

Looking Ahead....

NCPO Picks Las Vegas

The Nevada client protection fund has offered to host a NCPO Workshop in early 2003. The likely date is Friday, February 28, 2003, with a pre-workshop get together on Thursday evening.

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NCPO Leadership Changes

Electing at NCPO's annual meeting in Vancouver: President Janet Green Marbley (Ohio); President-Elect Carole R. Richelieu (Hawaii); Treasurer A. Root Edmonson (North Carolina); Secretary Georgia Taylor (Nevada); Director-at Large Betsy Brandborg (Montana). Other Directors: Martin A. Cole (Minnesota); Charles Goldberg (Colorado). Past-President William D.

Ricker, Jr. (Florida). Counsel Frederick Miller (New York).

Regional Vice-Presidents: Karen O'Toole (Massachusetts); Eileen W. Donahue (Illinois); Lynda C. Shely (Arizona); David Shearon (Tennessee); Martha Gonzalez (California); and Victoria Rees (Nova Scotia). ■

Message From The (New) President

Janet Green Marbley

I am honored to serve as the third President of the National Client Protection Organization, Inc. Bill Ricker, our Past-President, did an outstanding job leading NCPO. Bill worked tirelessly to advance the mission of client protection. My tenure as President-Elect under Bill's leadership will be a continuing source of guidance during my term as President.

Seven years ago, I became the third Administrator of the Clients' Security Fund of Ohio. My knowledge of client protection was very limited, to say the least. NCPO did not exist as an organization then, but I received much needed help from and support from several of NCPO's founders and members. That informal network of professionals is now a national organization providing information and support to protection funds throughout the United States and Canada.

The enthusiasm expressed at our annual meeting in Vancouver is evidence that NCPO intends to continue its efforts to support programs that help legal consumers who have been harmed by the dishonest conduct of a relative handful of lawyers. I am confident that together we will attain NCPO's priorities and goals.

A recent survey of NCPO's membership indicates that networking and educational activities are of paramount importance to our members. Likewise, our members view *The Client Pro-*

tection Webb as an invaluable tool for the exchange of helpful information within the client protection community. Thanks to NCPO Vice President Victoria Rees for conceiving and implementing this survey. Thanks also to Fred Miller, NCPO's Counsel, and Director Marty Cole for their work on *The Webb*; and to the Attorneys Liability Protection Society (ALPS) for its generosity in underwriting the costs of publishing and distributing our newsletter.

NCPO will soon begin the development of a training program for protection fund trustees, particularly newly appointed trustees. It will be an educational effort to acquaint trustees to their fiduciary roles in administering funds, as well as the concepts that are routinely employed in the evaluation of claims. A special committee, chaired by Ken Bossong, has been created to steer the program, and I invite everyone to help us in this important educational effort.

I look forward to the next two years. There's a lot to be done, and there are unique opportunities for promoting integrity in the practice of law, and public confidence in the administration of justice. Join me please in achieving those goals! ■

Florida's Client Protection Fund

William D. Ricker, Jr.

In January 2002, The Florida Bar celebrated the 35th anniversary of its Client Security Fund. Florida has a unified Bar and the Client Security Fund Committee is like any other standing committee of the Bar. The fund's revenues are allocated in the Bar's annual budget.

The CSF Committee is comprised of between 30 and 40 volunteer members of the Bar and, beginning in 2003, two public members who investigate claims and meet three times yearly to discuss and recommend payment to the Bar's Board of Governors. Lawyer members serve without compensation. There is an assigned Bar lawyer/director who is shared with other Bar entities, and a full-time fund coordinator who is responsible for the intake and assignment of claims and other necessary record keeping.

When a claim is assigned to a Committee member, the member initiates an investigation, which may include obtaining information from the disciplinary branch of the Bar, talking to the claimant, speaking with witnesses and hearing from the respondent attorney. Following the investigation, which is supposed to be completed in 90 days, the member recommends claim disposition to the Committee. The recommendation of the Committee is forwarded to the Board of Governors. Before the full Board considers a claim, a reviewing member from the judicial circuit from which the claim arose reviews the claim and makes a recommendation on payment. The Board must approve awards in excess of \$10,000.

Over the last several years, the Board of Governors has enacted regulations designed to streamline procedures and speed the payment of approved claims. The first change was to grant the fund administrator the authority to investigate and evaluate all claims for \$500 or less and place their recommended disposition on the Committee's consent agenda. That procedure has reduced the number of small claims that must be investigated by Committee members. The second change granted the Committee the final decision on awards of \$10,000 or less. All other awards require approval by the Board of Governors. A major new policy will limit committee membership to six years.

