

THE NCPO *e*-FORUM

A COLLECTION OF INTERNET TOPICS

SEP2004-DEC2004

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 webmaster@ncpo.org.



Real Estate Escrow Losses..... [3](#)
Spot/Random Audit. [4](#)
Pro-Rated Assessment. [6](#)
NEXUS Requirement..... [7](#)
BOARD COMPOSITION..... [11](#)
ABANDONED FILES..... [14](#)
1099 FORMS..... [14](#)
AWARDS FOR FOREIGN LAWYERS. [18](#)

Real Estate Escrow Losses

In New York, roughly one-third of all of our losses involve the theft of realty escrows in the practice of law. The vast majority of these involve the theft of realty down payments.

Geographically, these losses occur in the first and second departments in New York, a/k/a Manhattan and Long Island. In these jurisdictions, the practice is for the seller's lawyer to hold as escrow agent 10% of the purchase price as the down payment. Some of the problem has been alleviated by requiring the contract of sale to identify the banking institution and account where escrow funds are being held.

What is your jurisdiction's experience with Real Estate Escrow Losses?

What is your Bar's practice with respect to real estate down payments? (E.g. do lawyers or third-party vendors hold escrow fund.)

Does your State have any special loss prevention measures in this area?

Your help is greatly appreciated.

Mike Knight

NYS Lawyers' Fund

In Oregon, lawyers are rarely involved in real estate closings (at least as far as holding the money goes). That is all done by escrow or title companies that are carefully regulated by the state. Our Fund's real estate losses generally are proceeds of sales that the lawyer receives for the client and misappropriates.

Lawyers are not required to be licensed to act as escrows in real estate transactions, but few do it because of the ethical confusion about who (if anyone) is my client, etc. We recently disciplined a lawyer who tried to be the "escrow" for a sale by his client. He took the buyer's earnest money, then when the deal fell through he refused to return it or pay it over to his own client because he felt conflicted in his obligations. He ended up holding the money for over a year before someone reported him to the bar. He was held to have had a conflict of interest.

Sylvia Stevens, Oregon State Bar

In California, real estate escrows are handled by bonded escrow companies.

Martha Gonzales, California Client Security Fund

Mike,

Claims for stolen funds held in escrow pending the sale of real estate generally do not constitute a huge area of loss for the Clients' Security Board. The number of real estate claims fluctuates from year to year. There are no preventive measures in place. I would certainly be interested in learning about ones that are found to be effective such as the identification on the contract of sale of the financial institution

holding the escrow funds.

Karen O'Toole, Massachusetts Client Security Board

Thank goodness Hawai'i people usually use escrow cos., not lawyers. We've had one such a claim (fingers crossed), that I recall. A foreigner lost \$35,000 deposited in anticipation of a purchase. Lawyer got disbarred, of course.

Carole R. Richelieu

Chief Disciplinary Counsel

Office of Disciplinary Counsel

of the Disciplinary Board of the Hawai'i Supreme Court

Spot/Random Audit

Greetings everyone! I need some help...and the input of other Funds is always extremely valuable.

Here in Ontario (home of the Law Society of Upper Canada), we have for some years maintained what we call a Spot and Focused Audit program. The name is fairly self-explanatory. Essentially, on both a random and risk-targeted basis, we send out auditors - some staff, some contracted - to examine selected lawyers' books and records. The auditors' task is to ensure that financial practices are satisfactory, that there is "compliance" with the relevant by-laws, and that there are no deviations from our regulatory expectations. This function is independent of our response to actual complaints or suspected violations of lawyers' ethical or professional duties. Rather, the objective of Spot Audit is genuinely to support and promote high quality law firm record keeping practices - it is as much preventative and remedial as our normal investigative and disciplinary function is reactive and punitive.

What makes our Spot Audit program relevant to this forum is that it is entirely funded by our Lawyers Fund for Client Compensation, rather than as part of our ordinary member fee levy. The basis for this should be obvious: better record-keeping, more chance of "engagement" with the Law Society, quicker response to risk factors - all combine, at least in theory, to reduce the size and/or volume of claims against the Fund.

Escalation from a Spot Audit to a disciplinary investigation and subsequent prosecution is of course always possible, and occurs in a certain percentage of cases. Even then, we still think that we are catching at least some of our more dishonest members before they become major drains on the Fund.

I would be happy to furnish additional information about Spot Audit, its selection criteria and its activities, to anyone who is interested. I can also put you in touch with the program's managers, who I am sure would be happy to expand on what I've written above. But my question today is relatively straightforward, and is driven by a need to reinforce (or even challenge) our own perception of the value of such a program:

Does anyone else have a Spot Audit program like ours? That is, is anyone else operating what we might

call an "inspection model" or "compliance model" for managing (and hopefully reducing) anticipated claims levels?

