

THE NCPO *e*-FORUM

A COLLECTION OF INTERNET TOPICS

2006

This collection represents inquiries and responses to a wide variety of Client Protection Issues which were posted on the NCPO *e*-Forum. The queries and responses are unedited and appear just as they were written by NCPO members. NCPO hopes that you find this resource helpful and we intend to continue to offer similar publications of interest to the Client Protection Community.

For further information or questions, please feel free to e-mail ncpo@mybizz.net.

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Client Protection Reserves

Client Protection Colleagues:

In Illinois, our Supreme Court recently imposed an annual assessment for the Client Protection Program. I am pleased to say that with this new funding we are likely to start building a reserve. But our Commission has some questions about how other Funds deal with their reserve.

1) Do you seek to maintain a certain amount in reserve and, if so, what is that amount and how did you determine it?

2) Do you raise assessment amounts if the reserve falls below that ideal amount, or raise caps if it exceeds that amount for some period of time? How do you decide when such a change is needed? Any set parameters?

3) Do you have any policies or philosophies about when to use reserve funds?

Any thoughts would be appreciated.

Eileen Donahue

From: Cole, Marty [mailto:Marty.Cole@courts.state.mn.us]
Sent: Thursday, November 30, 2006 10:13 AM
To: Holtaway, John
Subject: RE: Client Protection Reserves

Eileen: Minnesota does have an actual reserve, just a fund balance that is maintained as part of the state general treasury (in a segregated sub-account since we are the only state agency that gets to retain the interest generated on our portion of the state fund).

What we also have are "parameters" established by the Supreme Court that require us to report to the Court whenever the fund either dips below \$1.5-million or exceeds \$2.5-million. In most recent years, we have been at or above the \$2.5-mil mark and the Court has not taken any action in response.

Our board has voluntarily asked the Court to reduce the amount of our annual assessment several times in recent years, from \$20 to \$17 and now to \$12/year/attorney, so that our fund balance growth is slowed. We have also raised our "cap" from \$50,000 to \$100,000 to \$150,000 during this same period. These steps reflect that generally claims (by amount) have been fairly low in most recent years.

On the one occasion when a very large misappropriation matter came before the board, the Court without hesitation allowed us, upon formal request, to exceed our anticipated budget and pay approx. \$800,000 on behalf of one lawyer in one year.

Marty

From: Gonzales, Martha [mailto:Martha.Gonzales@calbar.ca.gov]
Sent: Thursday, November 30, 2006 1:34 PM
To: CPR_LAWYERSFUND@MAIL.ABANET.ORG
Subject: Re: Client Protection Reserves

Like Minnesota, California does not have an actual reserve, just a fund balance that is maintained by the State Bar's Office of Finance kept in cash and cash equivalents. Interest is considered part of the fund's revenues. The balance is monitored throughout the year and we predict our payouts each month by running a 20 month average of payouts each month and use that figure as accrued liabilities that we expect to pay.

We subtract the accrued liabilities figure from the cash balance to arrive at a net balance. Our cash balance at year end was reaching the equivalent of two years' of payouts--which was the goal of the

recommendation of an actuarial study to maintain long-term funding without having to raise the assessment. However, as this balance grew it was considered too high and the legislature lowered our assessment from \$40 to \$35 for a couple of years. Our net assets at year end 2005 went down to 1.5 million which is low for us. As a result, the legislature raised our assessment to \$40 per year for 2006 and 2007. We subtract the accrued liabilities figure from the cash balance to arrive at a net balance. This balance then goes up at the beginning of the year when the revenues from the assessment on attorneys comes in.

There is no way to predict a catastrophic loss--we have been lucky so far to be able to pay our claims each year. Monitoring the claims activities each month and the balances does give us the opportunity to know as quickly as possible if we are going to have enough money. We look each month at any early warning signals that would help us get the information to the Board of Governors and the legislature as soon as possible if we believe we are not going to be able to cover our claims.

I have worked for this fund for 20 years, 10 years as manager, and so far, we have not had an emergency situation befall us. We have been able to pay eligible claims up to our maximum payment. Our claims are now running at the annual rate of 1300 per year.

Thanks, Martha, for automatically correcting my typing error - Minnesota does NOT have a formal reserve, even though I wrote that we do!

Marty

From: Sylvia Stevens [mailto:sstevens@osbar.org]
Sent: Thursday, November 30, 2006 9:59 AM
To: Holtaway, John
Subject: RE: Client Protection Reserves

Eileen, we in Oregon have had a reserve for about 20 years now. The reserve is a the greater of \$500,000 or 2x the average of the last five years' payouts. For several years our reserve was running close to \$1 million, so we reduced our assessments to almost nothing (\$5). At the same time, claims activity was on a fairly steady decline, so we are still maintaining a reserve of about \$700,000. Claims seem to be picking up, so we may get to the point where we have to increase the assessment again, but it is a bit too soon to tell. We did raise our per claim cap about ten years ago from \$25 to \$50 in part because the fund seemed flush.

We don't have any formal policy about when we would use the reserve, but the general idea was to have enough in the event of catastrophic claims. Many years ago the fund ran out of money because of claims relating to a couple of lawyers. The awards were made over a period of two years so the fund could be replenished by subsequent assessments. The Board of Governors wanted to avoid that happening again, so developed the reserve.

Eileen- CT has no particular policy on reserves. Based on what I've seen over the past several years (single attorney defalcations that exceed \$10 million dollars), I'm not sure how any fund can be sure that they have adequate reserves, especially if they try to pay losses in full.

Christopher G. Blanchard
First Assistant Bar Counsel/Staff Attorney
Judicial Branch Client Security Fund Committee

Eileen,
You raise one of the core issues of our field; there are more misconceptions about this than almost anything I can think of in Client Protection.

The good news is that NCPO's Standards address this issue directly and comprehensively. I'm not sure it can be answered better than it is there. Here are short answers to your questions:

1) I believe NJ has the highest reserve of any Fund in the US. We do everything we can to grow that reserve - from relentless pursuit of subrogation receipts and interest income on the reserve to saving any money we can on overhead - because we are absolutely convinced that our reserve is barely adequate.

2) N.A., except that I am hoping to get our Maximums raised from the current \$250,000 per claimant and \$1 million in the aggregate against any one respondent.

3) We use our reserve to meet the need of deserving claimants. That's what it's for.

It's really very simple: Our job is to take care of the victims. Not kinda/sorta, but meet the need. Anything other than full reimbursement for all (or nearly all) meritorious claims renders talk of a cap on reserve (trying to put this gently) foolish.

The need - and meeting it - must drive everything else in Client Protection, or we are kidding ourselves.
Ken

Kenneth.Bossong@judiciary.state.nj.us

From: Kris Wenzel [mailto:kwenzel@wisbar.org]
Sent: Thursday, November 30, 2006 9:42 AM
To: Holtaway, John
Subject: RE: Client Protection Reserves

Eileen,

Our SCR states that we must have a minimum balance of \$250,000, and if not, we can assess. However, even when we are above the \$250,000 we will assess based on what we anticipate in future claims. The committee is working on drafting a petition to submit to our supreme court to ask for an increase in the minimum sufficiency level up to \$750,000, based on the history of the large claims and high dollar amounts that are being taken and we state that to the court in our annual report. We are nervous when we end a fiscal year at or very close to the \$250,000 level. We pay out more than that each year. We have never been questioned when we do proceed with an assessment with a balance in excess of the minimum sufficiency level. We try to assess so that we have at least \$300,000-\$400,000 to start the next fiscal year.

The rule is below:

"SCR 12.07 (3) Certificate of sufficiency. The committee shall determine the net value of the fund as of May 1 of each year. Whenever the value of the fund shall equal or exceed \$250,000, after deducting all claims which the committee has determined to pay and which are not disposed of at the date of valuation and all expenses properly chargeable against the fund, the committee shall file with the supreme court prior to May 31 of that year a certificate of sufficiency to that effect. When a certificate of sufficiency is filed with the supreme court, there shall be no annual assessment for the next fiscal year."

As for assessments, the committee can assess up to \$25/year and that decision is based on the claims paid during a fiscal year; claims deferred; and anticipated claims.

Wisconsin would pay the claim, regardless of whether or not funds were available as, by rule, we have five years to pay a claim. Wisconsin only has a per claim cap, so this rule has been used two times in recent past, with the claim paid as soon as the next fiscal year's assessments start coming in.

Hope this helps.

Kris

Thank you to all who responded to my inquiry about reserves. I appreciate the time you took to help us out.

Eileen Donahue

RUNNING DOWN CLIENT PROTECTION RESERVES

Subject: Hawaii Fund Reserves

The Hawaii State Bar Association's made the following recommendation regarding the 2007 Lawyers' Fund budget: "Voted to recommend to the Supreme Court that bar members not be assessed this coming year for the Lawyers' Fund for Client Protection due to the Fund's excess surplus that has been carried over from year to year."

The Fund is under the direct supervision of the Court, not the bar association

My Trustees have asked for examples of other Funds that have run into trouble by allowing their funds to run down their reserves. Know of any?

Much thanks,

Carole R. Richelieu
Lawyers' Fund for Client Protection of the Supreme Court of Hawaii

-----Original Message-----

From: Bill Ricker [mailto:wricke@ix.netcom.com]
Sent: Friday, September 29, 2006 11:45 AM
To: CPR_LAWYERSFUND@MAIL.ABANET.ORG
Subject: Re: Hawaii Fund Reserves

The Florida Fund had reserves of more than \$2 million at one time, but stopped adding to the reserve and it is now down to about \$400,000 and incapable of responding to any serious defalcation. In fact the use of the fund is restricted. Florida has the reserve equivalent of 3 months of reimbursements. Clearly funds that do not build up a reserve several times their normal annual reimbursements are not treating their client protection fund as a true trust fund and most certainly are not complying with the recently adopted NCPO standards for client protection funds. When a fund's reserves is equivalent to an endowment that would support the fund's operations, one might argue that more assessments are unnecessary--but not until then.

Carol: I do not know from the message what the cushion is for Hawaii, but I doubt seriously that it is enough, or that the fund is generous enough in the first instance, to be able to respond to a significant loss such as occurred in B.C. recently. As a result of the Florida decision a decade ago, Florida can not meaningfully respond to the potential \$13,000,000 loss for which it is now being sued in Federal court. My analysis, that I do not have in front of me, would probably give you analytical support to demonstrate the need to build up a larger reserve fund and not let it become depleted. My guess is the annual dollar contribution by your lawyers is less than a billable hour of time per year--probably a lot less. Florida's per lawyer assessment works out to about 15 minutes of billable time per year.

Let me know if you would like more information.
Bill Ricker

----- Original Message -----

From: "Irwin Gilbert" <IGilbert@BizLit.net>
To: "Bill Ricker" <wricke@ix.netcom.com>; <CPR_LAWYERSFUND@MAIL.ABANET.ORG>
Sent: Friday, September 29, 2006 12:33 PM
Subject: RE: Hawaii Fund Reserves

The problem is one of philosophy. A fund which is based upon a per lawyer assessment plainly cannot respond to catastrophic claims. In Florida we may be faced with claims exceeding \$40,000,000.00 based upon the dishonest conduct of only three lawyers. The Bar is being sued on behalf of one group of victims on the theory that the Bar's CSF has an affirmative legal duty to pay the claims and lacks any discretion.

No reasonable amount of planning could ever have met this level of claims. At the end of the day, any CSF would face open mutiny if it tried to tax lawyers sufficiently to pay these kind of claims. If gigantic reserves were created over time, the pressure to invade that corpus for other good works would become insurmountable.

British Columbia's approach of insuring for catastrophic losses may well be the best approach, notwithstanding the expense of that insurance.

Irwin Gilbert

British Columbia with 10,000 lawyers responded to a \$36,000,000 loss before it had insurance. The only reason US funds can not respond to catastrophic losses is because they have not, and do not assess, enough and do not create responsible reserve funds. It is a matter of choice not of ability to pay when the average lawyer in the US pays \$20.00 per year to client protection funds. At a fee of \$100 per hour that is 12 minutes worth of time--for the entire year.

Bill Ricker

The Hawaii assessment is \$50 a year for lawyers licensed more than 4 years. I believe that works out to less than one dollar a week.

At the end of 2004, the Hawaii Fund had a reserve of \$950,000. Payment history is attached, thanks to Bill Ricker.

Carole R. Richelieu

Reimbursement When Constructive Notice Is Given

From: Robin Lawnichak [mailto:RLAWNICHAK@mail.michbar.org]
Sent: Monday, November 13, 2006 11:57 AM
To: Holtaway, John
Subject: Reimbursement when Constructive Notice Is Given

How would your Fund handle the following? How would the Rule of Professional Conduct 1.15 apply, if at all?

MRPC 1.15(b) A lawyer shall promptly notify the client or third person when funds or property in which a client or third person has an interest is received.

MRPC 1.15(c) When two or more persons (one of whom may be the lawyer) claim interest in the property, it shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Facts:

A claim was filed by Claimant, where Claimant's attorney embezzled settlement funds paid by her insurance company. The attorney was suppose to pay Claimant's medical providers. Claimant's medical providers filed suit against Claimant. An order was entered in favor of Claimant's medical providers and against Claimant for about \$26,000. Claimant filed a claim with the Fund. The Fund has approved the claim in the amount of \$27,333. Before an executed subrogation agreement was received from Claimant, Claimant's defense attorney in the suit filed by the medical providers sent a letter to the Fund indicating that it had a lien on the reimbursement. No lien was provided.

Thank you in advance for your input.

-----Original Message-----

From: Donahue, Eileen [mailto:edonahue@iardc.org]
Sent: Tuesday, November 14, 2006 10:46 AM
To: Holtaway, John
Subject: RE: Reimbursement when Constructive Notice Is Given

In Illinois, we would not recognize the lien. Our enabling rule says no person shall have a right in the Fund as a third party beneficiary or otherwise. That being said, we would consider paying the award or part of it to the judgment creditors if the client so directed. But I can't see us paying it to the defense lawyer even if the client asked, because it goes against the grain for the lawyers' reimbursement fund to benefit a lawyer in what is, for that lawyer, simply a business matter.

Maybe it's a distinction without a difference because the client can certainly pay the lawyer with award funds if he chooses, but in general we don't like paying lawyers.

Eileen Donahue

-----Original Message-----

From: Gonzales, Martha [mailto:Martha.Gonzales@calbar.ca.gov]
Sent: Tuesday, November 14, 2006 11:50 AM
To: Holtaway, John
Subject: RE: Reimbursement when Constructive Notice Is Given

Our rules specifically exclude assignees, lienholders, or creditors of the applicant or lawyer. Our fund considers the entire amount of the settlement amount stolen (minus the attorney fee portion) to be eligible for reimbursement. We leave it up to the client to negotiate and satisfy any liens or claims that may still exist the original settlement. Prior to this rule, we had a deluge of claims filed by lienholder medical providers fighting over money than was more than the actual settlement. The Commission feels that the med care provider has other remedies and the client only has one (us). The clients are told that they must use any reimbursement they receive from this fund to negotiate and settle any liens or claims because they might get sued.

The Commission does not want to be in the position of distributing funds. The rationale for us is that the client lost his/her thieving lawyer to represent them in these matters so they must negotiate for themselves. This policy has worked well for us for many years. We do not consider these liens to be against the fund's money.

