

The Client Protection Webb*

A Publication of the National
Client Protection Organization

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After Austin Success, Louisville Next



By
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&
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It is hard to believe that the holiday season is already here! It seems like just last week we were in Austin, enjoying Texas hospitality, sharing ideas, and providing inspiration to keep fighting the good fight to keep client protection relevant. The workshop in Austin was well attended, which included a wonderful dinner at Stubb's BBQ. Thanks again to Claire Mock, Alecia Ruswinkel, and Michael Harmon for putting together another wonderful workshop. Photos of the

workshop are on NCPO's website. Speaking of workshops, any jurisdiction that would like to host a Fall workshop should contact Michael Harmon, Alecia Ruswinkel, or any NCPO officer or Board member. The committee provides a lot of support in venue considerations, costs, and in formulating an agenda and sessions.

Please provide any milestones that your Fund is celebrating to Alecia Ruswinkel and Michael McCormick for inclusion on NCPO's website and *The Webb*. Photos of Board meetings or events are always welcome. Michael would also appreciate articles for publication in future editions of *The Webb*.

NCPO's annual meeting will be held on June 1, 2018

in Louisville, Kentucky. The annual meeting will be held in conjunction with the American Bar Association's National Forum on Client Protection. The time for the meeting and the meeting room location will be provided in the spring. I hope to see everyone at the annual meeting, and at the Forum, which will be held June 1-2, 2018 at the Marriott Louisville Downtown, Louisville, Kentucky.

Best wishes for a happy, enjoyable holiday season. See you next year!



Austin Town Hall Recap – News from the Front Lines

By Mike Harmon

The National Client Protection Organization Workshop was held on September 25 and 26, 2017, in the conference room of the State Bar of Texas. Representatives from twenty-two jurisdictions were present (Arkansas, Colorado, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, and Wisconsin.)

The conference started with an around-the-room discussion of significant events in each represented jurisdiction.

Arkansas reported that the number of claims are down and that few claims have been approved for payment. A new member of the committee will be appointed. Work continues on rule changes.

Colorado is attempting to implement payee notification, but there is resistance from the insurance companies.

Delaware had approximately 30 claims which totaled between \$60,000 and \$80,000, which were paid. Delaware has a new liaison justice and a new committee chair.



District of Columbia reported that claims in the last fiscal year were down. DC no longer requires discipline or death to pay claims if the claims were based on dishonest conduct. DC has implemented the Justware case management system.

Hawaii is looking for a new claims management system. Hawaii's court is proposing a limited license for spouses of members of the military that would be good for one year.

Idaho's fund is doing well. Claims were down in the last fiscal year and as a result there was no assessment imposed on attorneys.

Illinois reported a novel client protection issue; a lawyer for a bank stole the proceeds from the bank.

Iowa has implemented succession planning which becomes effective on January 1, 2018. Iowa has purchased new software, which has been excellent for its audit program.

Recap continued -

Kansas continues to experience an issue involving two lawyers licensed only in Kansas, neither of whom live in Kansas. Both lawyers represented clients in immigration proceedings in other jurisdictions. Kansas' issue involved how to investigate a claim where the victims didn't speak English, maneuvering through the immigration system, and who to pay when the victim may be deported.

Kentucky's claims are at a twenty-five year low. Kentucky now has a new committee chair, a former justice of the Kentucky Supreme Court.

Maine reported that no claims were filed this fiscal year.

Massachusetts reported a decline in claims filed. The amount of claims paid has been reduced from two million dollars (\$2,000,000) to five hundred thousand dollars (\$500,000). Massachusetts is looking to revise its website. Massachusetts has also proposed a rule change which would broaden its ability to pay claims for those who live outside Massachusetts, current rules only allow payment to Massachusetts residents.

Michigan reported that immigration claims are on the rise. Michigan's reserves have dipped for the second consecutive year as it has paid the maximum aggregate maximum on several attorneys.

