

The Client Protection Webb*

A Publication of the National
Client Protection Organization

February 2022



Michigan High Court to Enact Mandatory Succession Planning Fund Key to Drafting and Implementing New Rule

By Alecia Chandler, NCPO President,
Professional Responsibility Programs Director,
State Bar of Michigan

The Michigan Supreme Court is expected to approve a proposal by the State Bar of Michigan to enact an Interim Administrator Program, in other words, mandatory succession planning. As client protection professionals know, lawyers who do not have a succession plan and become unexpectedly unable to practice whether due to death, discipline, discipline, or disappearance cause havoc for their clients and the justice system, albeit unintentionally.

Effective January 1, 2016, Iowa implemented “Rule 39.18 Requirement for death or disability plan.” Following that general model, the State Bar of Michigan started along its own path to recommending enactment of a similar rule, tailored to Michigan. Five years later, the Michigan Supreme Court is contemplating enacting that rule, which, if approved, would go into effect with the 2022 annual licensing renewal beginning in October 2022.

Michigan’s proposed rule encompasses many of the same components of the Iowa program and addressed the majority of issues faced by jurisdictions that have no revenue sources to wind up law firms and a lack of attorney’s willing to step in if an attorney does become unable to

practice. All jurisdictions have a mechanism which creates authority for another person to step in and, at least, return client files when an attorney is no longer able to practice. However, the lack of a financial infrastructure to effectuate the necessary actions to ensure effective, efficient winding up or temporary operation of a law firm has been the topic of numerous national conversations by those involved in bar association and discipline work. Texas, at the National Organization of Bar Counsel meeting in August, 2018, reported that in the eight months after expanding their program to attempt to meet the needs of their members, they were involved either directly or in facilitating the appropriate winding down of 125 law practices. The speaker further reported that this was only a fraction of the practices that needed assistance.⁽¹⁾ That was in 2018, I am sure that number has skyrocketed over the last two years.

The proposed rule, as stated in previous articles allows the attorney to select their own interim administrator (successor attorney) or to opt into the State Bar of Michigan program for a fee. This selection will occur annually. Moreover, each attorney will have to name a Person with Knowledge, specifically following the Iowa model. In other words, the person who holds the

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⁽¹⁾ Riding the Silver Tsunami: Hang 10 or Hang it Up? National Organization of Bar Counsel Annual Meeting, August 2, 2018

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model. In other words, the person who holds the actual and virtual keys, including where bank accounts are held, how to find or reset passwords on management software, the location and way to access storage facilities, and other knowledge that is necessary in winding up or temporarily operating a firm. The Person with Knowledge

could be anyone who can simply advise where to look for important information and may be a spouse, child, long term assistant, or other person.

From my perspective, one of the most important ancillary benefits of any mandatory succession plan is knowledge. I am excited that judges and other attorneys will know that the program is here and, hopefully, will report to the SBM when another attorney cannot practice for any period of time. Right now, the Michigan Attorney Grievance Commission reports that it is often weeks or even years before they are notified. With a program like this in place, we will be informed and can take action to protect the clients early.

The program as developed is designed to protect clients, the justice system, the attorney's family, and the attorney's interest in their practice.

COMING HOME....

NCPO's membership outreach effort continues and is happy to welcome two funds back to the NCPO family: the Lawyers' Fund for Client Compensation of the Nova Scotia Barristers' Society and the Client Security Fund of the State Bar of South Dakota.

So the next time you happen to be in Halifax or Pierre, respectively, be sure to stop by and say "hello." Or just visit them online at <https://nsbs.org/concerns-with-a-lawyer/lfcc/> and <https://www.statebarofsouthdakota.com/client-security-fund/>



Have you renewed your membership for 2022?

**Annual individual membership is just \$25;
Organizational membership is \$200.
Contact Membership Chair Eileen
Donahue at edonahue@iardc.org TODAY**

**New Hampshire, Rhode Island,
Mississippi, North Dakota, North Carolina,
West Virginia, Oklahoma, Wyoming, Utah & Alaska –**

We need YOU!



