



**PLAN FOR THE ADMINISTRATION OF THE
BENCH AND BAR FUND**

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA**

October 2018

Revised March 2021

I. Establishment of the Bench and Bar Fund

- A. Authority. The United States District Court for the Western District of Virginia (“court”) establishes the Bench and Bar Fund (“*Fund*”) pursuant to the policies of the Judicial Conference of the United States (“Judicial Conference”), as set forth in the *Guide to Judiciary Policy*, Volume 4, Chapter 6 (“*Guide*”), 28 U.S.C. §1914, Standing Order 2018-8 dated September 26, 2018, and the court’s inherent authority.
- B. Purpose. The *Fund* shall be used to promote the principles of equal justice under law and to benefit the public, the bench, and the bar in the fair administration of justice. The *Fund* shall not be used to supplement appropriated funds or supplement the salary of any court officer or employee, or to pay for materials or supplies currently available from statutory appropriations.
1. Attorney Admission Funds. Attorney admission funds are non-appropriated funds segregated from all other monies in the court’s custody. Attorneys appearing *pro hac vice* must pay an attorney admission fee of one hundred dollars (\$100.00) per case.
 2. Sources. Funding is derived from attorney admission fees collected for the filing of a motion to appear *pro hac vice*.
 3. Excluded Sources. Except as provided in the *Guide*, Vol 4., Ch. 6, §670.20(b)(6), monies from any other sources, including those specified in the §670(d), will not be placed in the *Fund*.

II. Bench and Bar Advisory Committee

- A. Purpose. Pursuant to the *Guide*, Vol. 4, Ch. 6, §670.60, the Court establishes an Advisory Committee to provide advice and guidance to the Chief Judge on appropriate expenditures and to make decisions on matters of policy relating to the administration of the *Fund*. The Advisory Committee is the trustee of the *Fund* tasked with administration and operation of the *Fund* in compliance with the requirements of the *Guide*. Final determination of requests for reimbursement over \$1,000.00, with the exception of expenses involving pro bono representation, must be approved by a majority vote of the Advisory Committee. All pro bono representation expenses must be approved by the appointing judge.
- B. Composition of the Committee. The Advisory Committee shall consist of seven members: the Chief Judge, a Judge of the Western District of Virginia, the Clerk of Court, a member of the Federal Bar Association and three members of the Bar of the Western District of Virginia who are active and in good standing as selected by the Chief Judge. The Chief Judge shall serve as long as he or she occupies the position of Chief Judge. The appointment of a judge of the Western District of Virginia to the Advisory Committee is for a three-year term and such

shall be appointed by the Chief Judge. The attorney members shall be appointed by the Chief Judge, serving three-year terms, with the option to be reappointed for an additional three-year term at the discretion of the Chief Judge. Each committee member shall serve a staggered three-year term. Special appointments to fill unexpired terms due to a committee member's resignation, retirement or being otherwise unable or unwilling to serve may be appointed by the Chief Judge.

- C. Chairperson. The chief judge shall act as chairperson and preside over the meetings of the committee. The chief judge acts for the committee when it is not practical to convene a meeting of the committee.
- D. Meetings. The Advisory Committee may conduct its meetings by telephone, video conference, email, or in person. The chairperson calls meetings of the committee as frequently as necessary to consider matters that the chief judge or his or her designee puts before it. Unless designated otherwise, the meetings of the committee are not open to the public. However, the court's judges and employees may attend meetings and participate therein.
- E. Dissolution. All members of the committee serve at the will of the chief judge and the court. The court or chief judge may dissolve the committee at any time. The chief judge may at any time remove a member of the committee and appoint a new member.
- F. No Compensation. No member of the committee receives compensation for service on the committee except for reimbursement of expenses incurred while doing committee business. The chief judge must approve reimbursement of any such expenses. Reimbursements are paid only from the *Fund*.

III. Policies for Fund Expenditures

- A. Permissible Uses. The *Fund* may only be used for court related purposes that promote equal justice under law and inure to the benefit of the public, bench, and bar in the fair administration of justice. Proper uses of the *Fund* include, but are not limited to, the following:
 - 1. Reimbursement of expenses necessarily incurred by *pro bono* counsel as defined in Appendix A. Normally, these expenses should not exceed \$2,500 per case. Expenses over that amount must be approved by the presiding judge and Advisory Committee. In the event of an award of attorney's fees or costs to *pro bono* counsel in the course of such litigation, the presiding judge may order return to the fund any payments made from the fund to counsel for fees and expenses in an amount equal to the award.
 - 2. Educational programs for members of the bar of this court and educational

programs for community outreach.