-----Original Message-----

From: Administrators of Lawyers Funds for Client Protection
[mailto:CPR_LAWYERSFUND@MAIL.ABANET.ORG] On Behalf Of Bob Welden
Sent: Friday, November 17, 2006 1:58 PM
To: CPR_LAWYERSFUND@MAIL.ABANET.ORG
Subject: Re: Reimbursement when Constructive Notice Is Given

The lawyer withholding funds to pay creditors, whether or not there is a lien, is an issue my Fund committee has been inconsistent on. I would like to propose a rule to give them something to go by. Do other Funds have specific rules that address payment from the fund to third-party creditors the lawyer claimed to be withholding funds for? Thanks.

Bob Welden
General Counsel
Washington State Bar Association

-----Original Message-----

From: Gonzales, Martha [mailto:Martha.Gonzales@calbar.ca.gov]
Sent: Tuesday, November 14, 2006 4:27 PM
To: Holtaway, John
Subject: RE: Reimbursement when Constructive Notice Is Given

Our fund operates under its own rules--Rules of Procedure, Client Security Fund Matters--although great weight may be given to the Cal Rules of Prof conduct. In this case, our fund would only pay the money that came into the attorneys hands that was stolen (minus the attorney fee portion--usually 1/3 if no contract). If the attorney stole \$8,000, the money would go to the client. Our fund does not consider medical liens or attorney liens as liens against the fund--they are considered liens either signed by the client or attorney against the settlement money that was stolen. We also have the rule that lienholders of either the claimant or the attorney are excluded applicants which we have never been challenged on. Therefore, we do not pay any lienholders. Our claimants use the money we give them to settle the claim. If the client is lucky enough to obtain a civil judgment for all or a part of the loss or the lawyer pays them through a discipline order we would 'probably' only assert our subrogation rights if the client was made more than whole. Our clients are required to sign a subrogation agreement as part of the Application for Reimbursement. Our Office of General Counsel makes the decision on litigation matters.

Bob,

By NJ's rule, third-party creditors are NOT claimants and have no right to anything. Trustees have the discretion and power, however, to ensure that justice is done with the awards they make as a condition of such awards.

Ken
Kenneth.Bossong@judiciary.state.nj.us

Bob,

Ohio does not have a rule that addresses this issue. We routinely reimburse claimants in this situation. We do not pay third-party creditors.

Janet

Janet Green Marbley, Administrator
Clients' Security Fund of Ohio

Disputes Between Third Person and Client

Neither the Model Code nor the Model Rules specifically address a lawyer's obligation when both a third person and the client claim interests in the same property. DR 9-102(B)(4) simply announces the tautology that the lawyer must deliver to the client property or funds "which the client is entitled to receive." Presumably, something that belongs to a third person is not something the client is entitled to receive.

Rule 1.15(b) likewise provides that the lawyer must deliver to the client that which belongs to the client, and acknowledges the potential tension between third persons and clients by stating that the lawyer must deliver to third persons any funds or property that "the third person is entitled to receive."

The Comment to Rule 1.15 further recognizes that third persons may have "just claims" against client funds or property. Moreover, the Comment cautions that in these instances the lawyer may have a duty "under applicable law" to protect third party claims against "wrongful interference" by the client. That is, the lawyer cannot automatically side with the client and blindly ignore otherwise valid third party claims.

Primary Duty to Client

Generally speaking, property disputes between a client and another person should not be resolved unilaterally by the lawyer. Instead, the lawyer should deliver the disputed property directly to the client unless the lawyer knows there is a valid lien against the property, a court order concerning its disposition, or some other valid claim to the property "under applicable law."

See Arizona Ethics Opinion 88-6 (1988) (third party claim that is not a perfected lien or an assignment does not affect client's right and lawyer should advise claimant to take issue up with client); Colorado Ethics Opinion 94 (1993) (lawyer must distribute promptly to client if third person's claim against client property does not arise out of statutory lien, contract, or court order); Connecticut Informal Ethics Opinion 95-20 (1995) (lawyer has no duty to act on mere assertions of third party interests or to investigate whether third persons have interests in client property); Maine Ethics Opinion 116 (1991) (lawyer who represents client in both real estate transaction and divorce must turn real estate proceeds over to client even if he reasonably believes that client does not intend to comply with divorce order); Maryland Ethics Opinion 97-9 (1997) (settlement money may be disbursed to client even though two lawyers assert claim to proceeds for services in other, unrelated matters); Philadelphia Ethics Opinion 86-134 (1986) (lawyer must disburse to client without retaining anything for physicians who are owed payment provided that there is no agreement between doctors and client regarding proceeds from settlement); see also South Carolina Ethics Opinion 89-13 (1989) (lawyer not required to pay half of injury settlement to client's ex-wife under divorce decree where lawyer was not served with process as required by decree).

See generally 1 G. Hazard & W. Hodes, *The Law of Lawyering* §1.15:301-302 at 459-60 (1990 & 1994 Supp.) (lawyer owes "special duty" to client and must pay client all funds even though third person "expects" funds held by lawyer); *Janson v. Cozen & O'Connor*, 676 A.2d 242 (Pa. Super. Ct. 1996) (lawyer who holds client's funds in escrow owes no special fiduciary duty to third person who makes claim against funds where no there is agreement between client and third person regarding those funds); *Farmers Insurance Exchange v. Zerin*, 61 Cal. Rptr. 2d 707 (Cal. Ct. App. 1997) (lawyer who recovered tort settlement on clients' behalf is not legally obligated to clients' medical insurer to withhold portion of funds from distribution to ensure insurer's reimbursement); Maryland Ethics Opinion 97-20 (1997) (lawyer may disburse entire settlement to client where hospital failed to timely submit bills to insurer and thus had no legally valid claim).

Of course, if the lawyer releases the funds to the client, the lawyer should inform the client of the risks involved in disregarding the third person's claim. Cleveland Ethics Opinion 87-3 (1988); South Carolina Ethics Opinion 93-31 (1993).

If the non-client does have a valid statutory lien, contract, or court order that grants an interest in the client's property, the lawyer may not ignore the third person's interest and deliver the contested property to the client. See *Aetna Casualty & Surety Co. v. Gilreath*, 625 S.W.2d 269 (Tenn. 1981) (lawyer has duty to honor employer's statutory workers' compensation lien); California Formal Ethics Opinion 1988-101 (lawyer whose client agreed to pay recovery proceeds to health care provider may not ignore agreement and disburse all money to client upon client's request); Maryland Ethics Opinion 94-19 (1993) (lawyer must disregard client instruction not to pay creditor where client had valid agreement with creditor); Ohio Ethics Opinion 95-12 (1995) (lawyer must disregard client's instructions not to pay physician from proceeds when client entered earlier agreement to pay medical expenses from such proceeds); South Carolina Ethics

Opinion 94-20 (1994) (if lawyer knows client has executed a valid doctor's lien he may not comply with client's instruction that lawyer disregard it; no principle of client loyalty or confidentiality permits a lawyer to violate the ethical obligations to third persons of notification and delivery).

By the same token, however, a lawyer should not disburse the client's funds to a third person if the client contests the issue. See *In re Smith*, 625 So. 2d 476 (La. 1993) (lawyer disciplined for improperly withholding client's money to pay outstanding medical bills); see also Connecticut Informal Ethics Opinion 95-20 (1995) (lawyer cannot pay money to third person over client's objection); Pennsylvania Ethics Opinion 92-89 (1992) (lawyer, whose client was ordered to pay arrearage in child support, cannot release escrow proceeds from real estate sale without client consent).

Duty to Segregate Disputed Portion

If there is a legitimate dispute as to ownership of the property, a lawyer "should not unilaterally assume to arbitrate a dispute between the client and a third party." Comment, Rule 1.15. Instead, the lawyer should put the funds aside until the issue is resolved by agreement or by court order.

See generally Alabama Ethics Opinion 90-48 (1990) (lawyer whose client executed assignment of proceeds to chiropractors but instructed lawyer to disregard assignment should interplead the disputed funds into circuit court in order to establish rights of parties); Alaska Ethics Opinion 92-3 (1992) (lawyer may not follow client's instruction to disregard facially valid assignment or statutory lien in favor of the client's creditor; lawyer should advise client that he will withhold disputed funds until dispute is resolved); Arizona Ethics Opinion 88-6 (1988) (lawyer may disburse money if he has concluded that one party or the other is entitled to it under applicable law; but if good faith doubt, he should deposit into trust account pending resolution of matter and initiate an interpleader action or other proceeding to resolve the dispute); California Formal Ethics Opinion 1988-101 (lawyer whose client agreed to pay recovery proceeds to health care provider may not disburse all money to client upon client's request; lawyer should explain that funds will be put in trust until matter resolved); Los Angeles County Ethics Opinion 478 (1994) (cannot turn over disputed property either to creditor or client; should hold money in trust account if client and lien holder consent, or initiate interpleader action); Georgia Ethics Opinion 94-2 (1994) (lawyer may hold disputed funds in lawyer's trust account for a reasonable time while trying to determine who is entitled to funds; if dispute cannot be resolved lawyer may file interpleader action); Maryland Ethics Opinion 96-16 (1996) (lawyer whose client instructs him not to pay creditor--despite client's subrogation agreement with creditor--must hold funds until dispute resolved); Michigan Informal Ethics Opinion 61 (1990) (lawyer may not disburse to client if aware of outstanding lien; instead must initiate court proceedings to resolve which portion of the funds belong to lien holder and which belong to client); Nassau County (N.Y.) Ethics Opinion 89-25 (1989) (lawyer holding funds in escrow must deliver to client on request; if ownership disputed by several parties, and lawyer cannot determine who owns it, then lawyer should file stakeholder's action to have court decide); Ohio Ethics Opinion 95-12 (1995) (lawyer should hold disputed portion of funds until resolution by arbitration or court action); Oregon Ethics Opinion 1991-52 (1991) (if client's demand for all funds is plausible but not clear, lawyer may refuse and put funds in trust or implead the funds in an action involving client and creditors); Philadelphia Ethics Opinion 90-16 (1990) (if insurer has rights, lawyer must place funds in escrow until respective rights have been determined; if insurer has no rights, lawyer may turn over to client); Rhode Island Ethics Opinion 95-60 (1996) (lawyer cannot obey client's instruction to refuse reimbursement to health insurer where insurer has legally enforceable interest in the funds); Tennessee Formal Ethics Opinion 87-F-110 (1987) (lawyer who has notice that creditor has lien or assignment must segregate and retain the funds until dispute resolved; after reasonable opportunity to resolve, lawyer may pay disputed amount into court for resolution of matter); cf. Oregon Ethics Opinion 1991-68 (1991) (if lawyer represents both insurer and insured, he cannot obey insurer's instructions that lawyer forward all money to insurer so that insurer can decide how much money goes to insured; lawyer must retain disputed amount pending resolution).

Ohio's response would be the same - we would pay the claimant.

Janet Green Marbley, Administrator
Clients' Security Fund of Ohio

-----Original Message-----

From: Donahue, Eileen [mailto:edonahue@iadc.org]
Sent: Tuesday, November 14, 2006 10:46 AM
To: Holtaway, John

Subject: RE: Reimbursement when Constructive Notice Is Given

In Illinois, we would not recognize the lien. Our enabling rule says no person shall have a right in the Fund as a third party beneficiary or otherwise. That being said, we would consider paying the award or part of it to the judgment creditors if the client so directed. But I can't see us paying it to the defense lawyer even if the client asked, because it goes against the grain for the lawyers' reimbursement fund to benefit a lawyer in what is, for that lawyer, simply a business matter.

Maybe it's a distinction without a difference because the client can certainly pay the lawyer with award funds if he chooses, but in general we don't like paying lawyers.

Eileen Donahue

From: Kris Wenzel [mailto:kwenzel@wisbar.org]
Sent: Tuesday, November 14, 2006 11:12 AM
To: Holtaway, John
Subject: RE: Reimbursement when Constructive Notice Is Given

Ditto in Wisconsin

-----Original Message-----

From: Paul.WieckII@jb.state.ia.us [mailto:Paul.WieckII@jb.state.ia.us] Sent: Tuesday, November 14, 2006 4:01 PM
To: Holtaway, John
Subject: Re: FW: Reimbursement when Constructive Notice Is Given

And ditto in Iowa.

Paul H. Wieck II, Executive Director & Assistant Court Administrator
Iowa Supreme Court Commissions

-----Original Message-----

From: Bob Welden [mailto:bobw@wsba.org]
Sent: Tuesday, November 14, 2006 11:20 AM
To: Holtaway, John
Subject: RE: Reimbursement when Constructive Notice Is Given

I agree. The lawyer can pursue his civil remedies against the applicant if he wants, but we wouldn't recognize a lien against the Fund.

Bob Welden
General Counsel
Washington State Bar Association

-----Original Message-----

From: Kathy Peifer [mailto:kpeifer@palawfund.com]
Sent: Tuesday, November 14, 2006 9:56 AM
To: Holtaway, John
Subject: RE: Reimbursement when Constructive Notice Is Given

In PA, I believe my Board would not honor the Claimant's attorney's lien.

Our Board would look at the funds received by and converted by the dishonest attorney. They would want to see the funds go where they were intended to go, i.e. if they were withheld from a PI settlement to pay medical providers, the Board would likely require the claimant to sign a subrogation agreement and a statement authorizing the award to be paid to the medical provider(s) in the amounts indicated on the original statement of distribution. That is, if the dishonest attorney prepared a statement of distribution for the client/claimant and indicated that \$1,000 was being withheld to pay the doctor and \$2,000 was being withheld to pay the hospital, etc. the award would likely be approved in the amount that was withheld and not disbursed by the attorney and would then be disbursed to the appropriate parties. Any excess amounts withheld by the dishonest attorney that were not needed to pay the referenced medical providers,

would be paid directly to the claimant. Our Board would not look at any other obligation that may be owed by the claimant that was not the subject of the funds that were converted.

Kathryn J. Peifer, Esquire
Executive Director
Pennsylvania Lawyers Fund for Client Security

From: Kenneth.Bossong@judiciary.state.nj.us
[mailto:Kenneth.Bossong@judiciary.state.nj.us]
Sent: Tuesday, November 14, 2006 11:17 AM
To: Holtaway, John
Subject: Re: FW: Reimbursement when Constructive Notice Is Given

NJ's approach would be very similar to PA's, and for the same reasons. It is not that medical providers are claimants to the Fund; they lack the requisite A/C relationship. Portions of the award would be paid to them on behalf of - and with agreement of - client/claimant. That is, the Trustees are making the award conditioned on claimant doing the right thing with it. "He who seeks equity must do equity."

Ken
Kenneth.Bossong@judiciary.state.nj.us

-----Original Message-----
From: Linda Gosnell [mailto:LGosnell@kybar.org]
Sent: Tuesday, November 14, 2006 8:20 AM
To: Holtaway, John
Subject: RE: Reimbursement when Constructive Notice Is Given

We would tell him to file something with the court and we would object-no lien could apply because in KY no fees can be charged to represent Claimant in a CSF matter and our lien statute for attorneys fees, which is automatic, only applies to recovery in the action in which you represented the party--as to whether a signed lien or assignment by the claimant would be honored we would recommend "no" because our rule provides payment to the person who lost the money --if they then choose to spend it on a new stereo or an old attorneys fee that is their business- in order to avoid exposure in either case though by paying over a stated claim we would seek guidance from the Court who would more than likely go along with the trustees

-----Original Message-----
From: Irwin Gilbert [mailto:IGilbert@BizLit.net]
Sent: Tuesday, November 14, 2006 8:32 AM
To: Holtaway, John
Subject: RE: Reimbursement when Constructive Notice Is Given

I do not believe that a lien or notice of lien is effective when served on a CSF. We are not a corpus for the client's property anymore than we are an insurer of an attorney's bad acts. Since claims are granted on a purely discretionary basis, the disbursement of funds to a claimant is unimpeded by claims by third parties.