Has anyone assembled any empirical or actuarial data to track the success or cost-effectiveness of such an approach?

I would be very grateful for any responses I receive.

Many thanks, and have a great weekend.

Dan Abrahams

Professional Regulation Counsel and
Acting Manager, Lawyers Fund for Client Compensation
Law Society of Upper Canada

The North Carolina State Bar has had a random audit program since 1985, but we do not select members subject to audit on a "risk-targeted basis." Our auditor, Bruno Demoli, audits 60 trust accounts per quarter. Two of NC's 34 judicial districts are randomly selected each quarter by weighted criteria. That is, although all districts are subject to being selected each quarter, the districts that have been selected least or have had a long period since being last selected have a higher percentage chance of being selected. After the two districts are selected, the members of the districts to be audited are truly selected randomly. During the audit, Bruno looks at one year of the member's records to determine whether the member is keeping adequate records - i.e. is the member keeping a journal and ledgers and reconciling quarterly, etc. Bruno does not do a true financial audit to determine whether each client's funds were properly disbursed. This program has been very educational for our members. Bruno's name is probably known (and feared) by every member in NC. The program has certainly been worth the cost. The random audit program is funded from the State Bar's budget rather than from the Client Security Fund's budget.

Root Edmonson, North Carolina Client Security Fund

D. C. does not have spot audits.

Beverly Lewis-Koch, DC Client Security Fund

Dan,

NJ's Random Audit Program (RAP) is run by the Office Of Attorney Ethics. OAE Director Dave Johnson's Annual Report for 2002 had a comprehensive section on RAP to mark its 20th Anniversary. I'll FAX it to you shortly. A few quick thoughts:

- 1) RAP is funded out of the disciplinary portion of the assessment, rather than the Fund's, although the Fund conducts the entire annual assessment.
- 2) There are two types of audits, and two separate, corresponding audit programs in OAE: RAP and Audits for Cause. The latter constitute portions of disciplinary investigations, where there is reason to proceed. RAP is strictly random in selection, and there would be hell to pay if it weren't. I'm not sure what risk-targeted bases you use for your Focused Audits, but I have a feeling they would be a tough sell

here.

3) When random audits turn up bad things, they morph into audits for cause.

4) Most often RAP serves as an educational tool.

5) Tracking the success or cost-effectiveness of any loss-prevention measure is tricky; it is impossible to measure what has been prevented. I can only tell you that dozens of actively misappropriating lawyers have been stopped dead in their tracks by this program. One can argue about just how much more would have been stolen without the program, but it is silly to think it is anything other than quite substantial, probably millions.

6) Few lawyers exult when randomly selected; yet, complaints are very rare and letters of thanks are surprisingly common.

Best regards - and hope to see you at the NCPO Planning Session in Chicago on 10/15.

Ken Bossong

Kenneth.Bossong@judiciary.state.nj.us

Pro-Rated Assessment

Aloha!

My Trustees are meeting on September 21, and would like to know whether any other jurisdictions pro rate fees assessed for the Fund. For example, new admittees only pay a portion of the fee or attorneys changing status only pay a pro rata of the yearly fee. Or does your jurisdiction charge a flat fee no matter when the attorney joins the ranks during the billing period?

Mahalo,

Carole R. Richelieu

Fund Administrator

Lawyers' Fund for Client Protection

of the Bar of Hawai'i

In response to Carole Richelieu's question, British Columbia does allow members who join part way though the year to pay a pro rated portion of the Special Fund fee, as per the attached schedule, but no refund of the Special Fund fee is provided for members who leave the profession during the year.

Hope this information helps.

Mary Ann Cummings

Manager, Special Compensation Fund and

Custodianship Department, LSBC

NEXUS Requirement

Does your Fund require that a claim have a nexus with your jurisdiction for the claim to be approved? (I can't recall if this topic has recently been posted on the discussion list - my apologies if it has.)

C. Freudenburg

Director, Attorney/Client Relations Program

District of Columbia Bar

From: Sylvia Stevens [mailto:sstevens@osbar.org]

Sent: Thursday, September 30, 2004 12:21 PM

To: Holtaway, John

Subject: RE: Nexus requirement -discussion list inquiry Oregon--only in the sense that we only pay claims involving Oregon lawyers.