Florida has two types of monetary limits on claims, but no limit per lawyer. Claims for the reimbursement of unearned fees are limited to \$2,500. All other claims are limited to \$50,000. In the early years of the fund, these limits were significantly lower: \$300 for unearned legal fees, and \$3,000 for misappropriations.

In the mid-1980s the Board of Governors asked the Committee to find reasons to pay valid losses, rather than reasons to deny reimbursement. The effect on the fund was to increase the number and amount of awards. But too often, the fund is unable to fully pay all approved awards. The problem is addressed in a regulation that provides for the immediate payment of the first \$25,000 of an award, with each unpaid portion in excess of \$25,000 to be placed into a pool to be paid at the end of the fiscal year (June 30), on a pro rata basis until available funds are exhausted. This policy should result in full payment of 90 percent of approved awards.

Over the years the annual lawyer assessment has ranged from the original \$2.35 to the current \$20.00. The current funding formula generates \$1.4 million for reimbursement. The fund's administrative costs are paid by interest earned on the reserve fund or general Bar dues.

Florida is like most funds in requiring that the loss is caused by the wrongful act of a member of the Florida Bar. Pursuant to a 1977 decision of the Florida Supreme Court, a loss caused by a mere fiduciary relationship between a person who happens to be an attorney and another party is not sufficient to permit reimbursement. The loss must arise out of a traditional attorney-client relationship. *In Re Amendment to the Integration Rule and Bylaws Respecting Clients' Security Fund*, 346 So.2d 537, 538 (Fla. 1977).

The fund has the usual exclusions: no investment losses or thefts unrelated to an attorney-client relationship; no losses of law partners or relatives of the wrongdoer; and no losses by government agencies, institutional lenders, insurance companies, publicly held companies or subrogees, unless the claim is brought on behalf of an otherwise eligible claimant. There is two-year statute of limitations, but it is flexible enough not to do injustice to equity.

Millions of dollars have been reimbursed during these 35 years. While Florida lawyers can take great pride in their efforts to right wrongs, much remains to be done.

Both the maximum limits on awards and the annual lawyer assessment are too far below those in comparable jurisdictions. Florida has adopted the ABA model rule on overdraft notification, but not the equally helpful rule that requires insurers to notify clients of personal injury settlements. Nonetheless the client protection movement is alive and well in the Sunshine State and clients are better served because of it. ■

● *William D. Ricker, Jr. is a longtime leader of the Florida Bar and its client protection fund. He is the Immediate Past-President of the National Client Protection Organization.*

Arkansas Adopts Overdraft Notification Rule

Effective July 1, 2002, the Arkansas Supreme Court requires the reporting of overdrafts in client trust accounts maintained by Arkansas lawyers. The new program calls for an overdraft notification agreement between the Supreme Court, through its Office of Professional Conduct, and financial institutions throughout the state. Financial institutions will not have to have separate agreements with the lawyers who have client trust accounts with them. If a financial institution does not agree to the overdraft notification, no law firm trust account can be maintained with that bank. The Court also amended its law firm recordkeeping rule. The text of the new rules can be found on the Supreme Court's website: www.arkbar.com. Click on the button "New and Noteworthy". ■

New Discipline Policy in New Jersey

As reported in the *New Jersey Law Journal* (8/6/02), the state Supreme Court has created the new punishment of indefinite suspension for offenders "on the

An Experiment in Demographics

Michael J. Knight

The Model Rules for Lawyers' Funds for Client Protection identify publicity of fund activities and development of consumer protection and information programs as among the affirmative duties and responsibilities of a fund's Board of Trustees.¹ These efforts are vital to the early detection of losses and the prevention of losses. Also, there are benefits to funds that publicize their efforts and institute prevention programs including reduced claims and improved public perception of the legal profession.²

All funds, whether created by a judiciary or a bar association, share a common thread: losses span the range of legal practice. In New York, as in many other states, claims and awards are categorized into several main practice areas (e.g., Collection, Estates and Trusts, Unearned Legal Fees, Investments, Settlements, Realty Escrow, and "Other", our miscellaneous category). Our statistics are then calculated to reflect problem practice areas, and our Trustees, in turn, seek to produce consumer information and protection programs and focus public information efforts to address these problem practice areas.³ Our fund has also published several consumer education brochures and pamphlets,⁴ using the same collected information.