I would also think that as a matter of policy, payments of the fund are intended to benefit clients who are the victims of attorney dishonesty. Not lawyers who represent them in other matters.

Irwin Gilbert
Florida Client Security Fund

Procedure and Policy Questions

Good morning,

Our CPF Board is having a retreat next month to discuss procedural and policy issues, and they have asked me to do some research on several topics they will discuss. Any assistance you can give me is greatly appreciated.

1. Does your Fund pay business claims (i.e., the claimant is a business)?
2. Arizona's attorney assessment is \$30 per year, and our caps are \$75,000 per claimant and \$150,000 per attorney. We would like to find out the caps and assessments of other states' Funds.
3. Arizona has approximately 13,000 active attorneys. We would like to determine what would be an appropriate reserve amount for our Fund. What kind of reserve do other states generally keep?
4. We have a claim that has been approved for the cap amount of \$75,000 for a claimant who, at the time of claim, did not have a home and our Board was concerned about his competency. One of the Trustees spoke with the claimant's new attorney about the Board's concerns, and the attorney then met with the claimant and his sister. The sister had served as the claimant's guardian and conservator at one time; however, he now lives alone and takes care of himself. The claimant's attorney proposed the following:
 - a. The claimant wants to pay the attorney 1/3 of the \$75,000 (the attorney informed us that he has done a lot of work for the claimant, and has an agreement that provides for a 1/3 contingency).
 - b. The claimant needs a few thousand dollars now, to pay bills, etc.
 - c. The attorney can arrange for two annuities that will pay for six years, until the claimant is 65, paying the claimant every two weeks.

Our question is what would other Funds do in this situation? Several of the Trustees are not comfortable giving the attorney his fee right off the top, but understand that the money is the claimant's to do with as he sees fit.

I'm sorry for the length of this request, but having this info will really help our discussions. Thanks again for any assistance!

Just to clear up a little confusion about my question #4 - the attorney is not charging for assisting the claimant with the claim, he took over the claimant's case after the first attorney misappropriated the settlement money.

Thanks!

Karen Weigand
Client Protection Fund Administrator
State Bar of Arizona

Karen,

Pennsylvania's responses are as follows:

1. Yes, we have paid claims to businesses
2. PA's annual assessment is currently \$45; we have a \$75,000 per claimant cap and no per attorney cap.
3. PA has about 52,000 active attorneys. There was discussion some years back about maintaining a \$4 million reserve. During my tenure with the Fund (1997 to present) we have never had less than \$6 million available to us.
4. I'm not sure what our Board would do with this. I do know that if any portion of the award is going anywhere but to the claimant, the claimant must sign a statement of distribution authorizing the

disbursement to the third party. If our Board agreed to the above scenario, the claimant would have to sign a statement authorizing \$25,000 to the attorney, \$_____ to the annuity company and \$_____ to the claimant. If the \$25,000 fee is purely for representation of the claimant with the Fund, our Board would definitely have a problem with that; however, if the attorney provided legal services for other matters, and supported the fees (although our Board would likely encourage a reduced rate), the Board would oppose the disbursement to the attorney, with the claimant's consent.

Hope this helps. Please let me know if you have any questions.

-
1. Yes, we have paid claims where a business or company has been the victim of an attorney's theft.
 2. Our annual client security fund fee is \$110.00. We do not have a cap. Our fund will pay a claim up to \$375,000, without any further inquiry. If the loss is greater than that amount, the committee takes another look at the claim to determine if the remaining loss can be paid, and how it can be paid, without bankrupting the fund. To date, we have fully paid all reimbursable claims.
 3. We do not set a specific reserve level.
 4. I cannot tell you for sure how this would be resolved, except to note that in CT, attorneys may not charge a fee for assisting a client with a claim before our committee, except and unless the fee is approved by the committee out of the award. My experience is that a fee that would be a considerable portion of the award would likely be disfavored by the committee, unless there was a compelling reason to approve the fee.

Christopher G. Blanchard
First Assistant Bar Counsel/Staff Attorney
Judicial Branch Client Security Fund Committee

Karen, in response to your questions:

1. Yes - if it is a loss as defined by our rules
2. Wisconsin has a \$75,000 per claim cap (no per attorney cap) - but because our fund, by supreme court rule, can set the amount of reimbursement, it established an extreme hardship policy that allows the committee to reimburse at a higher dollar amount (loss of \$100,000 - extreme hardship identified - reimburse \$100,000). The maximum assessment is \$25 per attorney. Our assessment for the current fiscal year is the \$25.
3. Wisconsin has about 18,000 attorneys that pay the assessment and the current minimum sufficiently level, set by our highest court, is \$250,000 - way too low based on our recent claim loss history. The committee will be submitting a petition to the supreme court to increase the minimum sufficiency level to \$500,000. As a side note - if the fund has more than \$250,000 at the end of the fiscal year, we can still establish an assessment based on a number of factors - claims deferred, anticipated claims against known dishonest attorneys, etc.
4. It is unlikely that Wisconsin would pay anyone but the claimant. If the claimant was a ward or under some sort of protective services, I can only suggest that the committee would require something similar to Pennsylvania. As for the attorney's fees for representation for completing the settlement matter, I would anticipate that my committee would not approve payment to the attorney for the fees.

Kris Wenzel

Here is California's response:

1. We do pay business claims if the claimant was not a partner, associate or employer or employee of the lawyer.

2. Our assessment is currently set at \$40.00 annually for 2006-2007.

3. California has 154,463 active lawyers. We have never had a set reserve but we have had actuarial reports suggesting certain funding levels to ensure the solvency of the fund. In 2001 when our year-end balance reached 9 million, our assessment was lowered to \$35 for years 2002, 2003 and 2004 and 2005. Our year-end balance in 2005 was \$1,479,898. For 2006 and 2007 our assessment was raised to \$40.00 so I am anticipating our balance at year end will be higher this year end. Despite an actuarial report to the contrary, at least in our jurisdiction, if it looks like you too much money it will be taken away.

4. Prior to 1985, lawyers were prohibited from charging a claimant any money for fund reimbursement.

While our rules still encourage pro bono work for a claimant our Supreme Court issued a decision finding, iter alia, that the fund could not interfere with a lawyer contracting with the claimant for an attorney fee. Therefore, we give the money to the client and it is up the client to pay the attorney. We have paid homeless/transient before and we do pay conservators; however, we have not had a situation quite like yours. It sounds as if there may still be some competency issues here and the attorney is taking advantage of it. This is a first impression issue for us. I know our Commission would feel the same way about this case. Our Commission has the sole and final authority to determine whether and to what extent any application for reimbursement shall be granted and shall determine the order, the manner (which may be in installments) and amount of payment of each application. Maybe this language could help us if we were in your situation.

However, if it appears that the fee in this case is unconscionable or overreaching--taking advantage of an unfortunate client--perhaps it could lead to a discipline complaint against the claimants's attorney depending on your disciplinary rules--. We explain to claimants when they come to us that they do not need an attorney because our staff does all the work but they may hire one if they so choose. In my experience, it is rare that a claimant needs an attorney.

Martha Gonzales

Minnesota:

1. Yes; there are no characteristics of the claimant that per se disqualify a claim.
2. Current assessment is \$12/yr/atty; maximum payment is \$150,000 per claim; there is no aggregate cap
3. There are approx. 20,000 licensed attys in MN; current unallocated balance is \$2.6-million
4. There is no prohibition on an atty charging a fee for representation of a claimant before the Board; as to payment, the Board would probably just issue payment to the claimant (or conservator if there is one at that time), who can then make decisions as to how to use the funds. The Board probably would not involve itself in that subsequent use of the payment. Payment may be made c/o the atty if claimant has no mailing address or if claimant so requests.

Marty Cole

Karen - attached is NY's response! - All the best! - MJK

1. In NY - claimants not eligible for reimbursement include business organizations with 20 or more employees; financial institutions and other governmental entities. (22 NYCRR 7200.8(d))
2. In NY - the biennial assessment is \$350 - of which the Fund receives \$60. Our award cap is currently \$300,000 per law client loss. There is no per-attorney cap.
3. New York State currently has 226,000 registered attorneys. In our experience, awards approved for reimbursement have statistically equalled one-half of the Fund's exposure on pending claims.
4. New York Court rules prohibit an attorney from charging the claimant a legal fee for assisting with or obtaining a recovery from the Fund, so we would not honor a contingency agreement. In the past, our Fund has arranged for pro bono counsel to secure assisted living for claimants; nursing home care, etc.

Once an award is paid to the claimant or his/her representative, they may then exercise their discretion on whether to pay counsel fees for ancillary legal services.

Mike Knight

1. Our (Oregon) rules don't prohibit it; during my tenure we have paid several small corporate clients.
2. Our assessment is \$5 (has been for about four years now) and our cap is \$50,000 per claim. We rarely get claims that large. We don't have a per attorney cap and have paid over \$150,000 to about 12 during the nearly 40 years of the fund.
3. Our reserve is the greater of \$500,000 or 2x the average of the last three years claims paid.
4. I am not sure what our fund would do with this, but I am inclined to think there would be no objection to the attorney getting paid off the top, especially since the claimant is getting the entire reimbursement and the claimant's portion is going to be invested for his future benefit.

Sylvia Stevens

1. Yes, if there was an attorney - client relationship.
2. See the ABA survey of client protection funds fro this info:
http://www.abanet.org/cpr/clientpro/slfcg/toc_02-04.html
3. We currently have about 25,000 active members and our reserve is about \$750,000.
4. We have never faced any similar situation. I think that unless there was a guardianship or the like, we would pay the claimant and he could do what he wanted with the funds.

Bob Welden
General Counsel
Washington State Bar Association

Collections and Recoveries

The California Client Security Fund needs information to help us in our collection activities and to handle questions from our state auditors. Sorry for the number of questions -- any information you can provide will be appreciated. Thanks for your time and help, Martha Gonzales and Matt Zawol

What are the major impediments to collections/recovery that your fund experiences?

Does your fund receive an assignment of the victim's rights?

Is your fund subrogated to the victim's rights?

How do you use assignments or subrogation rights to seek recovery of reimbursed amounts, e.g. civil lawsuits, adversary proceedings in bankruptcy, probate claims, frozen client trust/business accounts, other? (Please specify.)

Does your fund file suit to seek recovery of every reimbursement made? If not, how do you determine whether to file suit?

May your fund's reimbursement decisions/orders be entered as money judgments in civil courts or otherwise enforced as money judgments?

Do you pursue banks, partners or employers of the attorney, title companies, insurers and bonding companies, third party recipients of misappropriated funds, or others to recover reimbursements? (Please specify.)

Does your fund receive restitution:
(1) pursuant to attorney disciplinary orders;
(2) pursuant to criminal restitution orders;
(3) other? (Please specify.)

Do your fund's reimbursement decisions/orders expressly include an order that the attorney pay restitution?

Do your fund's reimbursement decisions/orders create a lien against the attorney's assets?

Does your jurisdiction add reimbursed amounts to the attorney's membership dues billing statement?

What other methods does your fund use to recover reimbursements (liens, garnishments, other) and what other enforcement mechanisms are available in your jurisdiction (e.g. suspension of drivers or other licenses)?

What percentage of reimbursements does your fund recover? Please include a percentage breakdown based on the sources of recovery if available.

NC's responses are below the questions.

What are the major impediments to collections/recovery that your fund experiences?

Disbarred lawyers have few assets.

Does your fund receive an assignment of the victim's rights? Yes

Is your fund subrogated to the victim's rights? Yes

How do you use assignments or subrogation rights to seek recovery of reimbursed amounts, e.g. civil lawsuits, adversary proceedings in bankruptcy, probate claims, frozen client trust/business accounts, other? (Please specify.)

1. When reimbursement is made, I send the lawyer a Confession of Judgment in the amount of the reimbursement. I advise the lawyer that, if he fails to return the judgment, I will sue for double damages pursuant to N.C. Gen. Stat. Sec. 84-13 that allows a client to get double damages for an attorney's fraud.
2. If the judgment is not returned, I sue for double damages, costs and interest in Wake County District Court or Wake County Superior Court depending on whether I am suing for less than \$10,000 or more than \$10,000. The lawsuit is based upon the assignment attached to the complaint plus the Fund's right of subrogation.
3. Most often, the attorney defaults. I then get a judgment. I transcribe the judgment in the lawyer's home County.
4. I attempt to get the lawyer to begin making payments on the judgment. That is seldom successful, but we do have a number of lawyers who make regular payments to us.
5. I have a paralegal do an asset search. If the lawyer has no assets, I ask the Board to allow me to suspend collection efforts.
6. If the lawyer files Chapter 7 bankruptcy, I file an adversary proceeding to get a judgment in the bankruptcy court that is not dischargeable. If he files under Chapter 13, I file a proof of claim. Only once have I been successful in having a Chapter 13 dismissed by showing that the total of claims exceeded Chapter 13 limits.
7. As soon as evidence of a defalcation is gathered in a disciplinary investigation, the Office of Counsel gets a restraining order entered in Wake County Superior Court freezing the lawyer's trust account. After the Fund has paid one or more claims against the lawyer, the Fund seeks to get its pro-rata share from the lawyer's trust account through the Court. This is our greatest source of recovery.

Does your fund file suit to seek recovery of every reimbursement made? If not, how do you determine whether to file suit?

Yes, see above. However, if we already have a judgment against a lawyer for a considerable amount and pay an additional claim that is relatively insignificant, I ask the Board to excuse filing another lawsuit.

May your fund's reimbursement decisions/orders be entered as money judgments in civil courts or otherwise enforced as money judgments?

No. I must sue to get a judgment.

Do you pursue banks, partners or employers of the attorney, title companies, insurers and bonding companies, third party recipients of misappropriated funds, or others to recover reimbursements? (Please specify.)

We try to get applicants to pursue rights against a liability carrier that insures an innocent partner of the lawyer. I frequently attempt to get title insurance companies to pay the applicant's claim. I also attempt to get a bank liable for payment on a forged endorsement to pay. I make any of these attempts prior to my Board's consideration of the claim (especially since many of the claims subject to a third party's liability exceed the Fund's \$100,000 cap.)

Does your fund receive restitution:

- (1) pursuant to attorney disciplinary orders;
- (2) pursuant to criminal restitution orders;
- (3) other? (Please specify.)

(1) Before a suspended or disbarred attorney can seek reinstatement, the rules require the lawyer to reimburse the Fund.

(2) I ask prosecutors to ask the Court to order restitution to the Fund of any amount paid prior to sentencing. That usually results in regular payments through the probation office if the lawyer receives a suspended sentence.

Do your fund's reimbursement decisions/orders expressly include an order that the attorney pay restitution? No.

Do your fund's reimbursement decisions/orders create a lien against the attorney's assets? No.

Does your jurisdiction add reimbursed amounts to the attorney's membership dues billing statement? No.

What other methods does your fund use to recover reimbursements (liens, garnishments, other) and what other enforcement mechanisms are available in your jurisdiction (e.g. suspension of drivers or other licenses)?

Neither garnishment for money owed or suspension of a driver's license is available in NC.

What percentage of reimbursements does your fund recover? Please include a percentage breakdown based on the sources of recovery if available.

This information is not readily available. While I sometimes think that our Board should sell all of the judgments we have for a good cup of coffee, we sometimes get surprised. We recently had a lawyer make an offer to a claimant who's claim was limited by our cap. The judgment will be canceled, but claimant will be made whole and we will receive about \$40,000.