National Client Protection Organization, Inc.

Did You Know?

Client Protection Funds Celebrate 95 Years

The Webb frequently marks the 25th and 50th anniversaries of fund foundings across the U.S. and Canada. The very first client protection fund, however, was created 95 years ago – in February 1927 – “down under” by the New Zealand Law Society. The country’s parliament, sitting in the capital of Wellington, responded to concerns raised by the Chamber of Commerce and the Attorney

General by creating the

“Solicitors’ Fidelity



NEW ZEALAND
LAW SOCIETY

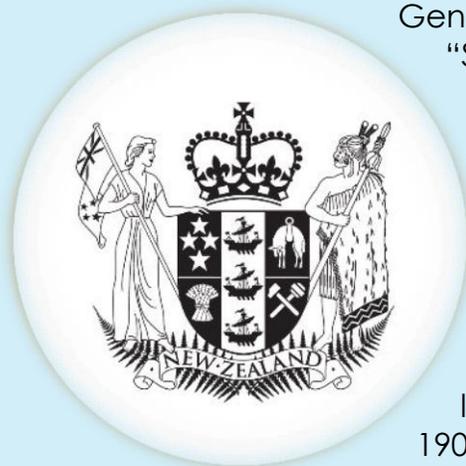
NZLS EST 1869

Guarantee Fund.”

New Zealand had taken the lead in client protection for some time before actually creating its fund. The issue had first arisen in Great Britain at the turn of the 20th Century. During the Boer War the English stock market tumbled, sending many solicitors and well established firms into bankruptcy. Until then, solicitors commonly commingled their own funds with client funds and even used clients’ funds, unless earmarked for a particular purpose. The severe losses following the market collapse prompted Parliament in 1901 to amend the Larceny Act of 1861 to make it a criminal offense to convert funds or property held in trust. See

https://www.americanbar.org/groups/professional_responsibility/resources/client_protection/history/

Today New Zealand’s “Lawyers’ Fidelity Fund” continues to reimburse up to \$100,000 to law clients who have “suffered pecuniary loss by reason of theft” by lawyers, law firms, or agents of lawyers. <https://www.legislation.govt.nz/regulation/public/2008/0190/latest/DLM1384309.html#DLM1384309>



ABA National Forum on Client Protection

June 3-4, 2022 – Baltimore Maryland

With fingers crossed, planning continues for an “in person” ABA National Forum on Client Protection on June 3-4, 2022, at the Hyatt Regency Baltimore Inner Harbor. The hope is that this 37th such forum will be a landmark session of reunions, renewal and networking. Sessions will include the community favorite Town Hall and Hot Topics, as well as important updates on regulatory innovation and the implications for the client protection community and on UPL. Sessions on subrogation and working with community partners, dangers of trust account scams and how the community can help lawyers avoid them, and a program focused on current proactive post-admission client protection fund educational initiatives are also on the agenda.

Our Profession and the Career Path Chosen.



By: Daniel R. Hendi, Director, New Jersey Lawyers' Fund for Client Protection

Editor's Note: Dan Hendi, Director & Counsel of the New Jersey Lawyers' Fund for Client Protection, retired on February 1, 2022 after 34 years of service. A true leader in the field, Dan's dedication to, and passion for, client protection is second to none. Congratulations Dan! Here's to many happy, healthy years ahead!



On January 2, 1988, I started a new job with the State of New Jersey, admittedly not knowing much about the organization for which I applied and would be working for. At that time, it was called the Client Security Fund, an organization that my employers would pay into on my behalf when I had worked in private practice or as assistant corporate counsel. This "job" ultimately became my career and my professional passion.

I write this article to reflect on my profession and the career path that I took as I look to retire effective February 1, 2022. For thirty-four years I grew with my Fund and immersed myself in legal issues in fields I previously knew very little about while "following the money". The Fund has afforded me the opportunity to appear in State and Federal Courts, create precedent, represent Trustees who are pillars of our legal community, share ideas and legal theories with colleagues I respect and whose opinions I value and, most importantly, help to rectify the wrongs committed by a certain few for the benefit of the public and the reputation of the Bar.