3. Equipment for photographing, videoing and otherwise recording court events, educational programs and court history for the archives of the court.
4. Attorney admission proceedings.
5. Attorney discipline proceedings.
6. Payment of fees and expenses incurred by expert witnesses appointed pursuant to Federal Rule of Evidence 706 for which appropriated funds are not available. Such payments are limited to civil cases involving *pro bono* counsel representing indigent parties.
7. Fees for services rendered by independent *Fund* auditors.

B. Advice of General Counsel. The court will maintain a compilation of requests for *Fund* expenditures for which the court has sought advice from the Office of General Counsel of the United States Courts, along with an explanation of the advice received in each such instance.

IV. Limitations on Use of the *Fund*

A. Limitations. Limitations on use of the *Fund* include those found in the *Guide*, Vol. 4, Ch. 6, §670.30, as well as the following:

1. No Unreasonable Accumulation of Funds. The court will avoid unreasonable accumulation of funds. The reasonableness of any accumulation of funds will be measured against the potential for large unanticipated litigation expenses of appointed counsel. When the fund reaches the amount of \$100,000.00 and remains at that amount for more than two fiscal years, the Court may, upon the recommendation of the Advisory Committee, reduce the amount of the attorney admission fee being collected for the filing of a motion to appear *pro hac vice* by fifty percent (50%) or may temporarily suspend assessment and collection of the attorney admission fee.
2. Equipment Purchases. If the *Fund* is used to purchase equipment, the equipment becomes the property of the United States District Court for the Western District of Virginia, and will be available for use by the members of the court's bar subject to any guidelines established by the active district court judges. The *Fund* may not be used to augment the purchase of computers and other information technology equipment that is otherwise subject to funding by the Judiciary Information Technology Fund.

V. Duties of the Custodian

- A. Chief Deputy Clerk as Custodian. The Chief Deputy Clerk is appointed as the custodian of the *Fund*. The custodian's duties are detailed in the *Guide*, Vol 4., Ch. 6, §670.70. In addition to the duties detailed in the *Guide*, the custodian will prepare an annual report on the financial condition of the *Fund* to be submitted to the Court no later than two months after the end of the fiscal year certifying that it accurately reflects the financial condition of the non-appropriated *Fund*.
- B. Successor Custodian. Whenever a chief deputy clerk of this court leaves office, his or her successor in office becomes the successor custodian of the *Fund*. The outgoing custodian is required to participate in an exit audit and the successor custodian must execute a receipt for all monies in the *Fund* as provided in the *Guide*, Vol. 4, Ch. 6, §670.70.20(a) and (b).
- C. Budget and Finance Administrator. The Clerk of Court has designated the Budget and Finance Administrator to supervise the maintenance, investment and protection of the *Fund*, specifically to:
1. Receive, safeguard, deposit, and account for all monies in the *Fund* in accordance with any pertinent laws, internal controls, this plan, the *Guide*, and the policies established by the court;
 2. Reconcile the account and advise the Custodian on the condition of the *Fund* by issuing monthly statements; and
 3. Arrange for an annual audit of the *Fund*.

VI. Maintenance of the Funds

- A. Accounts. The Custodian, with the guidance of the Budget and Finance Administrator, will segregate monies in the *Fund* from all other monies in the court's custody by placing them only in federally insured banks or savings institutions. When practical and feasible, all substantial sums should be placed in interest-bearing accounts, government securities or money market funds invested in government obligations, at the direction of the Chief Judge or Advisory Committee. The Custodian will leave sufficient liquid funds available to meet known or anticipated obligations, while maximizing, to the extent practicable, the amounts earning income.
- B. Reports. The Custodian shall render an accounting to the Court at least annually, within two months after the end of the fiscal year, which accurately reflects the financial condition of the *Fund*. Any additional reporting requirements may be done at the direction of the Chief Judge or Advisory Committee to report the following: beginning balance of assets; revenue during the reporting period,

including collections and investments; disbursements during the reporting period; ending balance of assets (bank balances and undeposited collections); obligations, accounts payable, or known future expenditures; and available balance.