A. Root Edmonson

What are the major impediments to collections/recovery that your fund experiences?
OFF THE TOP OF MY HEAD, THERE ARE A FEW. AS ROOT POINTED OUT, THE ACTUAL COLLECTION PART IS TOUGH WHERE THE DISBARRED LAWYER HAS NO MONEY. HOWEVER, I WOULD SUM UP TRUE IMPEDIMENTS IN THE CLASS OF CASES WHERE THERE IS A PROBLEM WITH THE STATUTE OF LIMITATIONS. SOME CLAIMANTS DO NOT KNOW THEY WERE ROBBED, IN WHICH CASE A DISCOVERY APPROACH MAY WORK TO GET AROUND THE STATUTE (IT WILL NOT WORK IN UCC CASES); OR WHERE THE CLAIMANT SAT ON RIGHTS AND THEN FILED A CLAIM. WHERE THERE IS A STATUTE OF LIMITATIONS PROBLEM, WE NEED TO LOOK AT LIMITATION PERIODS ASSIGNED TO YOUR GOVERNMENT (EVEN THOUGH THE CASES AND RIGHTS ARE ARGUABLY "ASSIGNED" AND CAN NOT BE GREATER). TRY TO WORK THE CASE WITHIN A THEORY OF NULLUM TEMPUS OCCURRIT REIPUBLICAE, THAT IS - THAT TIME DOES NOT RUN AGAINST THE COMMONWEALTH OR STATE, FAVORABLE JUDGES MAY LEAN YOUR WAY.

STATES THAT ARE SILENT AS TO A LIMITATION PERIODS FOR THEIR GOVERNMENT HAVE NO TIME PERIOD, OTHERS HAVE MODIFIED THE NULLUM TEMPUS STATUTE, BUT IT IS STILL LONGER THAN THE TIME PERIOD FOR "REGULAR" PLAINTIFFS. ANOTHER IMPEDIMENT INVOLVES CASES WHERE A RESPONDENT IS IN BANKRUPTCY AND THE INTERACTION OF FEDERAL LAW WITH YOUR STATE'S LAW HURT YOUR RIGHTS, ESPECIALLY THE TIME BARS IMPOSED BY THE BANKRUPTCY COURT WHILE YOU ARE STILL INVESTIGATING THE CLAIM.

Does your fund receive an assignment of the victim's rights? YES

Is your fund subrogated to the victim's rights? YES

How do you use assignments or subrogation rights to seek recovery of reimbursed amounts, e.g. civil lawsuits, adversary proceedings in bankruptcy, probate claims, frozen client trust/business accounts, other? (Please specify.)

ALL OF THE ABOVE, PLUS THE UNIQUE PROGRAM IN N.J. CALLED THE COMPREHENSIVE ENFORCEMENT PROGRAM (CEP) WHICH I PRESENTED AT THE NCPO MEETING IN PHILADELPHIA LAST YEAR, AND WILL PRESENT NEXT WEEK AT THE INTERNATIONAL BAR ASSOCIATION MEETING IN CHICAGO.

Does your fund file suit to seek recovery of every reimbursement made? If not, how do you determine whether to file suit?

GENERAL RULE IS YES, BUT LIKE EVERY RULE THERE ARE CASE-BY-CASE EXCEPTIONS,

ESPECIALLY IF THE TRUSTEES PAID A CASE KNOWING UP FRONT IT STOOD NO CHANCE OF RECOVERY. WE DO NOT LOOK AT THE RESPONDENT'S "ABILITY TO PAY" AS A FACTOR. OUR POLICY IS TO GET A JUDGMENT AGAINST EVERY RESPONDENT AND COLLECT AS LITTLE AS \$5/MONTH IF NEED BE.

May your fund's reimbursement decisions/orders be entered as money judgments in civil courts or otherwise enforced as money judgments? CIVIL JUDGMENTS AND "CEP" ACTIONS

Do you pursue banks, partners or employers of the attorney, title companies, insurers and bonding companies, third party recipients of misappropriated funds, or others to recover reimbursements? (Please specify.) YES, ALL OF THE ABOVE - WHERE APPROPRIATE. IN MANY CASES IT ONLY TAKES A WELL WRITTEN DEMAND LETTER TO HAVE THE COLLATERAL SOURCE PAY CLAIMANT BEFORE WE PAY. THIS IS DONE AS WE INVESTIGATE THE CLAIM AS NOT TO HOLD IT UP.

Does your fund receive restitution:

(1) pursuant to attorney disciplinary orders;

NO - EXCEPT THAT OUR SUSPENSION AND DISBARMENT ORDERS INCLUDE LANGUAGE THAT FREEZES TRUST AND BUSINESS ACCOUNTS AND THEN TRANSFERS THE MONEY TO THE COURT'S OWN TRUST ACCOUNT. THIS WAY, ERRANT LAWYERS DO NOT SPEND DOWN WHAT IS IN THERE AND WE ARE LATER ABLE TO RECOVER THE MONEY AS THE REPOSITORY OF ALL TRUST CREDITORS. OTHERS WHO CAN TRACE THEIR MONEY TO THE LAWYER'S T/A CAN ALSO RECOVER FROM THE FROZEN FUNDS AS WELL, THUS AVOIDING A CLAIM WITH THE CPF.

(2) pursuant to criminal restitution orders; YES

(3) other? (Please specify.) CEP

Do your fund's reimbursement decisions/orders expressly include an order that the attorney pay restitution? NO

Do your fund's reimbursement decisions/orders create a lien against the attorney's assets? NO

Does your jurisdiction add reimbursed amounts to the attorney's membership dues billing statement? NO

What other methods does your fund use to recover reimbursements (liens, garnishments, other) and what other enforcement mechanisms are available in your jurisdiction (e.g. suspension of drivers or other licenses)?

CEP ALLOWS SUSPENSION OF DRIVER'S LICENSE, WARRANT FOR ARREST FOR FAILING TO SHOW UP AT HEARING, AND EVEN LIEN ON TAX REFUNDS

What percentage of reimbursements does your fund recover?

Please include a percentage breakdown based on the sources of recovery if available.

THAT'S KEN BOSSONG'S DEPARTMENT, HE CAN ANSWER THIS, EXACTLY. MY GUESS IS THAT WE PAY OUT ABOUT \$1.5 MILLION TO AS MUCH AS \$3.5 MILLION PER YEAR, WE HAVE BEEN RECOVERING BETWEEN \$800K AND \$1 MILLION PER YEAR FOR THE PAST FEW YEARS AND THAT DOES NOT INCLUDE CASES WHERE WE "SAVE" OUR FUND MONEY BY WRITING DEMANDS AND HAVING COLLATERAL SOURCES MAKE PAYMENTS DIRECTLY. WE HAVE THAT NUMBER AVAILABLE IF YOU LIKE, PERHAPS LATER IN THE DAY.

DAN HENDI

Matt:

To supplement what Dan Hendi already submitted, I would add that a common impediment to collecting from the respondent attorney is that the attorney is sometimes difficult or impossible to find. Some flee the country, while others merely move out of the state. We do internet searches, motor vehicle searches and postal searches, with varying degrees of success. We contact relatives, but sometimes these people assist the attorney in avoiding suit and sometimes these people are owed money by the attorney, who is hiding from them as well.

In New Jersey, we have a six-year statute of limitations against the attorney, so the statute of limitations problem mostly arises in attempts to sue banks or other collateral sources.

With regard to subrogation and assignment, our Fund requires that the claimant sign a release, assignment and subrogation agreement as a condition for receiving the award. This entitles the Fund to assert the legal claims originally held by the client-victim.

Regarding decisions to file suit, as Dan mentioned our Fund files suit almost without exception. I can recall a few exceptions. If an attorney had died and left no estate, the Fund would likely forgo filing suit. If an attorney cannot be located, the Fund may file suit and attempt service by publication, but if that cost does not seem justified, the Fund may forgo suit. Sometimes the Fund does not need to file suit because the claimant already has a judgment against the attorney, in which case the claimant assigns the judgment to the Fund as a condition of payment of the award. Sometimes the Fund obtains a judgment by consent from the attorney as part of the plea bargain in the criminal court.

Fund decisions/awards do not create automatic judgments or liens. The Fund must file suit.

Regarding the various persons or entities the Fund may sue to recover what the Fund had paid to a client-victim, I would repeat what Dan has said, with one caveat. In situations where the attorney has created a "Ponzi scheme" by defrauding various clients, the early participants sometimes "cash-out" before the crash and may have received "interest" that was, in actuality, money that the attorney had taken from later participants. The Fund, to my knowledge, has never sued these people, even though they are third party recipients of misappropriated funds.

As Dan noted, our Fund does not get automatic judgments or liens against the attorney. My concern for any Fund that has such a mechanism is that it creates due process concerns. That is, in New Jersey, if an attorney objects to the grant of an award, the attorney will have a full and fair opportunity to contest the matter when the Fund files suit to obtain a judgment. If judgment or lien were automatic, the attorney could insist upon notice and opportunity to be heard by the Fund before an award can be entered.

In closing, I would underscore the value of having an attorney's trust and business accounts frozen at the time of disbarment and, as appropriate, even upon suspension. This is by far the largest and easiest source of recovery. In New Jersey, the frozen funds are transferred from the bank to the Superior Court Trust Fund Unit, where they are not only preserved from additional theft but also accumulate interest, which is added to the corpus. Any person who can show entitlement to some or all of those funds by clear and convincing evidence can receive those funds upon petition filed with the Supreme Court. Otherwise, the Fund enjoys priority to the funds.

Good luck in your collection efforts.

Bill Thomas

MALPRACTICE INSURANCE DISCLOSURE

Aloha!

At the request of the Hawaii Supreme Court, its Commission on Professionalism is considering an Insurance Disclosure Rule. The sense is to recommend both an ethical duty to communicate lack of malpractice insurance (Rule 1.4) and mandatory disclosure of some type on the attorney's annual registration statement filed with the bar association, perhaps even a certification.

We would appreciate hearing from those states that have adopted this combination, whether disclosure of the amount of insurance is required and/or lack of a minimum amount triggers disclosure. We are especially interested in the rationale and arguments pro/con.

From those states requiring disclosure on atty registration statements, we would very much appreciate seeing the actual form.

Mahalo!

Carole R. Richelieu

Fund Administrator

Lawyers' Fund for Client Protection
of the Supreme Court of Hawai'i

Delaware is in the same stage of deliberations. I would appreciate the same input. Thanks

Randy J. Holland

CLIENT TRUST ACCOUNTS

Good afternoon,

I have a question that my Board of Trustees wanted me to pose to this list about fee disputes vs. insubstantial work performed. What guidelines or criteria do you use to help in determining if a claim is actually a fee dispute? I'm new to this position, so I'm not too sure of the history here, but I think this Board is used to a "we know it when we see it" kind of thing, and they would appreciate some additional guidance if possible.

Thanks very much for your help!

Karen Weigand
Client Protection Fund Administrator
State Bar of Arizona

Karen,

The Clients' Security Fund of Ohio's Board of Commissioners considers the following factors in determining unearned fee claims vs. fee disputes:

1. Whether the services actually provided by the attorney were "significant", and thus the claim should be considered a fee dispute.
2. Whether the conduct complained of consists of errors and/or omissions by the attorney in the nature of negligence or malpractice.
3. A pattern of behavior evidencing the attorney's lack of good faith intention to perform the services for which the claimant paid.
4. Work performed by a subsequent attorney hired by the claimant, and the amount paid for such work.
5. The existence of a court order regarding the legal fees.
6. The fee structure, i.e. whether the claimant paid a "flat fee" for the services to be provided.

I hope this helps. Welcome Aboard!

Janet Green Marbley, Administrator
Clients' Security Fund of Ohio
Ohio Judicial Center

I volunteer for the Oregon Client Security Fund and am looking into the issue of what to do with trust accounts for lawyers who are no longer practicing law, particularly those who have been disbarred. We have found that a significant number of claims arise from dishonest lawyers but that those same lawyers retain control over client trust accounts even after they are disbarred. I was asked to explore what other states do in these circumstances and make a recommendation.

We are also looking at who takes custody of the trust account when the lawyer disappears or dies. Do you know what other states do, have citations to the statutes or regulations, know contact people in other states that I can contact, or have any other resources that could assist me with this issue? Thank you for your time.

Ted Sumner
Abbott & Paris, P.C.

From: otteyjr@aol.com [mailto:otteyjr@aol.com]

Sent: Wednesday, September 06, 2006 9:24 AM

To: Holtaway, John

Subject: Re: Client Trust Accounts

I am counsel to the Maryland CPF.

Without the benefit of any statute or regulation or rule I believe, the Maryland CPF holds such "inactive" trust account money with a separate ledger, I believe indefinitely, to see if any future claims are made.

Of course, if there are records showing a client's interest in a portion of the trust account, that would be a basis for returning that much to that client.

This procedure is of recent vintage, so its new territory for us. The money comes to us mostly from the Attorney Grievance Commission, the disciplinary arm of Maryland high court. How, exactly, the AGC comes by the money I don't know. For disbarred attorneys who refuse to turn over the money, I would (though I haven't had the opportunity) obtain an ex parte attachment before judgment on account, effectively freezing it so that the former lawyer could not get to it while you (or someone) proves that the lawyer has no right to it. I would imagine my final order directing the bank to turn the funds over to the Maryland CPF to be held as described above.

Best of luck.

Leo W. Ottey, Jr.

In Nova Scotia, when a lawyer disappears or dies our Society has the legislative authority to appoint a Custodian, which we do immediately if the member was a sole practitioner. This requires a court application. If there were partners or associates, we contact them and assess whether they are competent, capable and willing to take over the practice, or perhaps need some short term assistance from another lawyer in the community or one appointed by our Society. Our membership pays for the cost of Custodians.

With a sole practitioner, the Custodian takes over the trust and general accounts, disperses funds to clients as appropriate, pays out expenses of the practice from the general account, and where funds remain in trust for which no beneficiary can be identified, and where there is no evidence of misappropriation, our Society offers a service to members which allows them to apply through us to the Public Trustee for payment to that entity of undistributed trust funds which have been held for at least two years. Where there has been misappropriation, and all claimants have been fully paid, the Society applies to Court to have any unclaimed trust funds paid to the Society or the Compensation Fund for reimbursement of costs or claims. WE had two such successful applications in the past year.

Hope this helps.

Regards,
Victoria Rees

Washington has a rule for appointment of a custodian to protect client interests, which includes taking control of a lawyer's trust account.

ELC 7.7:

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ELC&ruleid=gaelc0707.07.

We recently had a situation where a lawyer who disappeared left \$70,000+ in his trust account. His account records were a shambles, and the WSBA auditor was unable to determine whose money was in the account. With the cooperation of the bank, we petitioned the Supreme Court to order the funds released to the Lawyers' Fund for Client Protection, knowing that we had more than \$70,000 in eligible applications to the Fund. The Court approved the transfer.

We notified all known clients that if they believed the lawyer should have been holding their funds to submit an application to the Fund. We received 7 applications and to date have paid out about \$116,000.

Bob Welden
General Counsel
Washington State Bar Association

From: Gonzales, Martha
Sent: Wednesday, September 06, 2006 11:21 AM
To: Cox, William
Subject: FW: Client Trust Accounts

Dear Bill, this question came up on my ABA list serve. I thought perhaps you could share some info on how we petition to take over the practice including the trust account in cases like this.

I volunteer for the Oregon Client Security Fund and am looking into the issue of what to do with trust accounts for lawyers who are no longer practicing law, particularly those who have been disbarred. We have found that a significant number of claims arise from dishonest lawyers but that those same lawyers retain control over client trust accounts even after they are disbarred. I was asked to explore what other states do in these circumstances and make a recommendation.