As an immigrant, I came to the United States with my parents and siblings in 1963 and was the only member of my family to complete college. To be honest, becoming a lawyer for me was not a calling because I was never exposed to the profession first-hand. It was a way to make use of an economics degree I earned and for which I had no other idea about how to use unless I went on to graduate studies. But as I became more and more involved in law school and the law, my interest in becoming a lawyer solidified and I could think of nothing else I would rather be doing. In those early years, my parents would proudly introduce me to their friends as the "doctor", as lawyers are commonly known in South America. My folks knew the honor in one becoming a lawyer, perhaps not unlike many people whose second language was English if they could speak the language at all. Immigrants, like most members in our society, rely on the honesty and integrity of lawyers to get through the basic transactions in life such as buying a home, drafting a will, or even getting themselves or a loved one out of legal trouble.

So, I became a lawyer and soon learned that we have a tough job. Lawyers not only need to draw clients and making payroll, but also protect those clients within stated ethical bounds intended to preserve the profession and that precious impression of honesty and integrity that we want all clients and the public to have. That aura is tainted each time a negative article is

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published, or a sensational news story is broadcast about the misdeeds of a few “bad apples”. Between that and lawyer jokes, our profession is constantly barraged in negativity and needs to be ever vigilant about its reputation and the consequences of public distrust.

When I began my career at the Fund, I was already five years into my law license. What we in the field of client protection and ethics have in common is the public’s take on what we do and the lack of knowledge about it. In private events or settings, you may have been subject to comments from people not in the legal profession who do not understand an attorney’s zeal to undertake difficult cases and represent clients. These same people will often also be the first to tell you about a dishonest lawyer they read about who was disbarred or arrested for stealing a client’s or clients’ money. Normally when this happens, I smile and act polite because there is little they want to know about the good that most lawyers do for society. But if you want to start a worthwhile conversation in these situations, ask these folks what they do for a living and inquire if their job or profession has the financial support of its entire membership behind clients or customers should the unthinkable occur. When I tell people what I do, they ask, “Really? Does this happen often?” They simply only heard about the dark side but not the institutionalized safety net that has been set in place.

Client Protection Funds or Client Security Funds are often described as the conscience of the Bar. The Fund is just one example of the commitment that the highest court in every State has created to keep the profession honorable, using its inherent Constitutional powers for the purpose of administering the admission, practice, and discipline of lawyers.

In the landmark New Jersey disciplinary case of In Re Wilson, 81 N.J. 451 (1979), respecting the trust clients place in lawyers, Chief Justice Robert Wilentz wrote at page 455:

“It is a trust built on centuries of honesty and faithfulness. Sometimes it is reinforced by personal knowledge of a particular lawyer’s integrity of a firm’s reputation. The underlying faith, however, is in the legal profession, the bar as an institution. No other explanation can account for clients’ customary willingness to entrust their funds to relative strangers simply because they are lawyers.”

I have come to appreciate that the purpose of the Fund is not to merely provide some quasi-insurance on behalf of attorneys to their clients. It is, instead, a statement to all clients by the highest courts and the Bar that when you trust a lawyer, you have the entire profession behind you supporting that trust. In fact, in many jurisdictions, when a lawyer assists a victim before a Fund, they are prohibited from charging a fee. This has never been an issue in my experience because these many honest attorneys are all too glad to correct the wrongs committed by the few bad ones, and it probably



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reflects the altruistic reason they entered the profession in the first place.

I have come a long way from the time I wanted to “supplement” my economics degree with a law degree. I am fully invested in client protection and the welfare of the public when dealing with lawyers and attorney ethics. There is no substitute for witnessing the relief from uncertainty that one may witness when a claimant is told that their life savings would be restored and that an award has been approved. Where their faith in lawyers was destroyed and they had no place to turn, the Fund pulled through for them with the mechanism the Bar supported by protecting the public.

