trust account regardless of the amount or whether the money is an advanced retainer or flat fee.
- Lawyer is prohibited from keeping his or her own funds within the trust account.

The Dead Lawyer Problem

KRPC 1.15 requires all advanced funds to be placed in a trust account.

If a lawyer fails to place client or third-party money in a trust account and then dies, we will assume that the lawyer engaged in dishonest conduct, *i.e.*, the lawyer wrongfully converted the money.

Random Audits of Trust Accounts

Kansas is 1 of 9 jurisdictions that has a random trust account audit program.

Kansas Supreme Court Rule 236

Program is designed as a passive enforcement mechanism to ensure that lawyers are complying with Kansas Rule of Professional Conduct 1.15

An audit is designed to correct deficiencies in record keeping and trust account procedures. Lawyers are given an opportunity to correct deficiencies

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

Educating the Bar regarding Proper Trust Account Management

In September 2023, the ODA published the *Kansas Lawyer Trust Account Handbook*

The ODA is 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

The ODA routinely answers phone calls and emails from attorneys with questions regarding proper trust account management

Rule 235: Appointment of Counsel to Protect Client Interests

Supreme Court Rule 235--Gives Chief Judge of Judicial District the power to appoint counsel to take over another attorney's practice for the purpose of protecting the attorney's clients

Can appoint counsel under the following circumstances:

- The Supreme Court transferred the attorney to “disabled status”
- The attorney has disappeared or died
- The Supreme Court has suspended or disbarred the attorney and the attorney has not complied with the notice requirements of Rule 231, or
- The attorney has neglected client affairs (*e.g.*, abandoned his or her law practice).

Rule 235 Counsel: Authorized Actions

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 not claimed by the owner are transferred to the Kansas State Treasurer's office under the Disposition of Unclaimed Property Act; and

Unidentifiable funds are transferred into the Client Protection Fund

Educating the Bench and the Bar Regarding Rule 235

In 2021, the ODA sent letters to Chief Judges and Court Clerks regarding Rule 235.

The ODA created a template order for chief judges to use in drafting a Rule 235 order to appoint counsel.

We asked that chief judges and court clerks provide us with copies of any Rule 235 orders that have been issued so we could direct former clients to contact appointed counsel.

Unidentifiable Funds

From January 2022 to August 2025, unidentifiable funds totaling \$364,958.70 has been found in lawyer trust accounts through audits performed by appointed Rule 235 attorneys or performed under the random audit program.

This money has been transferred into the Kansas Client Protection fund, helping to ensure the fund's continued viability.

Two Main Considerations When Handling Multiple Claims Against a Single Attorney

- Ensuring that all eligible claimants receive a pro rata share of the \$350,000.
- Determining a fair deadline for when 1-year time period for filing a claim has expired
 - *i.e.*, When should have all claimants have known about the lawyer's dishonest conduct?

Real World
Example

High-Volume
Criminal Law
Practitioner

High-Volume Criminal Law Practitioner

Lawyer practiced law in Wichita, Kansas since 1998.

Lawyer maintained a high-volume criminal defense and traffic practice, representing clients in Sedgwick County District Court and in municipal courts throughout the Wichita metropolitan area.

Lawyer had a good reputation.

Fee structure for most cases was flat fee, ranging between \$1,000 to \$10,000.

Signs of Trouble

October 2022—The ODA started receiving reports that attorney had stopped appearing for court, had ceased communicating with his clients, and had abandoned his office.

Attorney reappeared and resumed his practice

December 2022—Notes are being taped to the office door from clients and delivery drivers.

Late December 2022 to early January 2023—ODA begins communicating with the Chief Judge in Sedgwick County about appointing Rule 235 counsel to take over attorney's practice.

ODA also starts communicating with the Wichita Bar Association's Service to the Bar Committee, asking them to direct clients to the ODA for information about filing disciplinary complaints/CPF claims against Attorney.

News Starts to Spread Regarding Attorney

January 9, 2023

<https://www.kwch.com/2023/01/10/wichita-attorney-disappears-clients-say-he-took-their-money-with-him/>

Appointment of Rule 235 Counsel

January 12, 2023—the Sedgwick County District Court Chief Judge appointed two local attorneys as Rule 235 counsel.

The Chief Judge entered subsequent orders on January 19 and January 23, 2023, supplementing and expanding on the authority granted under the initial order.

Follow-Up Story Regarding Attorney

January 18, 2023

[Wichita attorney under investigation after clients say he took their money](#)

Protecting the Public from Further Damage

February 17, 2023, the Kansas Supreme Court temporarily suspended the attorney's license to practice law.

Rule 213—The Supreme Court, for good cause, may temporarily suspend a respondent's license to practice law.

“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

Money in the Trust Account— Mitigating Payouts from the Client Protection Fund

When the Rule 235 Attorneys took control of the trust account, the account had a balance of \$115,713.50.

Cross-referencing notations on client files with trust account records, Rule 235 Attorneys and the Trust Account Auditor were able to identify \$87,000.00 within the trust account as belonging to 27 clients.

\$28,717.43 was transferred from the trust account into the Client Protection Fund as Unidentifiable Property

CPF Claims

Between January 2023 to spring 2025, CPF Commission received a total of 26 claims

19 Claims were found to be compensable, totaling \$39,425.00

Due to media coverage of the attorney's abandonment of his law practice, CPF Commission determined that late January, early February 2023 was when all claimants knew or should have known of attorney's dishonest conduct.

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

For most claims, the amount ultimately paid out was reduced by money the claimant received from the trust account.

Example

Client K.M. retained Attorney on August 3, 2022 to represent him in two separate criminal cases.

Same day, K.M. paid Attorney \$10,000.

The next day, August 4, 2022, Attorney deposited \$2,000 into his operating account and \$8,000 into his trust account.

Later, Attorney abandoned his practice before completing any significant work on K.M.'s cases.

K.M. filed a CPF claim for \$10,000

Because \$8,000 in Attorney's trust account could be identified as K.M.'s funds, this amount was refunded to K.M. from the trust account.

CPF Commission paid the remaining \$2,000 to K.M.

Disciplinary Process Plays Out

- 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 issued its report, finding numerous rule violations and recommending that Attorney be disbarred.
- March 5, 2024 – While matter is pending before the Kansas Supreme Court, Attorney committed suicide.

Key Takeaways

Educate Judges, Court Clerks, and Attorneys on what they can do if they become aware of an attorney abandoning his or her practice.

Once signs of trouble arise, take immediate action.

- Appoint attorney to take over practice
- Take control of the trust account
- Work closely with appointed counsel to payout identifiable funds from the trust account
- Give the appointed attorney the information regarding the CPF Fund to share with affected clients
- If your fund has a deadline for filing a claim and/or a cap on claims against a single attorney, determine whether to
 - delay paying out compensable claims
 - a fair deadline to apply to all potential claimants

Questions or Comments

Thank You!