

# The Client Protection Webb\*

A Publication of the National  
Client Protection Organization

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## Maine on the Move

### NCPO Board Approves First-Ever Grant



The Maine Client Protection Fund will be updating its website, producing a new informational brochure and ramping up its community outreach efforts, thanks to a \$3,280 grant approved by the NCPO Board of Trustees. The grant is the first such award made by NCPO to support member funds. NCPO's outreach group worked closely with Aria Ee, Executive Director of the Maine Board of Bar Overseers, to develop a plan to help the Maine Fund proactively reach potential claimants and enhance the Fund's profile amongst attorneys as well as the general public.

Maine was among the first funds to respond to NCPO's 2021 survey seeking to identify areas where NCPO could utilize its members' expertise as well as NCPO resources to advance the goals of client protection in the U.S. and Canada, and bring funds closer to the ideals set forth in the *Standards for Evaluating Lawyers' Funds for Client Protection*.

The Standards were adopted by the U.S. Conference of Chief Justices in 2013 ([Resources | National Client Protection Organization \(ncpo.org\)](#)) and are a road map to enabling funds to effectively address the losses of victimized clients.



Aria Ee

### Send in Your Survey (and your annual membership)

Be sure to renew your NCPO membership for 2022, and while you're at it, complete NCPO's survey. Your responses will help NCPO identify areas in which it might be able to help you more effectively serve your jurisdiction. Membership can be renewed online at [Membership | National Client Protection Organization \(ncpo.org\)](#) ; The survey form is available at [Resources | National Client Protection Organization \(ncpo.org\)](#)

# ABA National Forum on Client Protection

June 3-4, 2022 – Baltimore Maryland

Plans are in place to resume in-person sessions at the 37<sup>th</sup> annual ABA National Forum on Client Protection, June 3-4, 2022, at the Hyatt Regency Baltimore Inner Harbor. The hope is that the Forum will be a landmark session of reunions, renewal and networking.

Sessions include favorites like the Town Hall, Hot Topics and Difficult Claims, as well as important updates on regulatory innovation and the implications for the client protection community and on UPL.

Also on the docket is how to increase subrogation receipts, working with

community partners, the 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.



The Forum will be held at the Hyatt Regency in Baltimore's Inner Harbor, conveniently located by the Baltimore

Aquarium and Camden Yards baseball stadium. A discounted Forum hotel rate is available. Register today at [Welcome - 37th ABA National Client Protection Forum \(cvent.com\)](https://www.welcomes37th.com) . Question? Contact Annie Kulman at the ABA at [annie.kuhlman@americanbar.org](mailto:annie.kuhlman@americanbar.org)

## Coming Soon –

### NCPO Plans Regional Workshop for September 19 – 20, 2022

Mark your calendar to attend NCPO's 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.

If you are a client protection professional and would like to attend, but are facing a limited budget, 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. Register for the workshop and apply for workshop assistance at [2022 NCPO Workshop | ncpo](https://www.ncpo.org/2022-Workshop)

# Tell Your Story -

## NCPO's Annual Report Template Can Help

You may be able to make a pretty strong argument that 2020, and perhaps even 2021, should be relegated to the trash heap of history. However, NCPO suggests this is the time for your Fund (if it's not already doing so) to get into the habit of issuing an annual report. The NCPO Board recently approved a new, step-by-step template for funds to use in preparing a basic annual report. The template is available free of charge to NCPO members at <https://www.ncpo.org/resources>



According to the ABA's Triennial Survey of Client Protection Funds, only 26 U.S. states currently provide an annual report to their Court, Bar, and the public. (*Samples are on NCPO's website on the "Resources" page cited above*). It does not appear that any of the Canadian funds have adopted the practice.