I am proud to have led the Fund for the last ten years as its Director, and as Deputy Director prior to that time. I leave the New Jersey Lawyers' Fund in a healthy and forward-looking position. We installed valuable technological resources to help with claims processing, investigation, and litigation, all for the public good. I treasure my friends in the National Client Protection Organization, its officers, and especially its founders. And if I had the benefit of hindsight ... yes, I'd do it all over again.



Nominations Sought for Hecht Award



The Hecht Award is granted annually to recognize an individual, law client protection fund, or other professional organization that has demonstrated excellence in the field of law client protection.

The Isaac Hecht award honors the memory of one of NCPO's co-founders, who practiced law in Maryland for 64 years before his death in 2003 at the age of 89. Mr. Hecht served as Treasurer of Maryland's Fund since its creation in 1967. He was committed to the belief that the trust of law clients is the essential linchpin in every lawyer-client relationship, and that the reimbursement of innocent victims of lawyer dishonesty represents the

legal profession at its best. Mr. Hecht was especially focused on the financial foundations of client protection funds, the initiatives of fund leaders, and their receptivity to techniques to deter and detect dishonest conduct in the practice of law. **To nominate a future Hecht award recipient, contact Alecia Chandler at achandler@michbar.org**

Prior recipients of the Hecht Award have been Francis X. Neuner, Jr. of Louisiana (2004); Frederick Miller of New York (2005); William D. Ricker, Jr. of Missouri (2006); Ken Bossong of New Jersey (2007); Hon. Thomas J. Moyer of Ohio (2008); Livia Barndollar of Connecticut (2009); Hon. Richard C. Bosson and Charles J. Vigil of New Mexico (2010); Charles Goldberg of Colorado (2011); Janet Green Marbley of Ohio (2012); Karen O'Toole of Massachusetts (2013); the Alabama State Bar Client Security Fund Committee (2014); Kris Wenzel of Wisconsin (2015); and Michael Harmon of Arkansas (2016).

Iowa E-Audits “A Game Changer”

In a classic example of “adapt, improvise and overcome” the Iowa Office of Professional Regulation’s Client Security Commission has implemented a correspondence auditing program that has kept attorney audits up-to-date despite the



Trinity Braun-Arana

limitations of the pandemic. Trinity Braun-Arana, Director of the Client Security Commission, called the initiative “a real game changer” that has made it possible to continue Iowa’s tradition – in place since 1974 – of performing a routine audit of every private practitioner in its 9,400 member Bar every three to four years.

The E-Audit Program got its start prior to Covid as a way to lessen auditors’ commute to attorneys located a four to five hour drive from the State capital in Des Moines. Attorneys in the far corners of the state who had been previously audited without incident could instead participate in “correspondence audits” in which documents were submitted for review. If the initial review revealed “complicating factors,” then a personal visit to the attorney’s office was scheduled.

Once the pandemic made it impossible for auditors to meet in person with attorneys under audit, however, the program took on much greater significance. Three primary forms were utilized to gather information. The “Attorney Information Form” identifies the attorney and major areas of practice. The “Trust Account Information Form” specifies the trust account signatories, how trust

account management functions are being performed, and other trust account information. The “Fiduciary Information Form” covers any other clients and cases in which the attorney is acting as a fiduciary. Such cases might include trusts, powers of attorney, and conservatorships.

Attorneys are asked to upload three months of records including their written triple monthly reconciliations and supporting documents (bank statement, list of client balances, general ledger) within three weeks of being noticed of their audit. The audit program uses Citrix ShareFile, which has the capacity to accept and securely transmit large documents, to ensure matters are kept confidential. All aspects of an attorney’s practice are covered, be it through the back-and-forth of emails, record reviews and, where necessary, zoom conferences.



E-Audits have allowed Iowa’s audit program to continue at a pace at least comparable to - in some respects even greater than - pre-pandemic times. As Director of of Client Security, Braun-Arana reviews each closed audit. So far, no “smoking guns” have been discovered through E-audits. “I realize that you can lose something when you’re not showing up unannounced at lawyer offices, but I don’t believe we’ve missed any bad actors in this transition,” she said.