We are also looking at who takes custody of the trust account when the lawyer disappears or dies. Do you know what other states do, have citations to the statutes or regulations, know contact people in other states that I can contact, or have any other resources that could assist me with this issue? Thank you for your time.

Ted Sumner
Abbott & Paris, P.C.

From: Cox, William
Sent: Wednesday, September 06, 2006 1:23 PM
To: Gonzales, Martha
Subject: RE: Client Trust Accounts

Mr. Sumner,

Your question was referred to me. I am the supervising trial counsel of the team in California that goes into Superior Court and petitions the courts to assume jurisdiction over the practices of attorneys pursuant to Business and Professions Code sections 6180 and 6190. Sometimes, our application results from the activities of a disbarred or resigned with charges pending attorney.

The court orders us to freeze bank accounts. In the past we relied upon receivers to determine the allocation of funds; however, due to the cost we now do this internally using bank subpoenas and investigators and paralegals to do the research. Once we reach a determination, we file a motion in the court for an order to the bank to issue the appropriate checks and to close the account.

Best,
Wm Cox

WHAT DEFALCATIONS ARE REIMBURSABLE?

Would you put the following questions to the list:

1. For what wrongs by a lawyer will your fund pay? For example, just theft; or theft and unearned fees; or theft, unearned fees and other particular types of dishonest conduct; or any dishonest conduct; or something else (if so, what?).
2. If the present rule is a change from a prior rule in the last five years, is the present rule an expansion of prior coverage or a contraction of prior coverage?
3. If an expansion or contraction, when was the change effective?

I'm trying to find out what type of defalcation is compensable, and whether there is any trend.

Thanks for your help,

David

David William Jordan
Jordan, Gfroerer & Weddleton

In California, our Rule 2 regarding unearned fees used to be worded exactly like Arizona's. The wording of this rule is very good and we are planning on changing our language back. I do have a suggestion: Our Rule 2 used to start out with "refusal" as does Arizona's. If we change our rule back to the former language I am going to suggest "failure" Failure to refund an unearned fee is a violation of the State Bar's rules of professional conduct and the word "failure" is consistent with restitution in the discipline matter. We have had respondents in the past who have argued that they did not "refuse". It is a ridiculous defense because the lawyer was probably unable to locate; substituting refusal with failure would eliminate this as a defense.

In California, dishonest conduct includes

- a) theft or embezzlement or the wrongful taking or conversion of money or property.
- b) refusal to refund unearned fees received in advance where the lawyer performed no services or an insignificant part of the services such that the lawyer may be regarded as having lacked the intention to perform at the time of payment; (the commission is not looking for specific intent here, if no work or minimal work is performed the Commission regards the attorney as having lacked the intention of performing; most of our fee cases involved multiple cases against one R with an established pattern of taking fees and not performing.
- c) the borrowing of money from a client without the intention, reasonable ability or reasonably anticipated ability to repay it;
- d) obtaining money or property from a client representing that it would be used for investment purposes when no such investment is made.
- e) an act of intentional dishonesty or deceit which proximately leads to the loss of money or property, by a person with whom the lawyer held an attorney-client or fiduciary relationship. (this one works often as a catch all)

c and d, Loans and investments require a preexisting attorney-client relationship; the remainder only require that the attorney be acting as a lawyer or in a specified fiduciary capacity such as the trustee of an express trust or an escrow holder.

Martha Gonzales

Ohio's fund uses the same definitions of defalcation as California.

Janet Green Marbley, Administrator
Clients' Security Fund of Ohio

From: Sylvia Stevens [mailto:sstevens@osbar.org]
Sent: Thursday, June 15, 2006 6:57 PM
To: Holtaway, John
Subject: RE: Defalcations for which payment can be made

In Oregon our rules say we reimburse dishonest conduct, but the definition of dishonest conduct includes failing to refund unearned fees. The unearned fee language was added about three years ago and is probably going to be revised again soon.

The State Bar of Arizona Client Protection Fund Declaration of Trust, Rule 3.D., states that:

"As used in these Rules, "dishonest conduct" means: 1) wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property, or other things of value; 2) refusal to refund unearned fees received in advance where the lawyer performed no services or such an insignificant portion of the services that the refusal to refund the unearned fees constitutes a wrongful taking or conversion of money; or 3) a lawyer's act of intentional dishonesty or deceit that proximately leads to the loss of money or property."

Although Rule 3.E. disallows claim were the money lost by a claimant was given to a lawyer for investment or other purposes that did not arise from the client-lawyer relationship. However, if the lawyer represented the claimant in the past on an unrelated matter, the Trustees have made exceptions and paid a couple of these claims.

Ann Hetzler

Our rules have not changed since 1995 except for the expansion of the program to include foreign legal consultants and attorneys registered with the State Bar under the Multijurisdictional Program all who must pay into the fund.

Martha Gonzales

In Connecticut, a reimbursable loss has to be the result of "dishonest conduct," which is defined in our superior court rules as "wrongful acts committed by an attorney, in an attorney-client relationship or in a fiduciary capacity arising out of an attorney-client relationship, in the nature of a theft or embezzlement of money, property, or other things of value, including, but not limited to refusal to refund unearned fees paid in advance...". The rule has not changed since it was adopted effective Jan. 1, 1999.

Christopher G. Blanchard
First Assistant Bar Counsel/Staff Attorney
Judicial Branch Client Security Fund Committee

Florida reimburses for theft and unearned fees.
No changes in past 5 years.

Michael A. Tartaglia
Director, Programs Division
The Florida Bar

From: Kenneth.Bossong@judiciary.state.nj.us
[mailto:Kenneth.Bossong@judiciary.state.nj.us]
Sent: Thursday, June 15, 2006 11:17 AM
To: Holtaway, John
Subject: Re: FW: Defalcations for which payment can be made

David,
1) NJ's Rule says "dishonest conduct".
2) It has not changed.
3) NA

Now, in practice, it is clear that dishonest conduct must be by way of a taking, not lying. Misrepresentations without more are not going to be enough. The two toughest cases for finding dishonest conduct, of course, are investment-type claims and unearned fees. I wrote on each topic for NCPO's Client Protection Webb. Rather than reinvent the wheel, I'll just attach. Hope they help.

Ken Bossong
Kenneth.Bossong@judiciary.state.nj.us

To follow up on Ken's earlier submission, in New Jersey the concept of "dishonest conduct" can include fraud, which induces a client to entrust money to the attorney on false pretenses.

For example, the New Jersey Fund paid a claim in which an attorney received a \$40,000 retainer even though the attorney filed pleadings, motions and obtained an expert witness.

In that claim, the attorney had been consulted by a husband and wife on a business matter. The attorney learned from them that years earlier, the husband and wife had their two children taken from them by the state because of apparent physical abuse, specifically, broken bones. The husband and wife contended that there was no abuse, but rather that the children suffered from a medical condition colloquially known as "brittle bone disease" that led to fractures.

The attorney was aware that the state had not only taken custody of the children, but had also terminated the parental rights of the husband and wife, and the two children had already been adopted several years ago. To an attorney familiar with New Jersey Family Law, there was no reasonable basis to believe that the husband and wife could ever regain custody of the two children.

The attorney did not inform the husband and wife of the impossibility of overturning the adoption, but instead assured the husband and wife that he could enable them to regain the two children and he demanded a \$40,000 retainer.

The New Jersey Fund concluded that the attorney had exploited his clients' vulnerability, had deceived the clients about the prospects of their case, induced them to pay an exorbitant retainer and then filed some perfunctory pleadings and motions that were destined to fail.

In short, this was claim was not an unearned retainer or an embezzlement, but rather one predicated upon fraud.

Bill.Thomas@judiciary.state.nj.us

The Washington Lawyers' Fund for Client Protection Procedural Rules include this definition:

C. Dishonest Conduct. As used in these rules, "dishonest conduct" or "dishonesty" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other thing of value, including but not limited to refusal to refund unearned fees as required by Rule 1.15 of the Rules of Professional Conduct.

Also, see ABA Model Rule 10(C):

C. As used in these Rules, "dishonest conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:

(1) Failure to refund unearned fees received in advance as required by [Rule 1.16 of the Model Rules for Professional Conduct]; and

(2) The borrowing of money from a client without intention to repay it, or with disregard of the lawyer's inability or reasonably anticipated inability to repay it.

Bob Welden
General Counsel
Washington State Bar Association

RECORDING LIENS

Georgia Flight from California, Lisa Watkins from Pennsylvania, and I have been discussing the possibility of client protection funds being able to record liens against lawyers to recover money that the funds paid out to claimants. In Arizona lawyers are required to pay back the Fund in full before being reinstated. However, the majority of disciplined lawyers do not seek reinstatement and the Fund never receives money from these lawyers.

We are all very interested to find out if any funds already record liens against disciplined lawyers, and the process that they went through to be able to do this. Ms. Watkins advised me that Wisconsin's Board of Governors is petitioning its Supreme Court to enable them to record liens. That is currently pending.

I would really appreciate it if you could put this on the list serve so that we can get some ideas on how to implement this procedure, and to find out what other funds do to try to collect money from disciplined lawyers.

In Arizona, we retained a collection lawyer on a contingency fee basis, but never used him because we really didn't know what lawyers to pursue, some claims were still pending, and quite a few were in bankruptcy.

Thanks very much.

Sincerely,

Ann Hetzler
Arizona

In New York State, a disciplinary court can order restitution, and arrange for that order to be recorded as a civil judgment lien against the respondent lawyer. There is also statutory and contractual subrogation in NYS when the client protection fund makes an award.

Tim O'Sullivan
NY Lawyers' Fund

From: Bill.Thomas@judiciary.state.nj.us
[mailto:Bill.Thomas@judiciary.state.nj.us]
Sent: Wednesday, June 14, 2006 9:19 AM
To: Holtaway, John
Subject: Re: Client Protection Funds/Recording Liens Against Disciplined Lawyers

Dear Ann:

In New Jersey, we file suit against all respondent attorneys and then docket the judgment to obtain a judgment lien. (The only exception to this procedure arises when the respondent has already died without assets and the theft then comes to light.)

What you propose, as I understand it, is that by rule or by statute an automatic lien is created whenever your Fund approves a claim against the respondent. The advantage of this process would be to reduce the time and cost of obtaining the lien. The disadvantage, as I see it, is that your claims adjudication process is now subject to attack on due process grounds. That is, since the attorney now has a lien placed upon him, the attorney may assert that he never had adequate notice or opportunity to be heard.

In New Jersey, the attorney receives full due process protection when we file suit to recover what we had paid on the claim. Since we file suit and serve the summons and complaint consistent with the court rules governing ordinary litigation, the attorney has a full and fair opportunity to contest the matter. The attorney cannot insist upon a hearing of the claim and cannot directly question the claimant, but the attorney can do both of these when we file suit to collect upon the claim.

As a final matter, if you are considering implementing rules to give your fund an automatic lien, may I suggest that an even more effective mechanism for collecting from respondents is to have a rule in place that freezes the attorney's trust account and business account upon disbarment or suspension. In New Jersey, upon disbarment or temporary suspension, these accounts are frozen and the money therein are transferred to an entity called the Superior Court Trust Fund Unit, where they are held in an interest-bearing account and are subject to disbursement upon order of the Supreme Court. This is perhaps the single largest source of recovery for our Fund.

Bill.Thomas@judiciary.state.nj.us

-----Original Message-----

From: Root Edmonson [mailto:REdmonson@NCBAR.com]

Sent: Wednesday, June 14, 2006 1:59 PM

To: Holtaway, John

Subject: RE: Client Protection Funds/Recording Liens Against Disciplined Lawyers

After almost every payment to a victim of a dishonest lawyer's client, I send the lawyer a confession of judgment for the amount paid. If the lawyer fails to sign the judgment, I sue for double damages pursuant to a civil statute. Most of the time, the lawyer defaults. Thus, I get a judgment. I don't think I have collected anything on a single one of the judgments I have gotten after a default. I have collected from quite a few lawyers who signed a confession of judgment, usually by the lawyer making monthly payments.

CLIENT PROTECTION FUND INVESTIGATORS

From: Ann Hetzler [mailto:Ann.Hetzler@staff.azbar.org]
Sent: Tuesday, May 02, 2006 12:24 PM
To: Holtaway, John
Cc: John Furlong
Subject: Client Protection Fund Investigators

My Board of Trustees would like to see claims investigated more thoroughly. In my role as the Client Protection Fund administrator I have limited access to investigative tools. The State Bar's Lawyer Regulation Department has two investigators whose primary purpose is to investigate lawyers who are being, or are going to be, disciplined, or are seeking reinstatement. The Client Protection Fund budget allows us to occasionally use the services of the investigators, however, this is contingent upon how much time they have available to help out.

Currently, I am the only person reviewing, processing, analyzing, investigating, and summarizing claims before they are sent to the Trustees. The Trustees are trying to determine if they need another person to help with the fund, be it in the form of a part-time investigator or a clerical position. My estimate is that approximately 20% of my time is spent trying to gather information that the Trustees need in order to fairly consider a claim.

I would very much appreciate it if any other funds who have investigators provide me with the following information:

1. whether or not the investigator is part-time or full-time
2. what tools does the investigator have available to them, i.e., can they investigate bankruptcy records, probate records, criminal matters, driver's license information, vehicle title information, real estate title information, bank account information, etc.

For those funds who do not have investigators and administrative staff conducts the investigations, please let me know what tools you have available to you so that you can thoroughly conduct investigations.

Thanks very much for your input.

-----Original Message-----

From: Michael D. Miyahira [mailto:miyahira@hawaiiintel.net]
Sent: Tuesday, May 02, 2006 12:54 PM
To: Holtaway, John
Subject: RE: Client Protection Fund Investigators

Ann,

The Hawaii fund contracts with the Office of Disciplinary Counsel for investigative work. We find that the same ground is often traveled by both investigations so decided years ago to combine resources and funding and become more efficient.

The Hawaii fund pays the ODC an annual stipend for these services. Their administrator also serves as our administrator. This arrangement has served both of our purposes quite well over the years.

Michael D. Miyahira
Ph: (808) 987-8328 Fx: (808) 959-4643

Ann: When Colorado created its Fund the court (by rule) delegated all investigative and report functions to the Office of Attorney Regulation Counsel (an office of the supreme court). We investigate claims in conjunction with our attorney regulation process. We have one full-time investigator assigned to the Fund, but all of our lawyers (15) and other investigators work in the process. We have full subpoena powers associated with our jurisdiction over the Fund. We work with a Board of Trustees (like all Funds) and I serve as counsel to the Trustees.

John Gleason

-----Original Message-----

From: Paul.WieckII@jb.state.ia.us [mailto:Paul.WieckII@jb.state.ia.us]
Sent: Tuesday, May 02, 2006 1:06 PM
To: Holtaway, John
Subject: Re: Client Protection Fund Investigators

The Iowa Client Security Commission employs four part-time persons to perform audits of lawyer trust accounts (periodic and special) and to assist with investigation of client security claims as needed. We call these persons "auditors." All are retired agents of the Internal Revenue Service. Each of the four works approximately 800 hours per year. We share information with our Attorney Disciplinary Board if the Board has an investigation underway, and it is common to perform special trust account audits based on information passed along to the Client Security Commission by the Attorney Disciplinary Board.