A continuing challenge, however, is how and where to target this information to produce the greatest result. While information regarding types of misconduct in claims is extremely useful in fashioning attorney regulation, it is not as helpful in identifying the most vulnerable client, our target audience.

With the advent of greater technology and a better ability to analyze data, we began to track Age, Occupation and Gender from our database. As an internal experiment, we recently reviewed over 3000 filed claims since 1996 and analyzed the raw data to make educated conclusions about where we find most

of our victims, and our business. The highlights:

Claimant Occupation

In New York, since 1996, 3001 claimants listed an occupation on their reimbursement application. Because of the wide diversity of individual occupations, it was necessary to divide all occupations into seven basic occupation categories: **Disabled, Incarcerated; Middle/Blue Collar; Professional Employment; Student; Retired and Unemployed.**

The largest number of filed claims in the sample came from the Middle/Blue employment area (1,831 claims). Next was Retired persons (467) followed by Professionals (301).

Likewise, the largest losses alleged were from the category of Middle/Blue employment (\$46.9 million), followed by Retired persons (\$21.7 million) and Professionals (\$12.4 million).

Finally, the largest amount of awards reimbursed were within the category of Middle/Blue employment (\$10 million), followed by Retired persons (\$5.4 million) and Professionals (\$2.3 million).

For each occupation category, we further identified the type of misconduct involved. For example, of the 1,831 claims filed by Middle/Blue income claimants, 1,004 of these claims involved unearned retainers, of the 467 claims filed by Retired Persons, 125 involved realty claims, and so on.

Claimant Age

Since 1996, 2,791 claimants listed their age on their reimbursement application. Again it was necessary to separate all ages into the following categories: **Ages 15-20; Ages 21-30; Ages 31-40; Ages 41-50; Ages 51-60; Ages 61-70; Ages 71-80 and Over Age 80.**

The largest number of filed claims in the sample came from claimants Ages 41-50 (743 claims), followed Ages 31-40 (701) and Ages 51-60 (517).

The largest losses alleged were from the Age 41-50 category (\$16.9 million), followed by the Ages 51-60 category (\$16.8 million) and Ages 71-80 category (\$13.9 million).

Finally, the largest amount of awards reimbursed were within Ages 51-60 category (\$3.9 million), followed by Ages 41-50 category (\$3.8 million) and Ages 71-80 category (\$2.8 million).

Again, as with occupation, each age group was analyzed by type of misconduct: For example, the 743 claims filed by claimants Age 41-50 included 393 claims involving unearned retainers.

Claimant Gender

Finally, 3001 claimants listing an occupation on their reimbursement application also indicated a gender. Non-gender titles such as a business or an Estate were treated as "Other".

Gender is the least reliable of the demographic data collected from our database. The information tallied represents only an initial determination of whether our claimant is a "Miss", "Ms.", "Mrs.", a married couple - "Mr. and Mrs." or simply a "Mr.". Often, these designations change during a claims investigation when it's learned, for example, that an estate is a proper claimant, or a claim is shared by a husband and wife, etc.

The largest number of filed claims in the sample came from the "Mr." category (1,451) followed by "Ms." (541) and "Mrs." (433). The largest losses alleged were also from the "Mr." category (\$46 million), followed by the "Mrs." (\$11.7 million) and "Mr. and Mrs." (\$11.6 million).

Finally, the largest amount of awards reimbursed were within the "Mr." category (\$7.4 million), followed by "Ms." (\$3.2 million) and "Other" (\$2.9 million).

Conclusion

Obviously, this is a topical treatment of raw data, but an important first step in identifying the types of victims we deal with. We are refining our information, cross-referencing it and hope to use the results as a guide to better target all strata of legal consumers.

Collection and analysis of this demographic information provides a unique opportunity to calculate probabilities and predict trends which, when married to traditional information regarding attorney misconduct, will permit the New York Lawyers' Fund to more accurately and wisely invest public information and education outreach efforts.

I would encourage all funds to undertake a similar review of claims demographics, even if only for the most recent reporting year. As this information

Veteran New York Trustees Step Down

The New York Lawyers' Fund is losing more than 32 years of hands-on experience with the retirements of Trustees Ray W. Manuszewski and Theodore D. Hoffmann. Mr. Manuszewski has served as the fund's Treasurer since 1981. Trustee Hoffmann, the fund's Vice-Chairman, has served since 1990. Fund trustees in New York are appointed by the state's high court and serve three-year terms, which are renewable.