The program has also been accepted by the legal community, an outcome Braun-Arana attributes to years of work to build good-will between practitioners and State regulators. The average age of an Iowa attorney is relatively high – in the mid-50’s – compared to the national average of 47.5. The pandemic, however, brought even the

technology shy into new ways of practicing law. Iowa's six auditors are all retired IRS officers and have also had to become accustomed to an auditing world without paper. Iowa has focused on education, being polite and respectful, and going the extra mile to make the audits comprehensive and accurate. If an attorney is non-responsive to audit requests, Director Braun-Arana does have the authority (which predates the E-Audit program) to request temporary suspension of the attorney from practice. Only about 1% of audit cases result in suspensions, an outcome which Braun-Arana

attributes to an outstanding auditor team and as a "testament to Iowa's great lawyers."

Iowa's program is likely transferrable to other jurisdictions, even those with larger Bars. The processes and forms in use cover many of the same areas addressed by random audit programs in larger states. To find out more, visit <https://www.iowacourts.gov/opr/about-opr/client-security-commission/> to review Iowa's annual report and <https://www.ncpo.org/resources> for samples of the Iowa forms.

Mark Your Calendar:

NCPO 2022 Workshop In-Person in Lexington Kentucky

After two consecutive virtual workshops, NCPO has finalized arrangements to conduct its 2022 Regional Workshop at the Hilton Lexington Downtown in Lexington Kentucky on Monday and Tuesday, September 19 and 20, 2022. NCPO workshops are key opportunities to "take a deep dive" into the issues confronting funds across the U.S. and Canada.



NCPO is aware of the challenges to participating this year – even with covid restrictions easing, the travel budgets of many funds have still been significantly reduced. If you are a client protection professional and would like to attend, but are facing a limited budget, visit <https://www.ncpo.org/copy-of-2021-ncpo-workshop> to apply for NCPO's workshop assistance. There is no substitute for the in-person exchange of ideas and networking which takes place at a workshop, facilitated by expert presentations and individual fund participation. Let NCPO help you be a part of this year's workshop. It's a great opportunity to enhance your fund's ability to fulfill its mission while furthering your own professional development.

See you in Lexington!

Robin Lawnichek Appointed NCPO Southwest VP

NCPO gratefully welcomes Robin Lawnichek as its new vice president for the Midwest U.S., which includes Michigan (Robin's home state), Ohio, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, and Nebraska. Regional VP's are your "go-to" people for help with emergent issues and questions. NCPO is in need of a new Southwest VP – If you're from Arizona, Utah, Colorado, New Mexico, Texas, Louisiana, Arkansas, Kansas or Oklahoma and willing to serve, please let Alecia Chanler know at achandler@michbar.org

NCPO Outreach Efforts Continue

Here's an update on NCPO Outreach Initiatives:

- ❖ Be sure to check out updates and additions to <https://www.ncpo.org/> designed to make the site more informative and user-friendly for potential claimants and a better resource for client protection professionals. New this month is an updated "front page" with links to a video describing the work of client protection funds.
- ❖ Outreach group members are following up with new member jurisdictions and 2021 survey responders to discuss how NCPO can help further their work.
- ❖ The NCPO Board approved a motion to consider grant requests from funds to support outreach initiatives. Does your fund need a brochure, web page creation or updating, or another means to "get the word out" to potential claimants? Let us know how we can help.
- ❖ Beginning with this edition, NCPO's newsletter "The Client Protection Webb" will be pro-actively shared with members of the legal community, media and others in order to educate and inform the public about client protection. An NCPO press release will also be available for use in other forums.

Good News!



Meet "NCPO Ned," Sage of Sages, Seer of Seers and Prognosticator of Prognosticators for all things related to client protection. Ned emerged from hibernation long enough to make the following predictions:

- ❖ We will have an early, sunny, healthy Spring
- ❖ 2022 will be the year that all client protection funds have adequate funding & staffing
- ❖ Dedicated fund staff and trustees will continue to be "The Conscience of the Bar" doing great things to serve client victims everywhere.

Happy Groundhog Day!

**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

