

**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

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July 15, 2022

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RE: *In Re Old CPF LLC, a Delaware limited liability company,*  
C.A. No. 2019-0881-JTL

Dear Counsel:

This proceeding involves an assignment for the benefit of creditors. The proceeding has unfolded smoothly, and the assignee moved for (i) approval of a final accounting and (ii) entry of an order closing the case, releasing the bond, and discharging the assignee.

On July 15, 2022, the court held a hearing to review the assignee's motion.

During the review of this matter, the court asked about the absence of any disbursements from the accounting for fees and expenses of the assignee and counsel. Counsel explained that the assignee and counsel had worked off retainers that were funded before the assignment for the benefit of creditors, with the expectation that any amounts that remained after the proceeding would be distributed to creditors.

The retainers provided funds for the assignee and counsel to draw on as they performed services. Consequently, the retainers remained assets of the assignor and became assets of the estate. *See, e.g., Arens v. Boughton (In re Prudhomme)*, 43 F.3d 1000, 1004 (5th Cir. 1995) (explaining that because under state law an unearned retainer paid to an attorney remained client funds, the unearned portion of the retainer became the property of the estate). *See generally Sarah C. Hays, D. Edward Hays, Good Help Is Hard to Fund: The Problem of Earned Upon Receipt Retainers and Pre-Funded Litigation*, 33 Cal. Bankr. J. 421, 424 (2016) (discussing different types of retainer arrangements and distinguishing between security retainers held in trust for a professional to draw down versus non-refundable "earned upon receipt" retainers). The retainers therefore should have been listed as assets of the estate. *See Task Force on Attorney Discipline Best Practices Working Group, Ad Hoc et. al., Working Paper: Best Practices for Debtors' Attorneys*, 64 Bus. Law.

July 15, 2022

Page 2 of 2

79, 105 (2008). The accountings should have identified the fees and expenses incurred by the assignee and counsel as disbursements from the estate, even though those disbursements were funded through draws on the retainers. The final accounting should reflect the return of an unearned amounts to the estate so that those amounts can be included in the final distribution to creditors.

Counsel will file a modified final accounting that reflects these items.

Sincerely yours,

*/s/ J. Travis Laster*

J. Travis Laster  
Vice Chancellor

JTL/krw