Missouri has a new director and is looking for a new case management system. Some in the Missouri Bar are questioning the necessity of the Client Security Fund as the fund is not making people whole enough.

New Jersey reported the implementation of a new case management system and in what appears to be a national trend, that claims are down. However, subrogation is up and may be the highest sum collected in history.

New York reported the lowest number of claims in years; 304 claims were paid for a total of \$30 million dollars.

North Carolina reported that attorneys often complain about the lack of professionalism and having to pay into the Client Security Fund. North Carolina has been meeting with lawyers across the state to explain the Client Security Fund and how it works. Education about the Fund goes a long way.

Ohio has a new website and the number of claims remains steady.

Oregon reported that 32 claims have been filed this year. The court reduced the assessments for client protection to \$10.

Pennsylvania has paid out \$15 million in the last four years due to fiduciary losses.

Texas is looking for a new case management system.

Wisconsin reported that most of its claims are related to two well-known respondent attorneys. Wisconsin has paid out all of its reserves and as a result is holding claims over until the next bar year. Wisconsin translated brochures and application forms to Spanish and is working on translating to other languages.

Please let us know what's going on in your state. Submissions can be made to newsletter editor Mike McCormick at Michael.McCormick@njcourts.gov.

Florida Fund Marks 50 Years

By P.J. Osborne,
Administrator of the Florida
Client Security Fund.

“If one lawyer misappropriates money, the entire 11,300 members of the Bar feel the agony of indiscriminate criticism.”

Those were the words of Florida Bar President Mark Hulse, Jr., of Jacksonville in March of 1970 as the first payments were made from the Clients’ Security Fund: \$15,534.40 to seven former clients of disbarred lawyers.

Established in 1967, the Bar’s Clients’ Security Fund is celebrating its 50th year. Since its inception, the CSF has processed over 12,299 claims and paid out over \$36.9 million to victims of attorney theft.

So far in fiscal year 2016-17, the CSF received 164 new claims and approved over \$2.5 million to clients for claims filed against 94 Florida lawyers.

“As lawyers, we tend to hold ourselves in high

regard, especially after the rigors of law school, scrutiny by the Florida Board of Bar Examiners, and continued oversight by The Florida Bar throughout our careers,” Leslie Larkin Cooney, chair of the 2016-17 Clients’ Security Fund Committee, said in her recent CSF annual report. “Even though we feel this way about ourselves, during the investigation of claims and discussions with clients, we are repeatedly humbled by the notion that individual clients impart an unbelievable amount of trust in their chosen counsel. Breach of this trust devastates clients financially and emotionally. Bar staff and the Clients’ Security Fund Committee are devoted to repairing the public’s trust in members of the Bar and the legal system in general. In return, the hard work is rewarded as most claimants are very grateful. Some, even when their claim is denied, are just grateful that someone cares about

their ordeal and listened to them.”

The Clients’ Security Fund is currently financed by \$25 of every Florida Bar member’s annual dues, as well as each application to appear pro hac vice in Florida.

Board of Governors member Scott Westheimer of Sarasota said the CSF is one way the whole Bar works to mitigate the damage done by the wrongful acts of a few.

“It is a terrible breach of trust and a stain on the profession when someone



is taken advantage of by their own lawyer,” said Westheimer, the board’s liaison to the CSF Committee. The Clients’ Security Fund demonstrates (cont. next page)

Florida continued -

the Bar is sincere in its efforts to hold lawyers responsible for their conduct, make it right to those who were wronged,

and works to restore the public's trust and confidence in the legal profession -- one client at a time.”

The Fund reimburses clients under two

circumstances: where an attorney takes an advance fee, but then fails to provide any services up to a maximum amount of \$5,000, and for (*cont. next page*)

Florida Fund's Legacy of Service

By P.J. Osborne, Administrator, Florida Client Security Fund

When I first came to work at The Florida Bar in 2004, I had no idea what the Bar did. I started at the executive offices and during my tenure, learned how the Bar was structured, how the governing body worked, and how many of our members volunteer their time and money to serve on the many wonderful Bar committees, without which the Bar could not do its job effectively. I then moved to the lawyer regulation office, where I learned about lawyer discipline, the grievance process, and how the Florida Supreme Court views lawyer misconduct, among many other things.