**Why?** Annual reports are the “go-to” sources for your fund. They tell the world why you're needed, as well as what you need to be able to serve victimized clients. The “Golden Rules” for funds – NCPO's Standards for Evaluating Client Protection Funds” – recognized as much in 2016 when Section 3.2 proclaimed, *“The Fund should issue and publish an annual report. Quarterly or semi-annual news releases should be done as well, even in the absence of high volume activity.”* [https://www.ncpo.org/files/ugd/289ac3\\_604dd3b7c4c4401b9004a19822b43419.pdf](https://www.ncpo.org/files/ugd/289ac3_604dd3b7c4c4401b9004a19822b43419.pdf)

Annual reports need not be complicated. NCPO's template will guide you to providing the basic information needed to populate a straight-forward report. Here are the basics you'll find in the NCPO template:

1. Overview/Jurisdiction
2. Board/Committee/Staff
3. Funding/Revenues/Costs
4. Claims Process
5. Claims Filed
6. Awards Paid
7. Pending Claims
8. Lawyers Involved in Awards
9. Other Programs/Recommendations
10. Conclusion

Once you've gotten started, your completed report can be updated annually using the original completed report as a starting point.

**Special thanks to Mike Knight, Director of the New York Fund, for creating the template.** Let us know if we can help you “Tell Your Story” – Mike Knight can be reached at [mjk@nylawfund.org](mailto:mjk@nylawfund.org) and Mike McCormick (*next door in New Jersey*) is at [michael.mccormick@njcourts.gov](mailto:michael.mccormick@njcourts.gov)

VISIT [WWW.NCPO.ORG](http://WWW.NCPO.ORG) FOR A 9 MINUTE VIDEO INTRODUCING CLIENT PROTECTION FUNDS TO THE PUBLIC & OUR INTERACTIVE MAP OF CONTACT INFORMATION FOR EVERY FUND IN THE UNITED STATES AND CANADA.

# *The Legacy Lives On*

## Nominations Sought for this year's Hecht Award Recipient **Nomination Deadline is July 1, 2022**

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.



The Hecht Award recognizes individuals and professional organizations that have demonstrated "excellence in the field of law client protection." "Excellence" includes significant achievements in promoting public confidence in the integrity of the legal profession; the substantial reimbursement of law clients for eligible losses caused by a lawyer's dishonest conduct; the

development of programs to prevent or detect professional misconduct in the practice of law; and meaningful public information programs for attorneys and legal consumers. The 20 recipients of the Hecht Award to date are an elite group, each of whom has dedicated their professional lives to the client protection mission of service to victimized clients. **To nominate this year's recipient, complete the form available at**

<https://www.ncpo.org/issac-hecht-award>.

**Contact Michael Harmon for more information at**

[Michael-Harmon@sbcglobal.net](mailto:Michael-Harmon@sbcglobal.net)

**"Funds exist because lawyers are honest by an overwhelming majority. It is simply unacceptable to honest lawyers that there be no remedy for clients who suffer solely for having given a lawyer their trust, especially since the system of justice depends upon such clients' trust and candor."**

Mr. Hecht was instrumental in developing the Standards for Evaluating Lawyers' Funds for Client Protection, from which this quote is taken.

# WELCOME NEW MEMBERS

## NCPO Quest Continues for Full U.S./Canada Representation



NCPO's membership outreach effort continues. This month we welcome back the Client Protection Fund of the State Bar of North Dakota to the NCPO family. Hailing from sunny Bismark, North Dakota, the Fund is led by Executive Director Jeanne Schlittenhard and supported by the State's 1,700 lawyers. Be sure to pay the Fund a visit the next time you're passing through the Badlands, or see them online at [https://www.sband.org/page/client\\_protect\\_claim](https://www.sband.org/page/client_protect_claim)

**Have you renewed your membership for 2022? It's easy to do at <https://www.ncpo.org/membership>**

## Counterfeiting and Identity Theft in the Carolinas

Christi Anne Misocky, who practiced in both North and South Carolina, recently admitted to giving "personal client information" to two acquaintances who used the information to make and pass counterfeit and forged securities in the names of Misocky's clients. Misocky, who specialized in adoption and property law, endorsed stolen checks and deposited them into her account. She then paid a share of the proceeds to her co-conspirators. She also is accused of using false identities, including fake driver's licenses and social security cards, to trade and purchase cars.



Christi Anne Misocky

Misocky's schemes led to her disbarment as well as claims with the South Carolina Client Protection Fund. While Misocky's problems first started to come to light as early as 2017, she was just disbarred in January 2022. Sentencing in the federal criminal case is pending.