Paul H. Wieck II, Executive Director / Assistant Court Administrator
Iowa Supreme Court Commissions
Judicial Branch Building, 1111 E. Court Ave., Des Moines, IA 50319
(515) 725-8029 Voice (515) 725-8032 Facsimile

-----Original Message-----

From: Cole, Marty [mailto:Marty.Cole@courts.state.mn.us]
Sent: Tuesday, May 02, 2006 1:04 PM
To: Holtaway, John
Subject: RE: Client Protection Fund Investigators

Minnesota's Client Security Board has the same arrangement with the disciplinary agency as does Hawaii. One of the disciplinary agency's paralegals works approx. 40% time on Client Security files.

-----Original Message-----

From: Root Edmonson [mailto:REdmonson@NCBAR.com]
Sent: Tuesday, May 02, 2006 1:17 PM
To: Holtaway, John
Subject: RE: Client Protection Fund Investigators

For NC, the answers are:

- 1) One of the State Bar's financial investigator's salary is paid by the Fund. Although he still does financial audits for the State Bar, other State Bar investigator's audit summaries are used by the Fund in deciding claims.
- 2) The Fund has the benefit of access to all of the disciplinary staff's investigative tools, including search capability on several data bases, access to bankruptcy and other court databases, investigators who can travel throughout the state to interview people, etc.

-----Original Message-----

From: Robin Lawnichak [<mailto:RLAWNICHAK@mail.michbar.org>]
Sent: Tuesday, May 02, 2006 1:44 PM
To: Holtaway, John
Subject: Re: Client Protection Fund Investigators

Ann,

The Michigan Fund relies on the Attorney Grievance Commission/Attorney Discipline Board (AGC/ADB) for the majority of its investigative work. The Fund requests whatever documents we can not obtain from other sources for little or no cost. The AGC/ADB has subpoena power, which the Fund does not. We also meet once or twice a year with the AGC and ADB to discuss issues that arise, data tracking needs, process concerns, prevention programs that are being considered, etc.

The Fund regularly contacts the courts for case dockets and in some instances the case file. Most state courts will do this at no charge for the Fund. The Michigan Appeals Court charges the Fund a reduced rate. A hand full of the courts have made the case dockets available on line.

Bankruptcy files are acquired through Pacer as are federal case information.

When a respondent has had his/her license revoked and a claimant, who had not already filed a complaint with the Attorney Grievance Commission, files a claim. Then the process, is slower and more cumbersome for the Fund.

Information gathering that is associated with collecting from the attorney once payment has been made by the Fund is handled by Subrogation Counsel. We currently utilize an outside law firm for the subrogation portion on a 1/3 contingency fee.

We also use a service called accurint for address information at 25 cents a search. We use this service to locate claimants who move and forget to inform us and respondents.

From: Sylvia Stevens [mailto:sstevens@osbar.org]
Sent: Tuesday, May 02, 2006 1:59 PM
To: Holtaway, John
Subject: RE: Client Protection Fund Investigators

In Oregon, the investigations are conducted by members of the CSF committee which, as you might expect, leads to inconsistent quality. They often rely on the investigation that is being done or has been done by the disciplinary department. We also have subpoena power. The committee members also typically review pertinent court filings or other public documents.

In Ontario, the Law Society's Compensation Fund levy pays for a portion of the costs of our regulatory investigations and discipline (the regular membership fee pays for the rest). Hence, the Fund is entitled to rely on the work product of the Law Society's Investigations department, which currently includes a mix of approximately 25 experienced Investigators, Investigations Counsel and Forensic Auditors. Under our statute, Investigations operates mainly in the context of alleged professional misconduct or conduct unbecoming, as opposed to "dishonesty".

Nonetheless the evidence obtained for the former purposes may also help to determine whether a loss due to dishonesty has occurred. To help address a particular claim, Fund staff will sometimes request further or follow-up investigation as required.

The Fund does not actually employ investigators of its own. Staff counsel do, however, make necessary inquiries and gather evidence from claimants to ensure that the grant criteria are satisfied. The staff counsel "investigative" role may become more crucial when further regulatory investigation is unwarranted (for example because the allegedly dishonest lawyer is deceased or has already been disbarred for professional misconduct or conduct unbecoming).

Dan Abrahams, Barrister and Solicitor
Professional Regulation Counsel
The Law Society of Upper Canada

-----Original Message-----

From: Victoria Rees [mailto:VREES@nsbs.org]
Sent: Wednesday, May 03, 2006 9:38 AM
To: Holtaway, John
Subject: RE: Client Protection Fund Investigators

Hi Anne -

In Nova Scotia we have a budget which allows us to retain private investigators to assist with investigations of complaints, claims and unauthorized practice matters as needed. We also have on staff a fulltime Officer of Complaints and Investigations, part of whose job is to process and investigate claims.

Our department is responsible for all conduct and compliance matters involving lawyers. We therefore have access to all information obtained from practice investigations, financial audits, receivers/custodians reports, etc. We have access to on-line credit information, property information, bankruptcy and judgment

data, etc. We do not have access to criminal records.

Our claims investigations therefore do not involve investigation of the lawyer, beyond conducting hearings or interviews, since we have access to all the information and reports we need, but with claimants, we often conduct interviews, and may require them to file a variety of documents to support their claim.

Good luck!
Victoria Rees

Thanks everyone. The information is very helpful. I'll pass it on to my Trustees

CLIENT PROTECTION FUND PRACTICE

The Maine Lawyers' Fund for Client Protection would appreciate input from other funds on the following scenarios. Thanks for taking time from your busy schedule to respond to this request.

Jackie Rogers

The Fund is subject to two caps: a cap of \$25,000 per claim, and a cap of \$50,000 per lawyer (who caused the loss).

Hypothetical Case 1:

A married couple retains a lawyer to represent them in their purchase of real estate. They deposit a total of \$60,000 with the lawyer to be held in escrow. The lawyer absconds with that money. Husband and wife file a claim against the fund for \$60,000.

Is their claim treated as a single claim, with the result that the maximum fund payment would be a total of \$25,000 or is their claim treated as two separate claims with the result that the maximum fund payment would be a total of \$50,000?

Hypothetical Case 2:

Same as #1, except, instead of husband and wife, substitute two partners, the two members of a business partnership.

[Note: In both cases, the determination as to whether these claims should be treated as a single claim or as two separate claims could affect not only the amount that the husband and wife (or each partner) could be paid from the fund, but also the amount(s) that other claimants against the same lawyer could be paid from the fund in the event that the total amount of all claims against the lawyer exceeded the per-lawyer \$50,000 cap.]

Questions presented:

1. In cases such as these, is it the practice of fund administrators to consider it significant that the claimants used only a single claim form for the total amount claimed instead of two separate claim forms, each covering his/her separate portions of the total claimed?
2. In considering the amount of the claim and the applicability of the per-claim cap in cases such as these, is it the practice of fund administrators to conduct a fact-specific investigation or inquiry concerning (a) form of ownership of the deposited funds e.g., joint or in-common ownership? and (b) the form of ownership of any property purchased by, or intended to be purchased with, the funds deposited with the lawyer?

Jacqueline M. Rogers, Administrative Director
Board of Overseers of the Bar
T. 207-623-1121 F. 207-623-4175

Jackie,

Stating the limitation as being "per claim" permits the interpretation "per transaction". NJ's maximum is \$250,000 per claimant. Husband and wife are two claimants; partners are two; corporations, trusts, and estates are one each (in the absence of unusual circumstances).

Q1. We ascribe no real significance to the number of claim forms submitted, or even how many claimants they present themselves as comprising.

Q2. We do dig into the facts to determine, under the law and policy, who the proper claimants are, and therefore how many there are.

I believe your bracketed note bespeaks the real issue: Caps are, at best, necessary evils; it behooves us in the field to constantly question how necessary they are and to seek opportunities to heighten or eliminate them. Do you really need an aggregate per lawyer limit of \$50,000? Note that is only twice the per claim maximum. Although we also have an aggregate maximum, I really believe they should be disfavored. (Why should victims of prolific thieves be treated differently?) Perhaps an aggregate limit of 4 or 5 times the claim or claimant limit would be more in line with experience that dishonest lawyers seldom steal from just a couple of clients. Then perhaps you could work on raising the per claim limit. The best way to handle these knotty problems is to make them moot for most trusting clients.

Best regards,
Ken Bossong
Kenneth.Bossong@judiciary.state.nj.us

-----Original Message-----

From: Fred Miller [mailto:MillerFG@aol.com]
Sent: Wednesday, April 05, 2006 9:12 AM
To: CPR_LAWYERSFUND@MAIL.ABANET.ORG
Subject: Re: Request for information regarding practice of Client Protection

These are very good questions, but I think the answers are easy depending upon one's view of the mission of a client protection fund. Is it to find ways to reimburse innocent victims of lawyer theft, or to find technical gimmicks to ration justice?

Gosh, Fred, I don't think of our decisions as "rationing justice;" we are rationing money and trying to make the best use of limited resources. I leave "justice" to the courts, the disciplinary system, and the hereafter. I fully appreciate the desire to make everyone whole who has been injured by a lawyer, but I don't think most funds are capable of doing that or won't be for long.

Sylvia Stevens

Q.1: The number of forms used is of no significance. The proper consideration is: (a) whether in Case 1 H&W are one entity (buying by the entireties) or two; and (b) whether in Case 2 the client is a partnership that has two partners or whether two of the partners in a partnership are clients.

Q.1: You would need to do a fact specific investigation to determine how to treat each of the potential victims.

A. Root Edmonson

Whether it be a husband and wife or two business partners, the Arizona Fund would consider them to be co-claimants. Thus, in all of the hypotheticals, although there be two, or even more claimants, in each situation our Fund would consider it as one claim. We would require all claimants/co-claimants to sign the Limitations and Agreements, and the Subrogation Receipt.

Ann Hetzler

Washington would probably do the same. Most of the Western states are community property states, so H & W would be treated as one entity, and I think the same would hold true for partners.

Bob Welden
General Counsel
Washington State Bar Association

Sylvia,

I certainly agree that we must make the best use of limited resources. Knowing you, I'm sure that means, among other things, handling claims as justly as possible. I also agree with Fred, however, that if our resources are more limited than they ought to be, that is THE issue. Patience in the face of inappropriate

and inadequate funding may not be such a virtue - recognizing of course that there is only so much one individual can do. If I am correct, most Funds could make almost all claimants whole if they collected \$25 - \$50 per year from every lawyer every year.

Once they understand it, who in their right mind does not believe the Profession's honor is worth \$.48 - \$.96 a week? We've got to find ways of being more effective in educating the powers-that-be that such limited awards are unacceptable.

Ken

Ohio's approach to this situation would be identical that of North Carolina. We would definitely conduct a fact specific investigation to determine how to treat each of the potential claimants.

Janet Green Marbley, Administrator
Clients' Security Fund of Ohio
Ohio Judicial Center

Colorado would treat #1 as one claim. However, my Trustees would strive to pay the claim in whole...one way or another. #2 would depend on the factual analysis..was it the partner or the partnership that suffered the loss? My Trustees would likely view it as a loss to the partnership rather than an individual partner.

John Gleason

PAYEE NOTIFICATION RULE

Massachusetts is gearing up for an uphill battle for promulgation of a payee notification rule. For those of you in one of the 11 jurisdictions with a payee rule, would you share your experience or provide insight on two points:

(1) How do you address the fact that the notification from the insurance co. that a settlement check has been mailed to the atty. DIRECTLY interferes with the atty.-client relationship? This infringes on the atty.-client relationship!! It has been explained to me that for years personal injury lawyers had to work hard to discourage insurance companies from working out settlements directly with clients. That practice has greatly subsided. Now we are telling insurance companies to go ahead and contact the clients!

(2) Does this rule pertain to Personal Injury Protection (PIP) checks?

(This is the "no fault" \$8,000 benefit that is provided by insurer of the vehicle that the injured person was the driver of or passenger in regardless of fault.)

Thanks for you assistance.

Karen D. O'Toole
Board of Bar Overseers/Clients' Security Board

-----Original Message-----

From: Irwin Gilbert [mailto:IGilbert@BizLit.net]
Sent: Monday, March 13, 2006 10:26 AM
To: Holtaway, John
Subject: RE: Payee Notification Rule

(1) The notification does not amount to interference in any genuine sense. It is a simple form notice that advises that funds have been distributed. This drives the client to communicate with the lawyer...not the insurance company. It is analogous to receiving a receipt from the bank for a deposit made. Limits on the content of the notice and the adoption of an "official" form for notice can safeguard against any potential abuse.

A far greater public interest is served by mandating the notice.

-----Original Message-----

From: Karen O'Toole [mailto:k.otoole@massbbo.org]
Sent: Monday, March 13, 2006 10:44 AM
To: Holtaway, John
Subject: RE: Payee Notification Rule

Very helpful. I am very interested in collect examples of analogous situations from other professions as support.

-----Original Message-----

From: Kathy Peifer [mailto:kpeifer@palawfund.com]
Sent: Monday, March 13, 2006 10:40 AM
To: Holtaway, John
Subject: RE: Payee Notification Rule

Karen,

I don't see PA's insurance notification regulation as an interference with the attorney-client relationship. It does not require the insurance company to "contact clients." Rather, whenever payment of \$1,000 or more in "settlement of a third-party liability claim" is paid by the insurer, notice of the payment must be provided to the claimant at the same time payment is made to the attorney or other representative of the claimant. This typically is accomplished by "cc'ing" the claimant with a copy of the transmittal letter forwarding the settlement check to the attorney. Therefore, no contact is made by the insurance co. with the client prior to settlement and, no direct contact is made after settlement, merely notice that the settlement has been sent to the attorney.

Kathryn J. Peifer, Esquire
Executive Director
Pennsylvania Lawyers Fund for Client Security

Colleagues,

Yet another question for those of you with experience (or ideas) with payee notification. How does the insurance co. learn of the address of the lawyer's client. Does ins. co. through its normal course of investigation learn of client's address? If the lawyer is planning on stealing the settlement proceeds, might he give a false address of the client?

Karen D. O'Toole
Board of Bar Overseers/Clients' Security Board
99 High Street
Boston, MA 02110

Karen:

Regarding payee notification and the possibility that the lawyer may give the insurance company a false address for his client, I think that such a scenario would be unlikely.

Before I accepted this position at the New Jersey Lawyers' Fund, I was a trial attorney for several insurance carriers. Before settling a claim, an insurance carrier would want to see the police accident report (if the claim arises from an automobile accident) or the incident report (if the plaintiff had fallen in a store) and in any event, all relevant medical records. In addition, the carriers I worked with participated in an information sharing network in which the carrier would submit the name, address and social security number of the plaintiff to see whether the same person ever filed claims with other carriers.

If the plaintiff attorney provided a false address to the carrier in anticipation of stealing the settlement check, the carrier would have several opportunities to discover the false address from the records noted above. The medical records would be an especially reliable source of information for the plaintiff's address.

Bill.Thomas@judiciary.state.nj.us

PUBLICITY

The Washington Lawyers' Fund for Client Protection Committee is reviewing its policy regarding publication of information about approved applications. Currently, when an application is approved, notice is published in the WSBA Bar News. The information includes the lawyer's name, discipline status, and detailed facts regarding the lawyer's misconduct. This same information is later compiled into the Fund annual report.

Concern has been raised by some Fund committee members regarding publication of these detailed facts regarding applications that were not also the subject of disciplinary action. These can arise because the lawyer was already disbarred, so no further action was taken by the Office of Disciplinary Counsel; because the lawyer is on disability inactive status and the discipline process is effectively stayed; or because the lawyer is deceased. In most of these instances the lawyer has either disappeared, or does not respond to the application.