- C. Audits. Audits of the *Fund* are conducted according to the provisions in the *Guide*, Vol. 4, Ch. 6, §670.80.20.
- D. Record Keeping. Bookkeeping and supporting records for the *Fund* shall be maintained in the Office of the Clerk. All requirements of the *Guide*, Vol. 11, Ch. 2, §270 will be followed regarding verification and review of the *Fund*.
- E. Fund Disbursement Approval. Disbursement from the *Fund* shall be made only with an approved order of the court. All expenditures must be approved by the Chief Judge. The Advisory Committee must approve non-case related expenditures over \$1,000. *Pro Bono* case related expenditures under \$2,500 may be approved by the presiding judge with the concurrence of the Chief Judge. *Pro Bono* case related expenditures over \$2,500 must be approved by the presiding judge and the Advisory Committee.
- F. Disbursements. The Custodian will issue payment upon presentation of an order signed by a judicial officer and appropriate documentation demonstrating that the expenditure meets the guidelines set out by this Plan. All disbursements from the *Fund* will be made by check. Signatories for all disbursement checks shall include one of the following individuals: The Chief United States District Judge; the Clerk of Court, the Chief Deputy Clerk; or any United States District Judge who is shown on the account's authorized signature cards.

VII. Procedures for Seeking Reimbursement from the Fund

- A. Prior Authorization to Incur Expenses. Whenever practical, prior authorization must be sought before expenses are incurred. Except for applications submitted by a judge, applications for authorization to incur expenses to be paid by the *Fund* must be submitted in writing, as follows:
 - 1. For litigation expenses in *pro bono* appointments, the application must be submitted for approval to the appointing judge, in accordance with the *Guidelines Governing the Reimbursement of Expenses in Pro Bono Cases* and attached to this plan as Appendix A;
 - 2. For all other expenditures, the application must be submitted to the chief judge.
- B. Applications by a Judge. Applications submitted by a judge will be made as directed by the chief judge.
- C. Applications for Authorizations. Except for applications submitted by a judge,

applications for authorization to incur expenses must set forth the purposes for incurring the expenses, the estimated cost, the applicant's efforts to keep the cost as low as possible, and the applicant's efforts to obtain funds from other sources to pay the expenses. The guidelines for reimbursable *pro bono* appointment expenses are attached to this plan as Appendix A.

- D. Repayment from Judgment or Settlement. An application for authorization to incur litigation expenses to be paid from the *Fund* constitutes an agreement that amounts reimbursed must be repaid, in whole or in part, if the case is settled with the payment of money, if fees and costs are awarded under 42 U.S.C. §1988 or any other fee-shifting statute, or if the party is awarded monetary damages. The amount of the reimbursement shall be determined by the presiding judge.
- E. Written Approval of Applications. All applications must be approved by the Chief Judge via written order stating the maximum amount approved. The Advisory Committee must approve non-case related expenditures over \$1,000. *Pro Bono* case related expenditures under \$2,500 may be approved by the presiding judge with the concurrence of the Chief Judge. *Pro Bono* case related expenditures over \$2,500 must be approved by the presiding judge and the Advisory Committee.
1. Authorization to Incur Litigation Expenses. For litigation expenses, the appointing judge must electronically file the original authorization order in the case (under seal, if appropriate).
 2. Other Authorizations to Incur Expenses. All other authorizations shall be maintained in the Office of the Clerk.
 3. Authorizations Open to Auditors. All authorizations, including those granted *in camera* and under seal, are available for inspection by auditors.

VIII. Dissolution of the Fund

- A. By Vote. A majority of the active district court judges may vote to dissolve the *Fund*. Any balances in the *Fund* shall be disposed of in accordance with the majority vote of the active district judges in ways that fulfill or further the purposes of the *Fund*.
- B. Final Audit. If the district judges vote to dissolve the *Fund*, a final audit will be conducted and a written accounting rendered to the court, according to the *Guide*, Vol. 4, Ch. 6, §670.80.30.
- C. Notice to Claimants. At the time of dissolution, the custodian will give notice to all persons known or believed to have incurred expenses for which the *Fund* may be authorized or obligated to pay. Such persons will be given at least 30 days to submit their claims for payment.

- D. Remaining Monies. The court must dispose of any remaining monies in ways that fulfill the purposes of the attorney admission fund.

IT IS THEREFORE ORDERED that this Revised Plan for the Administration of the Bench and Bar Fund is adopted by the court on this 30th day of March, 2021.

BY THE COURT:

A handwritten signature in blue ink, appearing to be 'W. M. ...', written over a light gray rectangular background.

Chief United States District Judge

**SCHEDULE OF REVISIONS TO
THE PLAN FOR THE ADMINISTRATION OF THE BENCH AND BAR FUND**

Date	Section Number and Title
March 29, 2021	Section I.B. Establishment of the Bench and Bar Fund
March 29, 2021	Section II. A, B, D. Bench and Bar Advisory Committee
March 29, 2021	Section III. A, B. Policies for Fund Expenditures
March 29, 2021	Section VI. E, F. Maintenance of the Funds
March 29, 2021	Section VII. E. Procedures for Seeking Reimbursement from the Fund