Peace Reigns in Hawaii

The Supreme Court of Hawaii has amended its rules to create a nominating committee to fill vacancies on court agencies like the client protection fund. Previously only the Hawaii State Bar Association had that authority.

Another rule change gives the Supreme Court sole authority for approving the fund's budget, after review and comment by the State Bar. The fund's budget was previously subject to bar association approval. The rule changes conclude a contentious struggle between the bar and the fund over the fund's finances and management. The fund's new website can be found at www.lawyersfundhawaii.com.

Progress Report from Illinois

Illinois' client protection fund approved 73 claims totaling \$257,219 to eligible victims of dishonest lawyers in 2001. The fund has a \$10,000 maximum limit on awards, and the majority of client losses are fully reimbursed. Most losses in 2001 involved the refund of legal fees paid in advance. The fund was created by the Illinois Supreme Court in 1994.

Leaders Elected in Maryland

The Client Protection Fund of the Bar of Mary-

land (new name!) has re-elected its leaders to new terms: Richard A. Reid as Chairman; Barbara Ann Spicer as Vice-Chairman and Secretary; and Isaac A. Hecht as Treasurer.

New Administrator in Michigan

Robin Lawnichak has been appointed the Administrator of Michigan's client protection fund. Robin can be reached at Rlawnichak@mail.michbar.org. Welcome to our community Robin!

Minnesota Fund Relocates

Marty Cole and the Minnesota Client Security Board have relocated to 1500 Landmark Towers, 345 St. Peter St., St. Paul, MN 55102-1218. (800) 657-3601.

Settlement Authority in Nebraska

A personal injury settlement made by a lawyer without the client's express authority, or acquiescence in open court, is not binding upon the client. The Nebraska Supreme Court holds that the lawyer-client relationship in itself does not provide a lawyer with implied or apparent authority to settle a client's claim without the client's express approval. *Luethke v Shur*, 8/9/02

Model Rules Amended

A package of amendments proposed by the ABA's Standing Committee on Client Protection were approved at the ABA's August 2002 meeting. The amendments, described as "fine-tuning" revisions, include expanding the definition of covered lawyer to include suspended and disbarred lawyers; encouraging disciplinary agencies to inform victims of lawyer dishonesty about client protection funds; extending the time period for filing claims to five years; barring investment losses; barring consequential and incidental damages; and requiring restitution from dishonest lawyers.

Sharing the Pain

The client protection funds of New Jersey and

New York continue to share the cost of reimbursement where a loss involves a dishonest lawyer admitted to practice in both jurisdictions. The most recent claim resulted in equal contributions by both funds to reimburse a \$188,532 theft by a lawyer who was retained in New York to administer a New Jersey decedent's estate.

Brenda Catlett Retires

Brenda Catlett has retired as the administrator of the Client Security Trust Fund for the District of Columbia, a post she held since 1984. Brenda is a past Chair of the ABA's Advisory Commission on Lawyers' Funds for Client Protection, and has been a active supporter and member of NCPO.

Thanks to Brenda's efforts to increase NCPO membership, the DC fund received NCPO's "110% Award" in June, 2001. That award recognized that all Trustees and staff of the DC fund were members of NCPO. Brenda looks forward to new responsibilities as Grandmother Catlett. We will sure miss Brenda!

California Blizzard

The Client Security Fund of the State Bar of California celebrates its 30th anniversary this year. Business remains brisk, with more than 1300 claims for reimbursement filed each year. The fund's 2001 annual report can be found at www.calbar.ca.gov/calbar/pdfs/csfreport_2001.pdf.

Progress Report from Washington State

Thus far in 2002, the client protection fund in Washington State has approved \$250,000 in reimbursement awards (which it designates as "gifts") to 47 eligible victims of 20 dishonest lawyers.

The Supreme Court recently granted the protection fund subpoena powers, which permits the fund to investigate claims where the state's office of disciplinary counsel lacks jurisdiction.


Tough Love in New York City

The obsession of a middle age lawyer with a young blonde stripper has resulted in awards of \$2 million plus from the New York Lawyers Fund. The devout lawyer/family man stole client funds to finance his 5-year affair with the stripper which, by the way, he swears was strictly Platonic. Mitchell Rothken is serving 3 to 9 years in state prison.

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In Memorium
Gilbert A. Webb, Esquire