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

From: Cole, Marty [mailto:Marty.Cole@courts.state.mn.us]

Sent: Thursday, September 30, 2004 12:31 PM

To: Holtaway, John

Subject: RE: Nexus requirement -discussion list inquiry

in Minnesota, yes: RULE 3.02 FILING CLAIMS

The Board shall consider a claim if: b. The loss of the claimant arose out of and during the course of a lawyer-client relationship of a matter in this state, or a fiduciary relationship between the lawyer and the claimant which arose out of a lawyer-client relationship in this state;

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

From: Karen O'Toole [mailto:k.otoole@massbbo.org]

Sent: Thursday, September 30, 2004 12:35 PM

To: Holtaway, John

Subject: RE: Nexus requirement -discussion list inquiry

No claimant does not have to have a nexus with the Commonwealth of Mass. in order for the claim to be approved. It is uncommon that there is absolutely no nexus in the past or present, however.

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

Sent: Thursday, September 30, 2004 12:47 PM

To: Holtaway, John

Subject: RE: Nexus requirement -discussion list inquiry

No. We considered a claim against an inactive Washington lawyer living in Carefree, Arizona (where else?) who had taken 10s of thousands of dollars to assist a guy in a criminal case. However, the committee concluded that because of some of the conduct of the "client," any payment from the Fund would be unjust enrichment, and denied the claim.

Bob Welden
General Counsel
Washington State Bar Association

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

From: Carol Green [mailto:greenc@kscourts.org]

Sent: Thursday, September 30, 2004 12:51 PM

To: Holtaway, John

Subject: Re: Nexus requirement -discussion list inquiry Kansas requires a lawyer-client relationship with a Kansas lawyer. If that relationship occurs outside Kansas, the Fund would look carefully at the circumstances. Location, however, would not be an absolute bar.

Some follow-up to Minnesota's rule - it has only significantly affected one set of claims: border lawyer licensed in both Minnesota and North Dakota with offices in both states; represented clients in both states, stole money from clients in both states; disbarred in both states; Minnesota client protection fund paid all Minnesota clients and North Dakota clients represented in Minnesota, but did not pay North Dakota clients who lawyer represented only in North Dakota (so no real nexus to Minnesota); unfortunately, ND's fund was essentially inoperative at the time, so those victims were not reimbursed at all.

From: Cole, Marty [mailto:Marty.Cole@courts.state.mn.us]

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

From: Christopher Blanchard

[mailto:Christopher.Blanchard@jud.state.ct.us]

Sent: Thursday, September 30, 2004 1:01 PM

To: Holtaway, John

Subject: RE: Nexus requirement -discussion list inquiry

Our fund has interpreted our superior court rules to require such a nexus. Our Practice Book Section 2-68(a) provides, in part, that the fund has been established to reimburse clients for losses "resulting from the dishonest conduct of attorneys practicing law in this state in the course of the attorney-client relationship." In addition, our Practice Book Section 2-71(a) provides that an eligible claim must be based on the conduct of an attorney who "was a member of the Connecticut bar and engaged in the practice of law in this state."

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

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

Sent: Thursday, September 30, 2004 1:27 PM

To: Holtaway, John

Subject: RE: Nexus requirement -discussion list inquiry

Currently, all we require is that the attorney is a California attorney who was dishonest no matter where it occurred.

New Hampshire: must be a loss caused by the defalcation of lawyers admitted to practice in New Hampshire occurring in New Hampshire and in the course of the client-lawyer or fiduciary relationship between the lawyer and the claimant.

Rhode Island: While the Rule is not express, a claim may be filed only when the accused lawyer has been been disciplined by the Rhode Island Supreme Court or placed on inactive status etc.

John Bomster - member of RI and NH Funds

Ontario does not require that the claimant have a nexus with this jurisdiction, nor does the loss necessarily have to be sustained here. It is not altogether unknown, for example, for us to entertain a claim in which a foreign claimant has been induced to invest in a fraudulent scheme flowing through an Ontario lawyer's trust account, but where the scheme itself is managed offshore. The nexus to this jurisdiction in those circumstances would be remote, at best.

The closest we have to a nexus requirement is found in Guideline No. 15, as follows:

In the case of a member who conducts a legal practice in a jurisdiction outside Ontario, other than a practice within Canada that complies with the provisions of the Inter-Jurisdictional Practice Protocol, no grant shall be paid out of the Fund when the funds or property of the claimant were received by or on behalf of the member in connection with a matter that originated in that jurisdiction or in connection with a trust of which the member was or is a trustee that originated outside Ontario.

What this means, in essence, is that we are not on the hook for loss resulting an Ontario lawyer's dishonesty while he or she is practising in, say, New York state and dealing with matters originating there. Pretty much everything else is fair game, however.

