

# The Client Protection Webb

A Publication of the National  
Client Protection Organization

November, 2014

## President's Message

### *Strategic Plan tops NCPO Project List*

*By Michael J. Knight, NCPO President, Deputy Counsel,  
NY Lawyers' Fund for Client Protection*

NCPO remains busy with ongoing projects! Past President, Mike Miyahira and Director-at-Large, Dan Hendi are in the process of re-forging NCPO's 2011 Strategic Plan. Your jurisdictions will soon receive questionnaires to gauge the effectiveness of NCPO - what we are doing well, and what we can improve on. Please participate!

It is never too early to submit nominations for the Isaac Hecht Law Client Protection Award! - Chaired by Janet Green Marbley and Janet Moss, the deadline for submissions is April 1, 2015. The annual award is presented at the ABA National Forum on Client Protection which coincides with the NCPO's Annual Membership Meeting - both to be held this year in Denver,



Colorado.

Finally, Regional Vice-Presidents continue to work with member jurisdictions and promote the NCPO Standards for Evaluating Lawyers' Funds for Client Protection. President-elect, Kathy Peifer coordinates our Vice-Presidents who are a valuable resource for NCPO members.

Recently, I attended the 2014 ABA Fall Leadership Conference in Chicago representing NCPO as liaison to the ABA Standing Committee on

## Save the Date



Mark your calendar now to attend the next NCPO Client Protection Forum – our 31<sup>st</sup> – on May 28-30, 2015 in Denver Colorado. The forums are a great opportunity to network with other states' Funds, catch up on client protection news, and delve into some of the difficult fact patterns and policy issues facing those involved in the field.

If your Fund is on a tight budget, consider applying for a grant from NCPO of up to \$1,000 to help defray the cost of attending the Forum. Applications will be assessed based on financial need, and must be received not later than 90 days before the Forum. For details, and to apply, visit

[www.ncpo.org/page12.html](http://www.ncpo.org/page12.html)

**See you in Denver!**

Client Protection. The general session offered a panel discussion sponsored by the ABA Commission on the Future of Legal Services which focused on the proliferation of non-lawyer legal service providers: both unlicensed commercial providers of legal documents such as Legal Zoom.com and court sanctioned programs such as Washington State's Limited Licensed Legal Technician Program (LLLT's).

The former category was presented with more of a pejorative blush while the latter program was presented as a welcome means to address a perceived 'justice gap' suffered by the under-represented. It is the latter discussion which got my attention. What became apparent in the latter example of LLLT programs is the need for clarity on the role of law client protection funds with the advent of this model.

Intuitively, permitting non-lawyers to practice law, even in a limited fashion, is a high-wire act without a net for the vulnerable legal consumer. Proponents of the LLLT program laud rigorous training and

education, separate ethics rules and the strict limited scope of the legal technician's purview as sufficient safeguards to protect law clients from abuse. Absent, however, is access to a client protection fund for the victim of a dishonest LLLT. With no formal admission to practice, Lawyers' Funds simply have no jurisdiction to consider these potential losses.

The areas of practice in which LLLT's are being encouraged to prosper include family law, immigration and home loan/mortgage modifications: practice areas which client protection circles know present the greatest risk to law clients who are among the most unsophisticated and vulnerable to dishonesty. Also troubling is that LLLT's, at least in Washington State, are not required to be tethered to a supervising attorney. They may engage in affiliation with a law firm, or as a stand-alone entity. Finally, LLLT's will be able to have trust accounts under the proposed LLLT RPC's that are currently published for

## "Disbar Me, Please"

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The Montana Supreme Court recently rejected the request of David McLean that he be disbarred for stealing more than \$350,000 of his clients' money. The Court said normal disciplinary proceedings were necessary to help establish the extent of McLean's theft and calculate the exact amount of restitution due. The Court noted McLean's request was "unusual and perhaps unprecedented," but if granted would "allow lawyers to bypass the system...with perhaps unintended consequences."

comment, but cannot take contingent fee cases.

Presently, there is no client protection fund equivalent in place to address potential dishonest conduct by LLLT's. Perhaps this is a discussion NCPO should have. I would certainly welcome your comments whether you believe this is an issue NCPO should weigh in on. Feel free to email me at [mjk@nylawfund.org](mailto:mjk@nylawfund.org). Thank you.

## Ohio Fund Gets New Name for 2015

*Submitted by Janet Green Marbley, Ohio Fund Administrator*

As of January 1, 2015, the Clients' Security Fund of Ohio will be known as the Lawyers' Fund for Client Protection. The Ohio Supreme Court approved the renaming on September 9, 2014, following a request by the Board of Commissioners.