In late 2007, I was offered a position with the the Florida Bar Clients' Security Fund. I only knew peripherally what the fund was, and with my grievance background, I thought I could really make a difference in this position. I did not have a clue. I had no idea what a profound impact the fund can make in someone's life after they have been victimized by an unethical lawyer. I found my niche in that position, and a career that I could enjoy and feel purposeful in at the same time.

The Florida Bar Clients' Security Fund has received and processed over 12,370 claims for over \$800 million since its first claim in 1967. The fund has paid over \$39 million to help compensate for the conduct of unethical lawyers, as well as lawyers who passed away without having properly accounted for client funds, or who did not perform the services they were retained to perform. In recent years, the Bar Board of Governors changed the rules to allow clients of attorneys who are placed on the inactive list not related to misconduct to make a claim to the fund, as well.

When I'm asked what I do, I proudly state that I administer a fund, created and funded by Florida lawyers, that helps compensate victims of attorney theft (a simple explanation). That statement generally garners an immediate response such as, "Wow, you must be busy since they are all thieves!" To which I calmly, but firmly, respond, "The claims I receive are due to the conduct of less than 1/10 of a percent of all of the members of the Bar. Ninety-nine percent of Florida Bar members are hardworking, ethical attorneys, genuinely concerned about their clients' needs, and who wouldn't dream of doing the sort of things that lead to a Clients' Security Fund claim."

As one of the few nonlawyer fund administrators, I have a unique perspective into a claimant's point of view. Many of the people I talk to every day just want someone to listen and understand what they are going through. Although probably 85 percent of claims we receive and process are denied, most of the claimants understand our process and are thankful that at least their story was heard.

Thank you all for helping us recognize the 50th year of fund operations. I love what I do, and I'm thankful to the Florida Supreme Court and The Florida Bar leadership for allowing me to do it. Moving forward, I will do my best to ensure that The Florida Bar Clients' Security Fund continues to do its good work and improve the public's perception of the legal profession for many years to come.

Florida continued -
misappropriation or theft of client monies up to a maximum amount of \$250,000. Claims are paid only after a lawyer has been disbarred, suspended, incapacitated, or in the event of a death of an attorney where a client's money is unaccounted for. Fee claims and misappropriation claims less than \$1,000 are paid promptly after approval. All other claims are paid on a pro rata basis after the end of the fiscal year.

P.J. Osborne, Administrator of the Clients' Security Fund, said she recently had a conversation with an assistant U.S. attorney who prosecuted a lawyer who stole millions from her clients.

"I was talking with him and explaining that we

have paid almost a million dollars to her victims. He said at the end of our conversation that it makes



him feel better about paying his Bar dues," said Osborne, noting over the years she has heard similar sentiments expressed by many lawyers who were either assisting people with claims or prosecuting errant lawyers.

The Clients' Security Fund Committee is composed of 25 volunteer attorneys, and Cooney said committee membership is "not for the faint of heart."

Membership involves extensive time and energy in the investigation of claims and preparation of reports, similar to that which counsel would undertake in handling their own client matters. Assisted by Bar staff, claims are thoroughly investigated and members make recommendations for approval or denial.

"Many investigations require active debate at committee meetings and discussions of claims at meetings are spirited, but always with the goal of doing the right thing for the injured client as well as being good stewards of the fund," Cooney said.

Or, as Hulsey said those many years ago: "Let it be known that the Bar has underwritten the integrity of every practicing lawyer in Florida."