Dan Abrahams

Professional Regulation Counsel and Acting Manager, Lawyers Fund for Client Compensation

Law Society of Upper Canada

[mailto:Kenneth.Bossong@judiciary.state.nj.us]

Sent: Monday, October 04, 2004 10:20 AM

To: Holtaway, John

Subject: Re: FW: Nexus requirement -discussion list inquiry

Martha, Really? If a CA lawyer has a friend or a relative in NJ who hooks him up with a couple of estates and trusts in NJ and he steals hundreds of thousands from them, are you really going to pay them? It would not deter your Trustees that there is no nexus to CA and the fact of the lawyer's CA law license was of no moment in the transaction?

(While we're at it: would it matter whether the lawyer's conduct in NJ were UPL or authorized MJP?)

For what it's worth, the NJ Fund would not pay in the converse situation.

Ken Bossong

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

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

Sent: Thursday, September 30, 2004 10:09 PM

To: Holtaway, John

Subject: Re: Nexus requirement -discussion list inquiry

Yes. RSCH 10.3(a) requires the offending attorney to have been licensed in Hawaii at time of conduct; maintain a law office in Hawaii; claimant engaged services in Hawaii; and dishonest conduct occurred in Hawaii.

Carole R. Richelieu

Fund Administrator

Lawyers' Fund for Client Protection

of the Bar of Hawai'i

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

From: Victoria Kremski [mailto:VKREMSKI@mail.michbar.org]

Sent: Thursday, September 30, 2004 3:19 PM

To: Holtaway, John

Subject: Re: Nexus requirement -discussion list inquiry

Yes, in Michigan.

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

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

Sent: Monday, October 04, 2004 10:59 AM

To: Holtaway, John

Subject: RE: FW: Nexus requirement -discussion list inquiry

Missouri has paid a number of claims on two Missouri licensed lawyers who were "representing" individuals (usually incarcerated) in federal court in various states. The Missouri licensed lawyers were not licensed in the other states and only once were associated with local counsel.

Often the lawyers got their business over the internet and did not actually travel to the state.

BOARD COMPOSITION

Greetings all!

Michigan is drafting a proposal to add non-lawyers to our Standing Committee. Does your state have certain criteria non-lawyers must meet in order to be appointed to the committee/board, i.e. educational requirements, business experience, etc. Also, is there a limit as to the number of non-lawyers who may be appointed to the Board/Committee? Any information you can pass along would be most helpful.

Thanks so much.

Victoria V. Kremski
Deputy Regulation Counsel
State Bar of Michigan

Oklahoma has several lay members including a CPA. She is most helpful but we have to careful scheduling meetings before the tax deadlines. Daniel Sprouse, Chairman Oklahoma Client Security Fund. Greetings all!

Daniel Sprouse, Oklahoma Client Security Fund

Hello Victoria,

Ohio's governing Rule provides that at least one of the seven members of our CSF Board of Commissioners "shall be a person not admitted to the practice of law in Ohio or any other state." All Board members are appointed by the Supreme Court of Ohio, and the Rule does not contain any specific criteria that the lawyer or non-lawyer Board members must meet.

Janet Green Marbley, Administrator
Clients' Security Fund of Ohio

Ditto for Minnesota, except two of our seven board members must be public(non-lawyer) members.

Marty Cole, Minnesota Client Security Board

The Wisconsin Supreme Court Rule requires two nonlawyer members on the seven member committee. As in Ohion, the rule does not contain any specific criteria that the lawyer or non-lawyer Board members must meet.

Kris Wenzel
Administrator, Wisconsin Lawyers' Fund for Client Protection

Victoria, Oregon has had a public member on the Client Security Fund Committee for many years. There are also public members on our Board of Governors, which has final say over any payments from the fund. We don't have any specific requirements other than that the public member can't be a former lawyer. We also try not to appoint people who are married to or related to lawyers (particularly on the Board of Governors) but our CSF public member now is the wife of a semi-retired judge. We look for people with some business experience, but it isn't a requirement. We have had public members from all walks of life, including a physician, a secretary, a leasing company manager, and a banker, to name a few. It is an excellent thing to do--public members have such a different view of things than lawyers!

Sylvia E. Stevens
Senior Asst. General Counsel
Oregon State Bar

The Law Society of Alberta has 4 "Lay Benchers" who are appointed by the Government of Alberta; these Lay Benchers are non-lawyer members of the Law Society. The appointment is a four year term, and these lay people participate in all of the standing committees of the LSA at various times over their terms, in addition to attending Convocation and being able to sit as members of disciplinary hearing panels.