## Ohio Fund Returns \$100,000 in Unearned Retainers

The Ohio Board of Commissioners of the Lawyers' Fund for Client Protection recently agreed to dedicate \$100,000 to refund retainers paid by clients of Donald P. Leone of Canfield, Ohio. Leone resigned from the Bar with disciplinary action pending in May 2020 and died in December 2020, eleven days before his 71<sup>st</sup> birthday. Leone practiced law for over 40 years and was well-known in the community as a Rotarian and president of both the Toastmasters and Wolves clubs. While he represented many clients in real estate transactions, he was also the prosecutor for the Village of Poland, Ohio. He was particularly proud of his hole-in-one at the Tippecanoe Country Club.



# International Lawyer Unanimously Disbarred

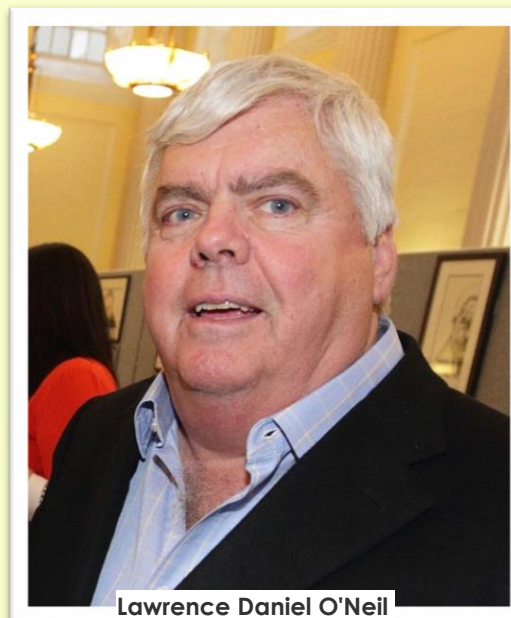
## New York Fund First of Many to Learn of Thefts

Lawrence Daniel O'Neil was described as an entrepreneur and international consultant, and practiced law for over 45 years in the District of Columbia, New York, Maryland and Ireland. The son of a World War II flying ace and direct descendant of the ancient O'Neill Clan of Ulster, Ireland, O'Neill was a Vietnam veteran and worked in the White House Office of Telecommunications Policy during both the Ford and Carter administrations. In the end, however, it was a trust account check overdraft notification to the New York Lawyers Fund for Client Protection which started the downward spiral of his legal career.

The resulting investigation by the Maryland Attorney Grievance Commission found that O'Neill had a negative trust account balance on at least ten different occasions. The Commission alleged O'Neill deposited personal funds into his trust account 17 times in an attempt to hide his commingling and personal use of client trust funds.

The Maryland Appeals Court ordered O'Neill be disbarred. In a 38 page opinion, the Court found O'Neill "demonstrated a dishonest and selfish motive by using client funds...to cover personal expenses...Respondent failed to safeguard client funds and to communicate honestly and responsively with Bar Counsel despite over four decades of legal experience."

O'Neill continues to deny any wrongdoing, claiming that the Court has relied on "erroneous interpretations" in a "trumped-up case."



Lawrence Daniel O'Neil

## Sixteen and Counting –

### Funds Still Working Towards NCPO Standards

NCPO's [\*Standards for Evaluating Lawyers' Funds for Client Protection\*](#) were adopted by the NCPO on June 2, 2006 and by the U.S. Conference of Chief Justices on July 31, 2013. The Standards are intended to help jurisdictions address the fundamental question of client protection: "Is the need being met?" As we prepare to reconvene in person for the first time in three years at the ABA Forum in Baltimore this is a good time to revisit the Standards, found here – [Resources | National Client Protection Organization \(ncpo.org\)](#)

The Standards' introduction pointed out that "Funds exist because lawyers are honest by an overwhelming majority. It is simply unacceptable to honest lawyers that there be no remedy for clients who suffer solely for having given a lawyer their trust, especially since the system of justice depends upon such clients' trust and candor. The same logic that compels Funds to exist commands them to be better than mediocre.

Finally, all is for naught if a Fund simply fails to respond to the need of deserving claimants who find it. The Standards are built upon these truisms. The Standards provide detailed explication of what excellence in client protection demands. Setting them high means that readers from virtually every Fund in North America will find at least something disquieting in these Standards. Discomfort with inadequacy is appropriate. When improvement is the result, the Standards are working.