Boy Scouts Honor Former NJ Fund Trustee

The Boy Scouts of America honored William R. Holzapfel recently as an exemplary role model for area youth. The Scouts recognized Mr. Holzapfel for his outstanding service – a citizen who lives the ideals of the Scout Oath and Law in his daily life. Mr Holzapfel was admitted to the New Jersey Bar in 1959 and has been the city attorney of Elizabeth, New Jersey, since 1993. He served as a trustee of the New Jersey Lawyers Fund for Client Protection from 1983 to 1987 and chaired the Fund's Board in 1987. A retired colonel in the US Marine Corps Reserve, Mr. Holzapfel has held numerous positions in the Union County and New Jersey State Bar Associations, was elected a fellow of the American Bar Foundation, and is involved in numerous professional and community organizations.

Austin Workshop Highlights Trends & Issues

By Mike Harmon

Several panels addressed issues confronting client protection at the Austin NCPO workshop. Here's a summary of what was discussed:

CPF Trends:

Robin Lawnichak of Michigan, Michael Knight of New York, and Kathleen Lewis of the District of Columbia presented a program on trends being tracked in each respective jurisdiction. Michigan reported that it has compiled statistics on its claims to support whether to implement an assessment, to enable process change, to facilitate rule modifications, and to acquire

additional resources. The use of the statistics has resulted in a push for payee notification, which is pending, and the adoption of trust account notification which has been adopted. The statistics also provided Michigan with information about how claims are handled and resulted in a streamlined application. Michigan intends to use the trends to develop a marketing strategy.

Collaboration between Funds and Disciplinary

Counsel. Alecia Ruswinckel of Michigan and Michael Harmon of Arkansas discussed the interplay between disciplinary agencies and client protection programs. Michigan has a trifurcated system where one office handles client protection programs, another office

handles disciplinary issues, and a third office handles the disciplinary board matters. Sometimes, information is shared and other times it is not. Arkansas has one office which handles both discipline and client protection, but even then the two functions of the office can work better together.

Immigration

James Ehler of Texas and Stan Hazlett of Kansas presented a program on issues concerning immigration claims, how to investigate, who to contact, and how to deal with attorneys licensed in one state and practicing

immigration law in another state. This two hour session provided attendees with invaluable information about processing immigration claims.

Fiduciary Accountability

Kathy Peifer Morgan of Pennsylvania and Martin Newhouse of Massachusetts presented a program on whether attorneys who serve as trustees of other people's money should be bonded, whether attorneys should be certified as fiduciaries, and whether failure to make timely accountings should be referred to discipline. This information will be shared with the ABA Standing Committee on Client Protection to assist in creating a model standard for dealing with fiduciary theft.

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Highlights cont.

Receiverships

Alecia Ruswinckel of Michigan and Bruce Kim of Hawaii presented a program about how client protection is involved when an attorney disappears, dies, or is disbarred. Client protection is broader than reimbursing a client of money lost as a result of dishonest conduct. Clients are affected in such instances. In some states, the court or the disciplinary board appoints a caretaker to inventory the files of the attorney, notify clients of papers, money and other property to which the client is entitled, publish notice of the cessation of the law practice, and to file notices, motions, or pleadings in time-sensitive matters. The program discussed what a receiver can do, how a receiver is appointed, how

the receiver is reimbursed for the work done, and duties of the receiver.

Information from the ABA Triennial Survey of Client Protection

Michael Knight of New York discussed the recently released ABA Triennial Survey of Client Protection. The presentation provided twenty years of data accumulated and divided the information into National Client Protection Organization regions and jurisdictions by attorney population. You may access the charts and graphs which demonstrate how many claims are filed, the amount of the claims, the number of claims awarded, and the average number of claims, by region and by jurisdiction size at ncpo.org.

Connecticut Attorney Steals, Flees to Mexico

John J. Carta, Jr., 72, a long-time Essex, Connecticut attorney was recently charged with stealing roughly \$300,000 from clients before fleeing to Mexico for several months, according to state police.