Two of the four Lay Benchers are appointed each year to the Finance Committee, which is the committee that oversees claims against the Assurance Fund. Rule 142(1) of the Rules of the Law Society of Alberta also specifies that on any claims panel, one panel member will be a Lay Bencher for the purpose of adjudicating claims.

Jennifer Rothery
Hearing Coordinator Administrator -
Custodianships & Assurance Fund Claims
The Law Society of Alberta

In Illinois, the Client Protection Program is operated under the auspices of the Commissioners of the Attorney Registration and Disciplinary Commission. There are 7 Commissioners, 3 are non-lawyers. We also have a Review Panel to that handles appeals on claims; ther are 3 panel members, 1 is a non-lawyer. We have no guidelines for who may be a non-lawyer member of either entity. Over the years, we have

had several educators, bankers, an engineer, a newspaper publisher, a deputy mayor, owner of a printing business.

Eileen Donohue, Illinois CPF

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

From: Jane Schoenike [mailto:JSchoenike@nebar.com]

Sent: Friday, October 08, 2004 9:49 AM

To: Marbley Green Janet

Subject: RE: Non-Lawyer Members of Board/Committees

Nebraska has two designated non-lawyer slots on a board of eight. No criteria.

No criteria for non-lawyers, but CPAs are usually one of our Trustees. The Trustees must consist of 3 lawyers and 2 non-lawyers. RSCH 10(b).

Carole R. Richelieu
Fund Administrator
Lawyers' Fund for Client Protection
of the Bar of Hawai'i

To All: The Rhode Island Fund is a creature of the Bar and is comprised of "seven or fewer members of the Rhode Island Bar Association appointed by the President Elect to serve one yearCommittee members may servesuccessive terms." There are no public members.

The New Hampshire Fund is pursuant to Court Rule and administered by "a nine member committee appointed by the President of the New Hampshire Bar Association with the approval of the associations's Board of Governors, which committee shall included at least two public members..."

John Bomster - member RI and NH Committees

Victoria:

The composition of the Board of the New York's Lawyers' Fund is similar to the other jurisdictions that replied to you. We have seven trustees, five of whom are lawyers while two are business or community leaders. Our rules do not set any restrictions or requirements for the Board. They only provide that the seven trustees are appointed by our high court. The Court has maintained our Board composition of lawyers and non-lawyers since our inception. It works very well - our non-lawyer members bring a new perspective to claims and issues as well as their individual talents and expertise.

Tim O'Sullivan, NY Lawyers' Fund

ABANDONED FILES

From: Linda Oligschlaeger [mailto:lindao@mobar.org]

Sent: Thursday, October 21, 2004 1:08 PM

To: Holtaway, John

Subject: Provisions for Abandoned Client Files

Do you know of any state that has a Rule that provides for the storage and the associated costs when a lawyer abandons client files that can't be destroyed or returned to the client?

Thanks, Linda

Linda Oligschlaeger

Membership Services Director

The Missouri Bar

We have RSCH 2.20 (d):

2.20. Trustee proceedings.

(d) Disposition of unclaimed files. Following discharge of the trustee, the attorney's client files shall be stored by Counsel for a period of one (1) year. At any time thereafter, Counsel may publish a legal notice in a newspaper of general circulation announcing that the attorney's client files will be destroyed in thirty (30) days if unclaimed. Upon expiration of the thirty (30) day period, Counsel may destroy any unclaimed files which, in the exercise of discretion, Counsel concludes do not contain original documents of value to the attorney's clients.

Carole R. Richelieu

Fund Administrator

Lawyers' Fund for Client Protection

of the Bar of Hawai'i

1099 FORMS

From: Ann Hetzler [mailto:Ann.Hetzler@staff.azbar.org]

Sent: Wednesday, November 17, 2004 10:54 AM

Subject: 1099 tax forms

At our recent Client Protection Fund Board of Trustees meeting, there was some discussion regarding whether or not 1099 forms should be provided to claimants. Our Trustees requested that I ask you to please post this question on the CPF list serve. In addition to knowing whether or not these forms are provided to claimants, I would like to know why they decided not to provide them, or why they decided to provide them.

Thank you very much, and have a Happy Thanksgiving!