# Red Flags –



## Dealing With Those Who Don't Get It

By Ken Bossong

Ken Bossong was Director of the New Jersey Fund for 30 years and is one of the founders of NCPO. Following is an article he wrote for the Client Protection Webb in 2017.



Work in this field a while and you are going to hear some things that are a dead give-away that the speaker or writer does not understand Client Protection at all. Worse, you're going to hear some of them over and over. Just as fields have their truisms, they have "falsisms" as well. No matter how specious, these notions seem to last for decades. That is one reason the Standards were written.

Who says these crazy things? It can be almost anyone: a member of the Bar or the media, a bar leader or staffer, a state government official, or, unfortunately, someone closer to the Fund.



One can either tear one's hair out or take the opportunity to educate. For those inclined toward the latter, here are a few of the classics and rejoinders as I would word them. (All section references are to the Standards For Evaluating Lawyers' Funds For Client Protection, adopted by NCPO on June 2, 2006.) If one of these red flags pops up, recognize it and proceed accordingly.

- 1) "I'm not paying for crooked lawyers!" [Said in opposition to the annual assessment] – Actually, they are correct. They are *not* paying for crooked lawyers; they are paying for the victims (Standards 2.1, 2.3). Not a dime of any award helps the dishonest lawyer in any way. The money stolen is now owed to the Fund instead of the client, and the Fund is a more formidable adversary than most clients. By the way, this is the second best reason, after replenishment, to pursue subrogation receipts: it is a moral, and public relations, imperative (2.6, 4.9).
- 2) "Most lawyers are crooks." [Said or implied by members of the public or, occasionally, the media] – Actually, only a tiny minority of lawyers are dishonest (though those few do a lot of damage). To the extent the Fund pays for every defalcation that occurs, as we strive to do, we have the statistics to prove it. In the entire history of the Fund, we have paid claims against [one-half of one percent of the number of lawyers admitted right now...] More importantly, law is one profession where the honest 99.5% pay out of their own pockets for the misdeeds of the few (2.2).
- 3) "We can't afford to pay for this type of claim." This is always bogus, but please note a crucial distinction from "We *should not* pay for this type of claim." A discussion on the merits of the latter is the #1 reason we gather at workshops and forums, call each other, invite NCPO's Speakers Bureau, and look forward to receiving The Webb. A more worthwhile topic can scarcely be imagined. If we cannot pay a type of claim that we know we should be paying,

however, we are failing in our mission as a Fund. This is purely a funding issue and must be solved (2.1). If we care a whit about the honor of the profession, we can't afford *not* to pay such claims (4.10).

- 4) "All claims for unearned fees are fee disputes." No, a fee dispute is where there is a legitimate dispute as to the value of services rendered. Funds don't decide them. When, on the other hand, the facts are clearly established that (a) a fee was paid, (b) it was not earned, and (c) the portion clearly not earned was not returned as required by RPC 1.16, Funds can and should decide them (4.10).

- 5) "A Fund can never pay a claim involving an investment, because that precludes the requisite attorney/client relationship." Time for another important distinction: Claims for bad investment advice or unfortunate outcomes will fail for lack of dishonest conduct, anyway. In analyzing the a/c relationship, though, never forget the But-For Test [thank you and RIP, Dick Amster]: The Fund has jurisdiction if, but for enjoying an a/c or fiduciary relationship with claimant, the lawyer would not have had access to the money that was misappropriated rather than invested.



- 6) "The Fund has too much money." This absurdity deserves its own column. The reserve levels at which this is sometimes invoked to reduce or eliminate the Fund's assessment would be laughable if not so tragic (2.4). Consider the damage one compulsive gambler can do on Super Bowl Sunday. Suffice it to say there is not a Fund in North America with too much money. There may be a few (very few) that are approaching adequate funding. What is adequate funding? Perhaps a test could go something like this: The Fund could pay for one or two catastrophic claims with sufficient aplomb to handle its other, more typical claims, and to carry on and replenish in good order. Jurisdictions that reduce the assessment get no thank-you notes, and live to regret it. By the way, unless the Fund is making all claimants whole, it is not appropriate to even have this conversation (2.5).