As in a disciplinary proceeding, the Fund burden of proof is "clear preponderance of the evidence." The concern is that there may be a due process problem if the lawyer either has no opportunity to respond because the application never reaches him/her, or the Committee cannot establish that the lawyer actually received notice of the application.

An additional, related issue has to do with the fact that the Bar News is archived on the WSBA web site, which means that the Fund notices are posted "in perpetuity." Some committee members think they should be removed after some period of time (bar discipline notices are posted in perpetuity).

Have other Funds considered these issues, and if so, what was done?
Thanks.

Bob Welden
General Counsel
Washington State Bar Association

These are all excellent issues and I think Bob for bringing them to the attention of the list serve. I am going to take these issues back to my Board.

PA is proposing some rule changes, the most significant of which is our confidentiality rule. The proposed rule changes are scheduled to be published in the March 18th edition of the Pennsylvania Bulletin. Our proposed confidentiality rule states that after the approval of an award, the Fund "may disclose" certain information, including the attorney's name, the amount of the award and a summary of the claim.

Since we are permitted to approve an award before the conclusion of any disciplinary or criminal proceedings, I believe, should our proposed rule changes be adopted by our Supreme Court, that we would choose not to disclose the information if the disciplinary proceedings have not been concluded or if the disciplinary action could not be pursued because the attorney was on disability status. I'm not sure how we will deal with a situation where the disciplinary complaint is not pursued because that office does not feel it could meet its "clear and convincing" burden of proof. A claim with our Fund must be supported by a preponderance of the evidence. I don't think that we will have a problem with disclosing the information if the attorney is disbarred or suspended and has been provided with notice of the filing of the claim and, the attorney chooses not to respond. If the attorney is missing, again, I'm not sure how we will handle that.

Should our proposed rules eventually be adopted by our Supreme Court, the Board will need to establish a policy regarding the disclosure of information. All of the issues in Bob's inquiry will have to be addressed.

I'm sorry that I am not able to provide any profound insight, but I thank you for the issues to present to my Board at our next meeting. If your Committee adopts any policies regarding these matters prior to June (my next Board meeting), I would appreciate the information.

Kathryn J. Peifer, Esquire
Executive Director

Pennsylvania Lawyers Fund for Client Security

Bob, we also publish somewhat detailed descriptions of claims paid. We stew frequently over the fact that some lawyers never really get notice that a claim has been paid, although we copy them on all correspondence at last known address. In recent years we have had two or three situations where a lawyers reappears after the claim is paid and provides sufficient information to cause the Fund to conclude that the claim was paid in error.

In those cases, we publish a correction if appropriate. We have never tried to recover the money from the claimant (although we are going to in the most recent situation), but we don't pursue our subrogation rights against the lawyer.

Sylvia Stevens

Colorado publishes all information regarding paid claims (except the name of the claimant). We do not publish the names of respondents against whom a claim was filed and denied. We do not remove information after the passage of time.

John Gleason

Bob- just fyi, in Connecticut, our particular superior court rule only permits disclosure of the name of the attorney, the name of the claimant, and the amount of the award. We would not be able to publish the relevant facts.

Christopher G. Blanchard
First Assistant Bar Counsel/Staff Attorney Judicial Branch Client
Security Fund Committee

Here is the ABA Model Rule:

RULE 18. CONFIDENTIALITY

A. Claims, proceedings and reports involving claims for reimbursement are confidential until the Board authorizes reimbursement to the claimant, except as provided below, unless provided otherwise by law. After payment of the reimbursement, the Board shall publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer. The name and the address of the claimant shall not be publicized by the Board unless specific permission has been granted by the claimant.

B. This Rule shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Board shall authorize, or the release of statistical information that does not disclose the identity of the lawyer or the parties, or the use of such information as is necessary to pursue the Fund's subrogation rights under Rule 16.

Comment

The need to protect wrongly accused lawyers and to preserve the independence of the Board's deliberations should be balanced with the strong public interest in protecting legal consumers and promoting public confidence in the administration of justice.

Publication of awards by the Board demonstrates the legal profession's responsiveness to clients and its commitment to self-regulation. Responsible public information programs are essential to achieving the purposes of the Fund. The public, bar, and judicial leaders, and the news media should be kept informed of the activities of the Board and the status of its reimbursement efforts.

The Board must also be sensitive to the privacy concerns of claimants, and of the constitutional rights of lawyers who may be the subject of criminal proceedings. Deferring publicity may therefore be appropriate where there is a pending criminal prosecution against a lawyer. Securing a claimant's consent to the release of information concerning a claimant's loss and reimbursement may also be a desirable practice, particularly for a voluntary fund which may not be protected by the immunity that is afforded a

court-established Fund under Rule 9.

It is within the discretion of the Board to determine which public agencies should be provided access to claim files. Lawyer discipline, law enforcement, and agencies considering nominations to public offices may have a legitimate need for information contained in the Fund's records that would otherwise be confidential.

John A. Holtaway

From: millerfg@aol.com [mailto:millerfg@aol.com]
Sent: Saturday, March 18, 2006 7:56 AM
To: Holtaway, John; CPR_LAWYERSFUND@mail.abanet.org
Subject: Re: Inquiry: publicity

Sounds like there ought to be a national policy (model rule) for client protection funds in this important area, beginning with the notion that sunlight is a wonderful disinfectant.

PAYEE NOTIFICATION 2

Several months ago, our mandatory overdraft notification rule was changed, without seeking comment from the Fund, to exclude accounts where the attorney is acting as an executor, trustee, guardian or conservator.

We are seeking to have the rule changed back to include such accounts. I would like to inquire to the states that have the mandatory overdraft reporting rule if any of these states exclude these types of accounts. It certainly would support our position if all of these other states that have this reporting requirement include the estate, trust, guardianship and conservatorship accounts.

Thanks for your help.

Kathryn J. Peifer, Esquire
Executive Director
Pennsylvania Lawyers Fund for Client Security

Massachusetts' Rule 1.15 specifically "includes property held in any fiduciary capacity in connection with a representation, whether as trustee, agent, escrow agent, guardian, executor, or otherwise." For the Clients' Security Fund, the largest payments often involve funds that had been held by atty. serving as a fiduciary. It would be a huge gap if estate, trust, guardianship funds etc. were excluded from the overdraft rule. Getting the financial institutions to recognize that these fiduciary accounts ARE subject to the overdraft rule has been very difficult in Mass. It is a real educational challenge in terms of compliance.
Karen O'Toole

-----Original Message-----

From: Reid F. Trautz
Sent: Friday, March 10, 2006 8:08 AM
To: Carla Freudenberg
Subject: RE: Listserve Inquiry

Our Rule 1.15 does exclude certain types of accounts, including "funds need not be held in an account in a financial institution if such funds (1) are permitted to be held elsewhere or in a different manner by law or court order, or (2) are held by a lawyer under an escrow or similar agreement in connection with a commercial transaction." Conservatorship accounts are generally directed by court order, so are not included as IOLTA accounts.

Feel free to pass this along.

Reid (Carla Freudenberg)

-----Original Message-----

From: Ann Hetzler [mailto:Ann.Hetzler@staff.azbar.org]
Sent: Thursday, March 09, 2006 3:44 PM
To: Holtaway, John
Subject: RE: Listserve Inquiry

If a lawyer receives unearned funds which are related to client representation, the funds go into the IOLTA account (individual lawyer's interest on lawyer trust accounts). That account has the Bar Foundation's tax id number and the bank is required to report NSF's to the State Bar. If a lawyer opens up a trust account for a specific client for a specific period of time and the account has the client's tax id number on it, the banks do not report NSF notices to the Bar.

Arizona's Supreme Court Rule 44(d) says banks report when an instrument is presented against a lawyer's trust account. However, we can prosecute under our rules for violations even if it is other than an IOLTA account.

-----Original Message-----

From: Office of Disciplinary Counsel [mailto:odc@lava.net]

Sent: Wednesday, March 08, 2006 3:29 PM

To: Holtaway, John

Subject: Re: Listserve Inquiry

Our mandatory notification rule comes under the IOLTA program so it only applies to attorneys who receive client funds RSCH 11(b); RSCH 11(c)(1)(F).

<http://www.state.hi.us/jud/ctrules/rsch.htm#Rule%2011>

Carole R. Richelieu

Fund Administrator

Lawyers' Fund for Client Protection

of the Supreme Court of Hawai'i

-----Original Message-----

From: Blanchard, Christopher [mailto:Christopher.Blanchard@jud.ct.gov]

Sent: Thursday, March 09, 2006 2:30 PM

To: Holtaway, John

Subject: RE: Listserve Inquiry

Connecticut's rule (contained in our Practice Book Section 2-27) does include fiduciary accounts.

Christopher G. Blanchard

First Assistant Bar Counsel/Staff Attorney Judicial Branch Client

Security Fund Committee

-----Original Message-----

From: Bob Welden [mailto:bobw@wsba.org]

Sent: Wednesday, March 08, 2006 11:57 AM

To: Holtaway, John

Subject: RE: Listserve Inquiry

The Washington TA OD rule applies to all lawyer trust accounts.

Bob Welden

General Counsel

Washington State Bar Association

THIRD-PARTY DEBTS

The Connecticut fund is facing the following factual scenario. An attorney converts the portion of a personal injury settlement that was to be used to pay the client's chiropractor. The statute of limitations for the chiropractor to pursue the client for the debt has expired (or, at the very least, the statute of limitations would be a viable defense to any action on the debt.) I was curious as to whether any fund that would pay the client's debt to the chiropractor under those circumstances?

Thank you for any thoughts you may have on this fact pattern.

Christopher G. Blanchard
First Assistant Bar Counsel/Staff Attorney Judicial Branch Client
Security Fund Committee

-----Original Message-----

From: Irwin Gilbert [mailto:IGilbert@BizLit.net]
Sent: Friday, February 17, 2006 3:45 PM
To: Holtaway, John
Subject: RE: Inquiry

The Florida Fund could pay the loss and probably would. If the Chiropractor was time barred, it would mean the client was entitled to the money and the dishonest lawyer was the cause of the client's loss.

We do not have a criteria that relates to whether the client is or is not at risk of being sued by the Chiropractor, but the client's liability might be a persuasive reason to reimburse the loss.

I believe the client should be reimbursed in your scenario.

Irwin Gilbert

-----Original Message-----

From: Michael D. Miyahira [mailto:miyahira@gte.net]
Sent: Friday, February 17, 2006 3:52 PM
To: Holtaway, John
Subject: RE: Inquiry

This might be one for the Difficult Claims Workshop.

I don't think we've run into a claim where the statute of limitations rendered a client's debt unenforceable. However the attorney did commit a dishonest act by converting a portion of a settlement received and using the proceeds for his own personal needs rather than the purpose agreed upon with his client. I would say that we would give this claim careful consideration and possibly satisfy the claim in the interest of justice. After all, one of the fundamental purposes for our fund's existence is to make clients whole. In this case, it would be ethically and morally correct to help a claimant satisfy a past debt that would have been paid by his attorney if not for the conversion of funds.

Michael D. Miyahira
Ph: (808) 987-8328 Fx: (808) 959-4643

It would depend on whether there is evidence that the chiropractor failed to file suit because of the lawyer's assurance that he would pay the chiropractor pursuant to the chiropractor's lien. If there is no such evidence, NC's Board would probably pay the money to the client. Although an argument could be made that the client has not suffered a loss since they would not have gotten the money if the lawyer had paid the chiropractor prior to the S/L running on the chiropractor's claim, the lawyer would not have been entitled to keep the money under any circumstance, and the money should be paid to someone.

A. Root Edmonson

Oregon might. We were ready to pay a claim a few years ago involving money that was to have gone to the client's creditors but for having been misappropriated by the lawyer. Payment was denied, however,

because the client had filed bankruptcy and the trustee took over the claim. The fund did not want the money to go toward the trustee's fees and other administrative costs, so denied the claim

Sylvia Stevens

From: Bill.Thomas@judiciary.state.nj.us

[mailto:Bill.Thomas@judiciary.state.nj.us]

Sent: Tuesday, February 21, 2006 11:05 AM

To: Holtaway, John

Subject: Re: Inquiry

Chris:

You raise an interesting question. In New Jersey, we analyze each claim by looking to see if the claimant proves each of the three elements of a prima facie case: (1) existence of an attorney-client relationship or fiduciary relationship, (2) theft or similar dishonest conduct, and (3) a quantified compensable loss.

The difficulty in your claim, as I see it, is whether the facts establish a compensable loss, since the statute of limitation enables the client to avoid liability to the chiropractor. The question you raise is two-part: should the Fund approve the claim, and if so, to whom should the award be paid?

Had the attorney not stolen that portion of the settlement, it would have been paid over to the chiropractor. In New Jersey, providers of medical services often insist that the attorney protect the medical provider's lien on any settlement or judgment by issuing a letter so promising. It is not clear under your hypothetical whether the attorney made such a promise to this chiropractor. If such a promise had been made, New Jersey may view this as a fiduciary relationship that the attorney violated when he misappropriated the money owed to the chiropractor.

If the chiropractor had never elicited such a promise from the attorney (or if Connecticut law does not recognize such a lien) then the analysis is more problematic.

The New Jersey Fund seeks to do equity. To grant an award payable to the chiropractor would place the client and the chiropractor in the position they would have been in had the attorney never stolen from the personal injury settlement. I would expect that the Trustees of the New Jersey Fund would be so guided and would approve the claim, but payable to the chiropractor. The only reservation I have to this prediction is that if the evidence showed that the chiropractor prejudiced the Fund's ability to recoup this from the attorney, especially if the chiropractor knowingly prejudiced the Fund, then the claim would be rejected on the basis that the chiropractor's unclean hands bars his recovery.

To reject this claim on the grounds that the client suffered no loss (since the client can defeat the chiropractor's demand for payment by virtue of the statute of limitation) might result in harm to the client. If the chiropractor pursues the client for the unpaid bill, perhaps even to the point of filing suit, then the client would be forced to hire an attorney and incur the charges associated with that. The client will now no longer be in the same position he would have occupied had there been no theft from the personal injury settlement.

Please let us know how your Fund resolves this interesting claim.

Bill.Thomas@judiciary.state.nj.us

-----Original Message-----

From: Office of Disciplinary Counsel [mailto:odc@lava.net]

Sent: Monday, February 27, 2006 1:24 PM

To: Holtaway, John

Subject: Re: Inquiry

If the funds were "earmarked" for the 3rd party, and thus belonged to the 3rd party, and stolen, our Fund would pay to the party entitled - the 3rd party.

Carole R. Richelieu

Fund Administrator

Lawyers' Fund for Client Protection of the Bar of Hawai'i

From: Daniel.Hendi@judiciary.state.nj.us

[mailto:Daniel.Hendi@judiciary.state.nj.us]

Sent: Tuesday, February 28, 2006 9:15 AM

To: Holtaway, John

Subject: Re: Inquiry

Obviously no "legal" obligation, but this fact pattern is the essence of phrase, "Trustee Discretion".

Will it benefit the client such as in his relationship with his/her doctor? Will there be an adverse impact going forward if the client has to pay him/herself out of moral obligation to the doctor? Was the client directed to the Chiropractor by the lawyer who used the doctor as part of his mill and the doctor was only too happy to be in this relationship with the lawyer? These are all factors, in my opinion, that the Trustees need to know to apply their discretion, and ultimately it's their call.

Dan

---The CSF of Ohio would pay the Claimant, not the medical provider, if we confirmed a theft of funds by the attorney. We have claims like this quite often: Attorney settles Claimant's PI, distributes proceeds and retains amounts due medical providers but fails to pay them. We reimburse the Claimant based on the premise that the amounts converted belonged to the claimant, who may then be responsible to pay the medical providers, but the CSF should not assume that responsibility, nor is the medical provider the appropriate claimant.