Sincerely,

Ann

From: Gonzales, Martha [mailto:Martha.Gonzales@calbar.ca.gov]
Sent: Wednesday, November 17, 2004 12:10 PM
To: Holtaway, John
Subject: RE: 1099 tax forms/client protection funds

As I recall from 17 years ago, this issue arose from with my predecessor, so I am not sure if this is what really happened; but what I recall is the decision was made that it was up to the claimants to decide whether or not their claim was taxable. Since they had suffered already, the fund did not want to get involved in the matter. To this date we do not provide 1099s

From: Tonimoss@aol.com [mailto:Tonimoss@aol.com]
Sent: Wednesday, November 17, 2004 1:56 PM
To: Holtaway, John
Subject: Re: FW: 1099 tax forms/client protection funds

Maryland does not provide 1099's. Our accountants said something like "they would not have had to declare the income from an accident, if that was the case, or what they paid attorney, etc. so we do not provide 1099's.

From: Tim O'Sullivan [mailto:tos@nylawfund.org]
Sent: Wednesday, November 17, 2004 2:29 PM
To: Holtaway, John
Subject: Re: 1099 tax forms/client protection funds

Ann: in NY, during my years here, our Trustees have never discussed this issue. I do not know whether awards from the Fund are taxable income to the claimants. When we have been asked, we have advised claimants to consult with their accountants and or lawyers.

Tim O'S

From: Christopher Blanchard
[mailto:Christopher.Blanchard@jud.state.ct.us]
Sent: Wednesday, November 17, 2004 3:22 PM
To: Holtaway, John
Subject: RE: 1099 tax forms/client protection funds

Connecticut does not provide 1099s. I don't recall specifics, but I do recall that some research was done into the question, and the conclusion was reached that we did not need to provide 1099s.

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

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

From: Carla Freudenburg [mailto:CFreudenburg@dcbar.org]
Sent: Wednesday, November 17, 2004 2:43 PM
To: Holtaway, John
Subject: RE: 1099 tax forms/client protection funds

Although the D.C. Fund does not provide 1099 forms to claimants, we inform the claimant, in writing, that his/her reimbursement will be reported to the IRS on the 1099 form filed by the Bar, and that the claimant should consult with his/her tax preparer to ascertain if this amount should be considered taxable income.

It appears that the Fund adopted this approach because it was administratively impractical to determine if a 1099 should be sent to a claimant in every instance of reimbursement.

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

From: John S. Gleason [mailto:john.gleason@arc.state.co.us] Sent: Wednesday, November 17, 2004 4:26 PM
To: Holtaway, John
Subject: RE: 1099 tax forms/client protection funds

Colorado does not 1099.

From: Kenneth.Bossong@judiciary.state.nj.us
[mailto:Kenneth.Bossong@judiciary.state.nj.us]
Sent: Thursday, November 18, 2004 9:49 AM
To: Holtaway, John
Subject: Re: 1099 tax forms/client protection funds

Ann,

NJ does not issue 1099s. For the vast majority of claimants, replacing their stolen money should not be a taxable event. The very few, if any, who deducted the loss when it happened are sophisticated enough to

understand the Tax Benefit Rule and declare the recovery.

Ken

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

From: Kathy Peifer [mailto:kpeifer@palawfund.com]

Sent: Thursday, November 18, 2004 7:36 AM

To: Holtaway, John

Subject: Re: 1099 tax forms/client protection funds

It is my understanding that the awards paid by the Fund take the nature of the funds that were misappropriated. Therefore, if the misappropriated funds were taxable, the award would be taxable. If the misappropriated funds were not taxable, then the award would not be taxable. We also advise claimants that they should discuss this matter with their tax preparers.

Kathryn J. Peifer, Esquire

Executive Director

Pennsylvania Lawyers Fund for Client Security

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

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

Sent: Thursday, November 18, 2004 11:15 AM

To: Holtaway, John

Subject: 1099 tax forms/client protection funds

As Ken Bossong pointed out, NJ does not issue 1099's for Fund awards because generally the money stolen was nontaxable to begin with. For example, personal injury awards are not taxable and reimbursed fees are initially paid by clients with taxed funds in the first place (i.e. income).

But the gray area comes in where the Board reimburses money stolen from the sale of an asset, such as a business or business asset. One claim that comes to mind was approved by the NJ Board where the lawyer stole a substantial amount of money from the sale of an insurance business from two partners. The sale proceeds that the lawyer stole would clearly have been taxable, but the lawyer gave advice intended only to fill his pockets, and told the clients that giving him the money and investing it in a certain income producing manner would offset taxable triggers. Of course it did not, so when our Board approved the award, it merely required the Claimants to prove that they filed the necessary tax returns to ensure them that the clients would comply with their tax obligations on the profit.