- 7) "The Bar will rebel if we raise the Fund's assessment [\$5 or \$10]." Just as there are very few lawyers who are dishonest, not many are so callous as to not care about harmed clients (2.1 - 2.3). If given a chance to understand that clients devastated for having trusted a lawyer are getting 25 or 50 cents on the dollar from their Fund, and that this can be cured at an annual cost to them of a sandwich, honest lawyers are going to rebel? Stop it.

Education is not only prudent; it is a core responsibility (3.1). No opportunity should be missed to replace misconception with clarity in these and other areas of our field. Speaking of which, what are some of the myths you encounter that need addressing? Please provide them to Webb editor Mike McCormick at [michael.mccormick@njcourts.gov](mailto:michael.mccormick@njcourts.gov) for possible inclusion in a future edition.



# Sanctions, and what you can do about them --

By Joe Kelly

Database Administrator, State Bar of Michigan

The United States has recently imposed sanctions on Russia for their war against Ukraine. The United States has sanctioned many individuals and entities, and this list changes regularly, as more people are added, and some may be removed.

If you run a Client Protection Fund or otherwise coordinate restitution, you may be wondering if anyone that is due payment is on the sanctions list and therefore ineligible for payment. There is indeed a list that you can check against, using either a one-by-one manual lookup, a customized automatic lookup or specialized software.

To manually look up the list you can use this website:

<https://sanctionssearch.ofac.treas.gov/> The Client Protection Fund in Michigan will use this method to ensure that we are not making payments to sanctioned individuals. Typing in name only, and appropriately setting the minimum name score at say 80 allows for the broadest search capabilities. This allows typos and other transliterations and sound-like matches. The lower the threshold, the greater the chances for making matches, including false positives.

This allows matches on "Vladamer Pootin" for example, which will match at a score of 88, even though there are typos.

If you find the process of looking up

individual records tedious, then there are software vendors that deal with the US Treasury Department's Office of Foreign Assets Control (OFAC) sanctions list. The OFAC FAQ indicates that these regulations primarily apply to banks and asking a bank what software they use for enforcement.

I also worked at another company that developed a custom method for checking against the sanctions list. OFAC makes the list available as a text file. The Complete Specially Designated Nationals List in Text format is located here:

<https://www.treasury.gov/ofac/downloads/sdnlist.txt> This can be imported into a database by delimiting on the 'a.k.a.'s in the file. This list can then be searched. In the SQL Server, there's built in functionality for the Soundex algorithm, which will allow matches based on similar sounds, even if the text does not exactly match.

What do you do if you find someone on the sanctions list that you are about to pay? You should search the OFAC FAQ for information on "Blocking and Rejecting Transactions", and if necessary, you may want to call OFAC with any specific questions.

For the volume of transactions that any Client Protection Fund receives, your best bet is likely a manual lookup. Hopefully, no one asking for indemnification is subject to sanctions. But by doing our due diligence, we will all be able to sleep a little better knowing that we did our part to keep America safe.



# THE LAST WORD....

## NCPO Advocates for Change!

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

Over the past few years, I have been talking about how Funds should take steps to implement the client protection measures recommended by the American Bar Association, which can be located here: [Client Protection Information - Resources by Topic \(americanbar.org\)](http://americanbar.org). These programs protect clients, and in preventing losses, protect Fund reserves by minimizing claims. Author Leslie Levin in [Ordinary Clients, Overreaching Lawyers, and the Failure to Implement Adequate Client Protection Measures \(uconn.edu\)](http://uconn.edu), makes the argument for institution of the programs, addresses hurdles to enacting their recommendations, and provides evidence and support to assist jurisdictions in implementing programs.



It has been my goal to reach out to jurisdictions that have implemented these programs and ask about successes, opposition, and any other information that may assist those willing to advocate for implementation. Mr. Levin's article provides much of what is needed to start.

I encourage you to read the article and share it with your staff, Trustees, Board Members, and anyone else who will listen. Then take the steps to implement these needed protectionary measures. Even one of these programs would benefit our members and the public. But do not fear, even if all are implemented, you will still have a job and a Fund. Unfortunately, there seems to be no limit to the creativity of a lawyer who is bound and determined to steal from clients – and that's why we need your Fund.



*\*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](mailto:Michael.McCormick@njcourts.gov)*