Janet Green Marbley, Administrator

Clients' Security Fund of Ohio

Ohio Judicial Center

In Florida, we would determine if the Dr. had a letter of protection from the dishonest lawyer. If so, we might pay the Dr. as the victim.

Absent a letter of protection, we probably would pay the client without regard to whether the client pays the doctor...the settlement funds are the clients.

Irwin Gilbert

Same in California as in Ohio. Our experience has been that medical care providers are very successful in debt collection and have no problems at all collecting if the client does not pay. We advise our applicants that they are responsible and are subject to debt collection if they don't pay. In California, our experience is that the errant attorney sends all his/her clients to the same medical care provider for care rather than the client using his or her own doctor. The client just goes because the attorney tells them to, but they look very much like sweetheart deals between the chiropractor and the attorney with meds often inflated.

Martha Gonzales

PAYEE NOTIFICATION III

-----Original Message-----

From: Administrators of Lawyers Funds for Client Protection
[mailto:CPR_LAWYERSFUND@MAIL.ABANET.ORG]On Behalf Of Donahue, Eileen
Sent: Thursday, January 26, 2006 9:59 AM
To: CPR_LAWYERSFUND@MAIL.ABANET.ORG
Subject: Insurance payee notification rule

In Illinois, our Fund commissioners are considering the insurance payee notification rule. The preface to the Model Rule says that in states that have this rule it has had a "salutary effect" on lawyer conduct. Can anybody whose state has this rule give me something a little more specific about the effect it has had on their Fund? Any before and after numbers or percentages?

I appreciate any help you can give me.

Eileen Donahue

Arizona has only recently approved this rule, and is still in the process of determining how the information will be made available to the public. Therefore, we have no statistics at this point. I plan to track if this makes a difference in the amount of claims that we receive that are actually cases of malpractice. Once a substantial amount of statistics have been accumulated, I will try to share it with all of you.

Ann Hetzler

Eileen - In Nevada, our Rule just became effective October 2005, so we have not yet been able to quantify its effectiveness (but we have high hopes that it will make a big difference).

Georgia Taylor

PUBLICATION OF CLIENT NAMES

The Nova Scotia Lawyers' Fund for Client Protection is currently revisiting its policy regarding publication of claimant names. This subject generated a great debate at the Forum in Chicago last June. Our position up to now has been that clients retain lawyers with an expectation of confidentiality and privacy. If a lawyer steals their trust funds, the Fund should continue to respect that privacy and not publish the names of claimants. When claims are paid, we will only publish the name of the lawyer and the amount of each claim paid. We have had experience with claimants who were afraid to come forward with a legitimate claim in fear of publication of their name in their small community.

1. Does your Fund have a rule or written policy with respect to what information is released to the public when claims are paid? If so, what is your rule or policy? Is this done through an Annual Report or via some other means of notice; e.g. website, newspaper?
2. Are claimants required to consent to or authorize the release of their names? Is this done on an application form or by some other means, or are they advised of this at the time they are told their claim has been approved? Is this consent a condition precedent to payment of the claim?
3. Finally, in connection with this, does your jurisdiction have any rules or policies regarding sharing of information with the authorities? For example, will your State Bar report serious disciplinary matters to the police and in so doing, provide copies of audit and other reports, which include client names and privileged information?

I appreciate everyone's help!

Victoria Rees
Director of Professional Responsibility

Victoria- Connecticut's rules provide that once an award is made, the claimant's name, the responding lawyer's name, and the amount of the award are public information. Otherwise, information in connection with a claim is confidential, except that our committee is permitted to provide relevant information to law enforcement authorities and our lawyer discipline agency.

We have never had anyone complain about the rule concerning a claimant's name being made public upon payment. For that matter, I cannot remember the matter being raised in any discussions with any particular claimants. Usually, they are just happy that they have an avenue that may provide reimbursement for their losses. In my personal opinion, notwithstanding the legitimate concerns about the client's feelings in the matter, I have always felt that our office is a public agency, handling money that is provided by members of the bar, and therefore, members of the bar and the citizens we serve have an interest in as public a process as possible.

Christopher G. Blanchard
First Assistant Bar Counsel/Staff Attorney
Judicial Branch Client Security Fund Committee

-----Original Message-----

From: Kris Wenzel [mailto:kwenzel@wisbar.org]
Sent: Wednesday, January 04, 2006 2:41 PM
To: Holtaway, John
Subject: RE: Inquiry re Publication of Claimant Names - Nova Scotia

Victoria, please see below

1. Does your Fund have a rule or written policy with respect to what information is released to the public when claims are paid? If so, what is your rule or policy? Is this done through an Annual Report or via some other means of notice; e.g. website, newspaper?

Wisconsin has SCR 12.11 Confidentiality that is fairly broad. Basically, when the committee makes a final determination on a claim, confidentiality ends. We publicize the name of the attorney, but our practice is not to release the name of the claimant. We will be submitting a petition to our highest court this spring for

rule changes, one of which is to adopt the ABA proposed confidentiality language. Currently, we release the name of the attorney via bar publications, however, we have begun to send out PR's naming the attorneys.

2. Are claimants required to consent to or authorize the release of their names? Is this done on an application form or by some other means, or are they advised of this at the time they are told their claim has been approved? Is this consent a condition precedent to payment of the claim?

We do not seek authorization to release names of claimants. However, we have used Marty's approach in MN when the press seeks comment from a claimant.

3. Finally, in connection with this, does your jurisdiction have any rules or policies regarding sharing of information with the authorities? For example, will your State Bar report serious disciplinary matters to the police and in so doing, provide copies of audit and other reports, which include client names and privileged information?

Our SCR is also similar to MN's in that our Office of Lawyer Regulation provides us their files and we provide them with copies of our claims and any other information. We also work with law enforcement on the state and federal levels with the sharing of information - this helps us in getting the restitution ordered to the fund at the front instead of having to file motions to have the payments revert from the claimant to the fund. With that said, however, to my knowledge, the fund has not provided information to initiate a criminal investigation.

-----Original Message-----

From: Kathy Peifer [mailto:kpeifer@palawfund.com]
Sent: Wednesday, January 04, 2006 3:00 PM
To: Holtaway, John
Subject: Re: Inquiry re Publication of Claimant Names - Nova Scotia

Victoria,

Thank you for making this inquiry! Pennsylvania has recently adopted an open discipline system. Prior to the new open system, the PA Lawyers Fund for Client Security more or less piggybacked on the Disciplinary Board's confidentiality rules and took the position that everything was confidential except for the aggregate amount of awards. Since the new open discipline rules have been adopted, the Fund has determined that we need our own confidentiality rule. We are in the process of writing this rule for review and approval by the Board and ultimately the Court. I will share everyone's responses with our Counsel to the Board. I am sure this information will be very helpful to her also.

Kathryn J. Peifer, Esquire
Executive Director
Pennsylvania Lawyers Fund for Client Security
4909 Louise Drive, Suite 101
Mechanicsburg, PA 17055
717-691-7503; 800-962-4618
kpeifer@palawfund.com

-----Original Message-----

From: Chris Janku [mailto:cjanku@mobar.org]
Sent: Wednesday, January 04, 2006 3:13 PM
To: Holtaway, John
Subject: RE: Inquiry re Publication of Claimant Names - Nova Scotia

Missouri does not publicize the names of the clients. For many reasons, the client may not want anyone to know that he or she contacted a lawyer.

From: Kenneth.Bossong@judiciary.state.nj.us
[mailto:Kenneth.Bossong@judiciary.state.nj.us]
Sent: Wednesday, January 04, 2006 4:00 PM
To: Holtaway, John
Subject: Re: Inquiry re Publication of Claimant Names - Nova Scotia

Answering for NJ, Victoria:

1) Unless and until a claim is paid, everything is confidential. Once claim is paid, we give (in press releases and to whoever asks) name and county of respondent; amount paid; brief, generic description of claim's factual basis; and town of residence of claimant. While our Rule does not make claimants' names confidential, we resist disclosure by treating requests as if we had Marty's Rule in MN. As others have written, many claimants have suffered enough.

2) This is basically not applicable. Claimants are required, however, to disclose same facts they give the Fund to both prosecutors and disciplinary authorities - and to cooperate with both. (They swear to having disclosed on our claim form.)

3) Given the above, the Fund actively shares and seeks information with and from all authorities. Such interaction is among the best, most productive steps we take.

Ken

Kenneth.Bossong@judiciary.state.nj.us

Arizona's Declaration of Trust states the following regarding confidentiality:

A. Claims, proceedings, deliberations, and reports involving claims for reimbursement are confidential, pursuant to Ariz.R.S.Ct.61(b)7., except as provided below. After payment of the reimbursement, the Trustees may publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer. The name and the address of the claimant shall not be publicized by the Trustees unless specific permission has been granted by the claimants.

B. This Rule shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Trustees may authorize, or release of statistical information that does not disclose the identity of the claimants.

I would like to add that, to my knowledge, the Trustees have never sought permission from a claimant to reveal their identity. There have been a couple of occasions where the claimant has voluntarily revealed their identify, thereby waiving the confidentiality granted to them by the Declaration of Trust, either by going to the press, or copying other entities such as the Attorney Generals Office, the Governor's offices, etc., on correspondence.

Each year the Fund publishes an annual report identifying the names of lawyers, and the amounts paid out on claims against the lawyers.

Ann Hetzler

In Florida, claims and the claims process are considered confidential. The FCSF does not report payments or denials of claims. Claims hearings are not open to the public
Irwin Gilbert

Victoria:

1. The NY Fund's Regulations provide that all claims and proceedings are confidential, but "the Trustees' final determination awarding reimbursement of a claim, and the facts relating to the claimant's loss, shall be a public record."

Therefore, a claimant's name and the facts of their loss is information we release to the public in announcing awards. Our press releases can include claimants' names receiving awards. We also disclose names of successful claimants to reporters interested in a story on the Fund.

I know from the Chicago discussion that many Funds withhold award recipients names for the reasons you mention. I think this is harmful in the long run.

We have an ongoing struggle to get the word out about the existence of Client Protection Funds and the

steps the legal profession takes to protect legal consumers and promote the integrity of the bar. A very powerful weapon we have in this struggle is telling the public/media the real life examples of law clients we reimburse. Putting a name and face on an award statistic attracts interest and attention and furthers our overall cause of advocating for our individual Funds and client protection in general.

In NY, on extremely rare occasions, an award recipient has been reluctant to have their name made public or to be interviewed by the media. While our Regulations permit us to disclose their names anyway, we have honored the very few requests for privacy.

2. On our application for reimbursement it states in bold letters "Should you receive an award from the Fund, the facts relating to your loss become a public record". We have never had a prospective claimant refuse to pursue a claim because of the possible public disclosure of an award.

3. Our Regulations authorize us to coordinate and cooperate with disciplinary prosecutors in the investigation of claims. Again, if an award is approved, the loss is a public record so we freely share material with disciplinary and criminal authorities. As a matter of policy, we require all claimants to file a disciplinary complaint at the outset of their claim with the Fund. All claimants alleging a theft are also required to file with the appropriate criminal authorities. We then freely share information and material with these authorities.

I hope this is helpful.

Tim O'Sullivan NY Lawyers' Fund

This is great, Tim - I appreciate your expanding on the rationale for your policies and rule. Very helpful to our process.

Cheers,
Victoria

Victoria,

Below is the response from Massachusetts.

1. In Massachusetts Clients Security Board Rule 7H provides:

7 H. All applications, proceedings, investigations, claims, and reports involving specific applications for reimbursement from the Fund and all financial statements furnished by the claimant shall be kept confidential.

The Board and its staff shall conduct themselves so as to maintain the confidentiality of the application, investigation, and proceeding. This provision shall not be construed (1) to deny relevant information to the Board of Bar Overseers, to a court or investigative agency of proper jurisdiction, to an authorized agency investigating the qualifications of a judicial candidate, or to another jurisdiction investigating qualifications for governmental employment; (2) to prohibit the release of statistical information that does not disclose the identity of the parties; or (3) to prohibit the release of publicity as provided in section 11 herein.

RULE 11. PUBLICITY

All publicity regarding the activities, decisions and awards of the Board shall be within the discretion of the Board.

The Board, in appropriate cases, may publicize decisions and awards made by it, and any information concerning its decisions and awards may contain the name of, and other information pertaining to, a lawyer who has caused a reimbursable loss. The Board may withhold such information in those cases in which it finds the existence of mitigating circumstances.

The Board releases an annual report that contains the names of the thieving attorneys but not names of claimants. The Board publishes on its website case summaries of all of the matters that were decided by the Board at its monthly meeting. The case summaries include the former lawyer's name and town where

he or she practiced law. Claimants' names are not used, nor is any information that might identify claimants to the public.

2. When we release the annual report to the press, good reporters always want to interview a claimant. We review that year's claimants and select those usually who had been represented by counsel and always those who have a positive experience before the Board. Only with claimant's consent do we give the presents claimants' names.

3. The Board may release confidential information to a very limited entities. See 7H above. The terms of 7H allows the Office of Bar Counsel (Mass. atty. discipline agency) to share all of its investigative materials with the Board. This is a tremendous help to the Board's staff. In addition, the Board and the Atty. General's office exchange information with the AG is investigating an attorney (or former attorney) for theft of client funds and the clients have filed claims with the Board. Again, as with the Office of Bar Counsel, sharing information with the AG is extremely helpful.

The AG will NOT disclose to the Board its confidential information until the attorney has been indicted; however, the Board is informed that a confidential investigation o a thieving attorney has commenced and at times, the Board has referred claimants to the AG's office for them to file a criminal complaint against their former atty.

Please feel free to call me if you want to discuss any of the above information.

Karen O'Toole

I agree with Tim that it is harmful in the long run to keep claims information confidential. Among other things, full public disclosure of these awards would alert other victims of the same attorney to make claims and generally educates the public as to the good works of the Bar.

This inspires me to try and reform our process in part. Thanks Tim.

Irwin Gilbert

-----Original Message-----

From: Chris Janku [mailto:cjanku@mobar.org]

Sent: Thursday, January 05, 2006 11:44 AM

To: Holtaway, John

Subject: RE: Inquiry re Publication of Claimant Names - Nova Scotia

Releasing the lawyer's name to let other clients know of the situation is not a problem but releasing the claimant's name is absolutely wrong, particularly without the client's consent. What if the claimant hired the lawyer to consider filing a divorce, never pursued it and the marriage now continues happily without the other spouse being aware of the potential problem? Or the matter involved a serious criminal allegation that could damage the claimant's reputation but which never was filed?

Is the claimant compelled to waive confidentiality as a condition of filing the claim so the Bar can get some good publicity?

-----Original Message-----

From: Gonzales, Martha [mailto:Martha.Gonzales@calbar.ca.gov]

Sent: Friday, January 06, 2006 4:15 PM

To: Holtaway, John

Subject: RE: Inquiry re Publication of Claimant Names - Nova Scotia

Under Rule 20 of the California Rules, all applications for reimbursement to the fund are confidential unless formal disciplinary charges have been filed with the State Bar Court based on the same facts as the application. Notwithstanding a court filing, once a case is paid the following is a matter of public record: the name of the lawyer, the name of the applicant, the amount of reimbursement and the date of reimbursement. We do share information with law enforcement. We do not routinely publish names of the parties. However, if we are planning to issue a press release, we first advise the applicant of the rule but will ask permission to use his or her name. We have found that most applicants do not want their names in the paper for various reasons. We have not had any problems honoring the request.