Ohio's fund was established by in 1985 by the Supreme Court of Ohio. Gov. Bar Rule VIII of the Ohio Supreme Court Rules for the Government of the Bar was enacted using the American Bar Association's Model Rule as a guideline. At the time, the ABA Model Rule was entitled "*Model Rules for Clients' Security Funds.*" The Model Rule was amended in 1989 and is now the "*Model Rules for Lawyers' Funds for Client Protection.*"

According to the most recent ABA survey, twenty-one jurisdictions currently include *client protection* in the name of their fund. Nineteen jurisdictions include *client security* in the name of their fund.

Ohio's renaming will reinforce the purpose and mission of the fund by clarifying the role played by the legal profession in assisting those who were harmed because they trusted their lawyer. The name change will not affect other aspects of the fund's work.

The name change will, however, require a great deal of changes in other ways! All of the fund's printed materials must be reprinted. All of the signage in the Ohio Judicial Center, where the fund's offices are located, must be changed. All references throughout the Rules for the Government of the Bar must be updated as well. Claimants in all pending claims must be notified, along with the various disciplinary agencies and committees and bar associations throughout the state. Last but certainly not least, every licensed Ohio attorney will receive notice of the name change.

Ohio has nearly 44,000 attorneys engaged in the active practice of law. Less than one-tenth of 1 percent of those attorneys is involved in CSF claims. Since its inception, the fund has allocated almost twenty million to nearly 3,000 former law clients.

Ohio's renamed *Lawyers' Fund for Client Protection* will continue to help improve the image of the legal profession by reimbursing losses caused by defalcating members of the bar.

## NCPO Speakers' Bureau Ready and Willing

One often underutilized benefit of NCPO membership is the NCPO Speakers' Bureau. If you need someone to talk about payee or overdraft notification, what constitutes a high performing client protection fund, the benefits of community education about your Fund, or a wide range of other topics, then the NCPO Speakers' Bureau is for you. There are no speakers' fees, and NCPO will underwrite all travel expenses for its speakers, who possess a huge body of knowledge and experience in client protection matters. Speakers are happy to talk to your trustees, bar association, court, law school or community organization. To arrange for a speaker, just get in touch with the speaker of your choice. Full biographies are available online at [www.ncpo.org](http://www.ncpo.org) under the Speakers' Bureau tab on the bottom left of the page.

## California Fund Recognized for Job Well Done

A recent California Bar Journal article highlighted the efforts of the State's Client Security Fund to help victims of now-disbarred attorney Bruce Weiner, who promised dozens of clients loan modifications meant to stave off foreclosure, but failed to deliver on those promises. The Fund paid \$222,209 to 73 of Weiner's clients, who had paid "fees" which Weiner said were needed to obtain their modifications. After paying Weiner, his clients never heard from him again. Many lost their homes in the process. The Journal noted that the Fund's awards on behalf of Weiner were just part of a record year in which the Fund paid out more than \$11 million to over 2,000 claimants.

Lori Meloch, Fund Director, said mortgage loan modification fraud was largely responsible for the influx of claims, which has required hiring additional temporary staff to help with the legal review and processing needed to insure that claimants receive reimbursements in a timely matter. It looks like the Fund may continue to need the extra help: Another recent article reported that Stephen Lyster Siringoringo, a 33 year old Garden Grove, California attorney, had consented to his disbarment, effective October 18, 2014, after over 800 clients filed ethics complaints against him. The clients allege they paid Mr. Siringoringo to obtain mortgage modifications for them, but he did nothing,

"I found out I wasn't the only person being taken for a ride by these people," said William Letendre, one of Weiner's victims. "It's good to know that the State Bar of California has an organization to protect unsuspecting people from these kinds of situations....And thanks to all the honest attorneys who work so hard to protect their client's rights. "

## Nominations Being Accepted for Annual Isaac Hecht Award

Nominations are now being accepted for the 12<sup>th</sup> recipient of the Isaac Hecht Law Client Protection Award.

The Hecht Award is presented annually at the ABA Client Protection Forum (this year on May 28-30, 2015 in Denver, Colorado) to recognize an individual, law client protection fund, or other professional organization that has demonstrated excellence in the field of law client

protection. "Excellence" includes achievements in promoting public confidence in the administration of justice and the integrity of the legal profession; the substantial reimbursement of law clients for eligible losses; the development of programs to prevent or detect professional misconduct in the practice of law; and meaningful public information programs for client protection funds, attorneys and legal consumers.