Dan Hendi, NJ

AWARDS FOR FOREIGN LAWYERS

In light of the recommendations made by the ABA Commission on Multijurisdictional Practice, the Standing Committee on Client Protection is reviewing the ABA Model Rules for Lawyers' Funds for Client Protection to see if amendments are necessary to address the issues of temporary practice by U.S. lawyers in U.S. jurisdictions where they are not licensed, practice by foreign legal consultants (FLC's) and temporary practice by foreign lawyers. (i.e. ABA Model Rule for Temporary Practice by Foreign Lawyers).

Would you please let me know if your Fund has ever received and/or paid a claim against:

- 1) A lawyer licensed in a U.S. jurisdiction but not your state;
- 2) A foreign legal consultant (24 U.S. jurisdictions currently have FLC Rules); and
- 3) A foreign lawyer not licensed in any U.S. jurisdiction.

If so, please let me know how many?

Thanks for your help.

John A. Holtaway
Client Protection Counsel
American Bar Association

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

From: Kris Wenzel [mailto:kwenzel@wisbar.org]

Sent: Thursday, December 09, 2004 9:33 AM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

John,

Yes to #1: A New York state lawyer, Calvin Eleby, Jr., who, with a WI attorney, Phaidra Knight (Ken, she is now a resident of New Jersey) stole \$41,514.95 from a WI resident. The fund named both attorneys in its claim: Tim O'Sullivan is aware of the case, too. The committee's motion reads: "approve the claim in the amount of \$41,514.95 against Phaidra Knight and Calvin Eleby, Jr. because it is the belief of the committee that the criminal prosecution was occasioned by the activity of the Wisconsin lawyer and that the committee will seek contribution/reimbursement to the extent possible from the New York Fund for Client Protection as Eleby is licensed in the state of New York. The motion passed unanimously." Note: The WI attorney was still licensed in WI at the time of the committee's action as was Eleby in New York.

No to #'s 2 and 3

Kris

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

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

Sent: Thursday, December 09, 2004 9:32 AM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

No. No. No.

However, we have paid claims (many) on two Missouri licensed lawyers litigating on federal habeas cases in states in which they were not licensed.

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

From: Cole, Marty [mailto:Marty.Cole@courts.state.mn.us]

Sent: Thursday, December 09, 2004 9:35 AM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

No to all three questions for Minnesota...

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

From: Karen O'Toole [mailto:k.otoole@massbbo.org]

Sent: Thursday, December 09, 2004 9:49 AM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

The Massachusetts Clients' Security Board has never paid a claim against any former lawyer who was NOT a Massachusetts licensed lawyer. The Board has never received a claim involving a foreign legal consultant or a lawyer not licensed in Mass.

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

From: Donahue, Eileen [mailto:edonahue@iardc.org]

Sent: Thursday, December 09, 2004 10:05 AM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

No to all three questions for Illinois.

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

From: Tonya Herring [mailto:THerring@nmbar.org]

Sent: Thursday, December 09, 2004 10:12 AM

To: Holtaway, John

Cc: Christine Morganti; Richard Spinello

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

In answer to your questions about the Client Protection Fund receiving or paying out funds against attorneys in another state or foreign jurisdiction, the answer is NO. In fact, I'm sure the Bar's interpretation of our CPF Rules would prohibit the fund from reimbursing clients unless the deceased or suspended attorney had been a licensed New Mexico attorney. We have no provision for reimbursing clients that have been harmed by attorneys from any jurisdiction other than New Mexico.

Tonya Herring

Client Attorney Assistance Program

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

From: Keith Norman [mailto:exec@alabar.org]

Sent: Thursday, December 09, 2004 10:44 AM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

John,

Alabama--None.

John: RI and NH - None. John Bomster

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

From: Christopher Blanchard

[mailto:Christopher.Blanchard@jud.state.ct.us]

Sent: Thursday, December 09, 2004 11:24 AM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

In Connecticut, the answer to all three questions is no.

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

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

Sent: Thursday, December 09, 2004 11:21 AM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

None in California

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

Sent: Thursday, December 09, 2004 11:13 AM

To: Holtaway, John

Subject: Re: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

no to all three. janet moss - maryland fund

No to all questions regarding Montana.

Marie Connolly

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

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

Sent: Thursday, December 09, 2004 11:39 AM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

Not in Washington.

Bob Welden

General Counsel

Washington State Bar Association

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

From: Paul.WieckII@jb.state.ia.us [mailto:Paul.WieckII@jb.state.ia.us]

Sent: Thursday, December 09, 2004 11:53 AM

To: Holtaway, John

Subject: Re: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

The answer in Iowa is no for each question.