Troopers first learned of the theft when they were contacted by another attorney representing an Essex couple. The attorney claimed Carta had represented the couple in civil litigation and that a judgment had been entered against them in which they owed a contractor \$200,000. While Carta appealed the judgment, the couple obtained a second mortgage on their home, from which \$300,000 was wired to Carta. Financial

records secured by investigators showed that the \$300,000 was disbursed through multiple payments to a PayPal account, Ameritrade and to Carta. None of the payments benefitted the clients involved, nor was any of the money returned by Carta to the account. The account was finally closed in June 2014 when the last \$44.12 was transferred to a different Essex Savings Bank account also belonging to Carta.

Records showed that Carta was frequently in San Diego and Cabo San Lucas, Mexico, through the end of 2016. Carta fled to Mexico for several months and was taken into custody by authorities on

Aug. 17 in San Diego as he attempted to return to the country. Carta waived extradition and was escorted



back to Connecticut by authorities. State records show that Carta, who admitted to the bar in 1969, has been under administrative suspension for failing to pay the client security fund fee.

Ohio Victims Reimbursed by Fund

A late Columbus lawyer who stole from his court-appointed wards accounts for more than a quarter of the compensation awarded by a state panel to victims of attorney theft.

Thirty-seven claims totaling \$229,968 were paid to victims



of Paul S. Kormanik last fiscal year by the Lawyer's Fund for Client Protection, according to its annual report. That money, totaling 27 percent of all awards from the fund, was in

addition to two claims for \$28,957 paid to Kormanik wards in 2015-16.

Using money from attorney registration fees, the fund is designed to reimburse clients — up to a maximum \$75,000 each — for losses caused by

dishonest lawyers, typically for theft or failure to perform services after fees are paid.

The fund awarded a total of \$841,227

last fiscal year to 158 victims of theft attributable to 40 lawyers.

Kormanik, 65, killed himself in his Upper Arlington home in 2015 on the day he was

scheduled to appear in court to face contempt charges for failing to pay back money stolen from one ward.

The Columbus Bar Association brought 15 charges of misconduct against Kormanik, who forfeited his law license, after a series of stories in *The Dispatch* uncovered his illicit practices while serving as a ward to 400 court-appointed clients.

Kormanik had pleaded guilty to four counts of theft from an elderly or disabled person, one count of theft and five counts of tampering with records. He died prior to being sentenced.

Reprinted from the Columbus Dispatch

NY Attorney Targets Distressed Homeowners

A Manhattan lawyer was disbarred after an appeals court found he cheated distressed homeowners out of tens of thousands of dollars in legal fees and monthly charges tied to a mass joinder litigation that was supposed to result in mortgage relief for the homeowners and claims against their lenders.

Mitchel Tarter's mass lawsuit amounted to a years-long scheme that involved kickbacks to nonattorney mortgage brokers he located through a college acquaintance previously banned from working in Washington state's and Maryland's mortgage industries. Tarter "performed no meaningful work for those fees, which he failed to refund and improperly shared with nonattorney

mortgage brokers who referred clients to him," the panel wrote.

Tarter induced financially vulnerable homeowners to pay him advance legal fees, and subsequently monthly charges, on the premise that he would launch a mass joinder litigation aimed at modifying their mortgage obligations and asserting claims against their lenders. Then once he began hauling in fees, he bypassed depositing the money into a trust account, as required by federal law and regulations. Instead, he dropped the fees into his own operating account, and then disbursed the money to two sham entities which, in turn, paid the nonattorney brokers who referred the clients to him. (*Summarized from the NY Law Journal*)

Happy Holidays

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A celebration of the season...



And Best Wishes for a Happy, Healthy and Prosperous 2018!

**The Client Protection Webb is published in memory of Gilbert A. Webb, Esq., who served as Assistant Client Protection Counsel for the American Bar Association's Center for Professional Responsibility.*

Mr. Webb was dedicated to protecting the welfare of clients victimized by their attorneys and served as an editor of the ABA's first client protection newsletter. Submissions to the Webb are always welcome. Please send them to the editor, Mike McCormick at Michael.McCormick@njcourts.gov