Isaac Hecht was a co-founder of NCPO in 1998 and served as its Director and Treasurer. Through 64 years of the practice of law in Maryland he remained committed to the belief that trust is the essential linchpin in every lawyer-client relationship.

Nominations may be submitted through NCPO members Janet Moss at [tonimoss@aol.com](mailto:tonimoss@aol.com) or Janet Green Marbley at [Janet.GreenMarbley@sc.ohio.gov](http://Janet.GreenMarbley@sc.ohio.gov).

# NCPO Regional Vice Presidents Report on Fund Activities

*Here's a round-up of what's happening in some of NCPO's member funds across the country. If your fund isn't mentioned, please let us know what's going on in your state. Submissions can be made to newsletter editor Mike McCormick at [Michael.McCormick@judiciary.state.nj.us](mailto:Michael.McCormick@judiciary.state.nj.us).*

**Connecticut:** The Fund has a substantial reserve against pending claims, but is facing several issues involving out-of-state clients interested in filing claims against a Connecticut licensed attorney who only has a "virtual" office in Connecticut. The Fund also received its first claim against an attorney admitted "pro hac vice"; and claims filed against a busy former PI attorney who paid clients their shares of settlements but did not pay third-party beneficiaries who potentially have liens on the proceeds.

**Delaware:** The Fund is winding up claims it received last fiscal year. It paid out \$235,000 this year (a large amount for Delaware) and has 3 claims pending.

**Massachusetts:** Counsel for the Board was "respectfully requested" to appear before a Bankruptcy Judge who had issued Orders to Show Cause to a former lawyer as to why she has not disgorged her legal fee on 18 cases where she failed to perform legal services. The lawyer suffers from severe substance abuse. Of those 18 matters, 4 clients/debtors filed claims with the Board and each received an award for the unearned fee received by the former lawyer for which no legal work was performed. The judge wanted to know why haven't the remaining 14 clients filed claims with the Board? While there was some "dancing around" by the various lawyers at the hearing, the Fund explained that the Board stands ready to hear any claim that is filed. The potential problem is this: In analyzing 82 claims against the former lawyer, in those rare cases where successor counsel took over the case and DID NOT charge a legal fee, the Board

usually found no compensable loss and therefore made no award, i.e. the clients received legal services and got a discharge in bankruptcy. They got what they paid for, even if they paid the now suspended lawyer and a different lawyer did the legal work. Will the bankruptcy judge be satisfied with the no compensable loss (no award) outcome? The judge really wants the former lawyer to be responsible for paying back her clients.

**New Jersey:** The Fund is flooded with claims - 30 just in August and 9 already in September. The Fund will have paid out a banner amount this year due to one respondent for whom the Fund is paying out 50% this year on a total of \$12 million in claims against him.

**Vermont:** Issues that stand out are (1) what to do about the lawyers with virtual offices and whose only really connection to the jurisdiction is the law license? (2) How are pro hac vice claims being handled and are they frequent?; and (3) Should Funds require all claimants to file a criminal or disciplinary complaint? Should there be any exceptions? What if the clients don't want to?

**Florida:** Florida is having a challenging year, but nothing more money would not solve.

**Kentucky:** The Fund has always hoped to reach a funding level of \$1M, but has never gotten over \$600,000. In 2013, the Fund lowered the caps from \$65k to \$50k per claim and \$200k to \$150k per respondent. The Fund awards between 30-40% of its assets each year. The Fund considered raising the assessment rather than lowering the caps, but was not able to secure approval.

**Ontario and Alberta** – These Funds have just completed 10 years of dealing with defalcation claims through an insurance policy, and have just published a special 10 year report, which was sent to all of their 13,000 plus members.

## New Jersey Fund Celebrates 45<sup>th</sup> Anniversary

On September 10, 2014, the New Jersey Lawyers' Fund for Client Protection celebrated 45 years since adoption of the Court Rule which created the Fund in 1969. A dinner held at the New Jersey Law Center in New Brunswick was attended by generations of Trustees, Judges and friends of the Fund in the legal community.



The Fund's first chairman, the Hon. Dickenson R. Debovoise, now Senior Judge of the U.S. District Court for the District of New Jersey.



The Fund's current chair, Lisa R. Rodriguez, Esq., addresses the event.



Fund Director Daniel R. Hendi with the Hon. Stuart Rabner, now Chief Justice of the NJ Supreme Court (left), and once a law clerk to the Fund's first chairman, Judge Dickenson R. Debovoise.



From left, Fund Director Dan Hendi with NCPO President Mike Knight, Fund Trustee Joseph Severino and NCPO Treasurer Timothy O'Sullivan.