Paul H. Wieck II, Executive Director / Assistant Court Administrator

Iowa Supreme Court Commissions Judicial Branch Building,

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

From: Jane Schoenike [mailto:JSchoenike@nebar.com]

Sent: Thursday, December 09, 2004 12:19 PM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

Nebraska is no to all three

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

From: Bob [mailto:bpaolini@vtbar.org]

Sent: Thursday, December 09, 2004 12:39 PM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

Not in Vermont either.

Robert M. Paolini, Esq.

Executive Director

Vermont Bar Association

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

From: John S. Gleason [mailto:john.gleason@arc.state.co.us]

Sent: Thursday, December 09, 2004 4:29 PM

To: Holtaway, John

Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

Colorado--No to all.

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

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

Sent: Thursday, December 09, 2004 8:13 PM

To: Holtaway, John

Subject: Re: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

None in our State.

Carole R. Richelieu
Chief Disciplinary Counsel
Office of Disciplinary Counsel
of the Disciplinary Board of the Hawai'i Supreme Court

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

From: Kathy Peifer [mailto:kpeifer@palawfund.com]
Sent: Friday, December 10, 2004 7:40 AM
To: Holtaway, John
Subject: Re: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

No to all three in Pennsylvania.

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

From: Kenneth.Bossong@judiciary.state.nj.us
Sent: Friday, December 10, 2004 10:42 AM
To: Holtaway, John
Subject: Re: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

John,

- 1) The NJ Fund has received one claim against a lawyer admitted pro hac vice. It was docketed, considered, and rejected by the Trustees on the merits. The NJ Fund has explicit jurisdiction over claims against PHVs, who pay the annual assessment while appearing in a NJ matter.
- 2) We have received nothing against FLCs, who also pay the assessment and over whom we would have jurisdiction.
- 3) Again, nothing received. If a lawyer is not admitted in NJ in some capacity - licensed, PHV, FLC, In-House-Counsel, MJP - we have no jurisdiction. I would not even docket a claim against that lawyer.

Ken Bossong

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

From: Root Edmonson [mailto:REdmonson@NCBAR.com]
Sent: Friday, December 10, 2004 11:03 AM
To: Holtaway, John
Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

NC's answer is no to all three questions.

Alberta - no to all 3 (to date).

Jennifer Rothery
Hearing Coordinator
Administrator -
Custodianships & Assurance Fund Claims
The Law Society of Alberta

From: Sylvia Stevens [mailto:sstevens@osbar.org]
Sent: Monday, December 13, 2004 12:36 PM
To: Holtaway, John
Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

No to all in Oregon. The only out-of-state claim we have had involved a lawyer who was licensed in Oregon and Washington. After determining that the conduct occurred in conjunction with his practice in Washington, we told the claimant that the only recourse would be through Washington's fund which, as I recall, paid the claim.

From: mtartag@flabar.org [mailto:mtartag@flabar.org]
Sent: Monday, December 13, 2004 2:05 PM
To: Holtaway, John
Subject: Re: FW: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

In Florida the answer is no to all.

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

From: Carla Freudenburg [mailto:CFreudenburg@dcbbar.org]
Sent: Tuesday, December 14, 2004 10:00 AM
To: Holtaway, John
Subject: RE: Client Protection Funds and FLC's and Temporary Practice by Foreign Lawyers

1) The D.C. Fund has received claims from time to time about lawyers who are licensed in another U.S. jurisdiction, but not D.C. I am not aware of any that have been paid. The Fund would probably consider a claim from a lawyer admitted to the Bar pro hac vice, (the Bar has disciplinary authority over the lawyer) unless it was more appropriate to refer the claimant to the jurisdiction in which the lawyer was admitted.

We have a claim pending right now involving a US lawyer who took on a client in the mid-1990s while the lawyer was practicing in DC under an exception to the DC unauthorized practice of law rule. The exception permits temporary practice in D.C. subject to some restrictions while a lawyer's application is pending before the committee on admissions. The lawyer was admitted in another state at the time he applied to D.C. The lawyer in question was suspended from DC some years later.

2) I'm not aware of any claims involving a foreign legal consultant (special legal consultant in DC). However, because they receive a limited license to practice in DC, and would be subject to the disciplinary authority of DC, the Fund would probably consider a claim involving the special legal consultant.

3) A foreign lawyer not licensed in any U.S. jurisdiction - would be handled as in #2 unless the foreign lawyer was practicing in DC on a temporary or incidental basis. DC doesn't have disciplinary authority over a lawyer practicing under the temporary or incidental exception, regardless of whether the lawyer is admitted in another state or another country.