

The Client Protection Webb*

- BEGINNING OUR "POST-PANDEMIC" EDITIONS -

A Publication of the National
Client Protection Organization

July, 2021

Oregon Enacts Payee Notification

Support of NCPO Key to Passage

By Amber Hollister,
Oregon CSF Administrator & General Counsel

On June 1, 2021, with the support of the Oregon State Bar Client Security Fund, Oregon became the sixteenth state in the union to enact payee notification as an additional tool to deter lawyer theft. The stalwart support of the NCPO and Oregon Attorney General Ellen Rosenblum was absolutely critical in getting the bill across the finish line.

In the 2021 legislative session, in the midst of a historic pandemic, the OSB introduced SB 180 – seeking to enact payee notification for all third-party insurance payments exceeding \$5,000. NCPO President Alecia M. Chandler submitted a letter in both chambers championing the Fund's efforts and laying out the national support for payee notification efforts. Likewise, Oregon's Department of Consumer and Business Services weighed in with technical information about the agency's authority to enforce the insurance code with civil penalties.

For all the details of this landmark achievement for client protection see Page 3

Register TODAY for NCPO's Virtual Workshop

FREE for NCPO Members Online – Monday, September 20, 2021, 1 – 4:30 p.m.

Online registration is now open on the NCPO website at [2021 NCPO Workshop | ncpo](https://www.ncpo.org/2021-NCPO-Workshop)

Registration includes 1.5 FREE CLE ethics credits – let us know when you register how we can help you qualify for credit in your jurisdiction.

Not an NCPO member yet? No problem – register for the workshop for just \$20 and receive a FREE one year NCPO membership!

For details on this year's workshop, see Page 6

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President's Corner -

Resources, Resources, Resources



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

If any of you are members of the ABA Administrators of Client Protection Funds listserv you will know that I have been posting a lot of questions lately and you should too! **(See Page 11 to become a part of this great resource)**

NCPO and the ABA have a lot of wonderful resources that your Fund can take advantage of as part of your membership. As you can see from the other articles in this newsletter, we are promoting listserv participation, with a little help from our friends at the ABA; our grant initiative project is underway; the speakers' bureau is being revamped; and we are reaching out through our Regional Vice Presidents to determine other resources we can provide to you and your Fund.

With that in mind, **I need your help.** On our website, www.ncpo.org, we provide **Resources including model rules, articles, links to affiliate organizations, videos, orientation guides, annual reports, and more.** However, there are so many additional resources that would be useful to other Funds. Do you have something that you have produced that could help other Funds? If so, please send it to info@ncpo.org.

Moreover, we would like to find a web developer to work with to enhance the website and keep it up to date. Do you know a good developer who may want to engage in a side project with the NCPO? It is our hope to create a secure area for our members that will include sample documents, rules, and additional information relevant to Funds.

Finally, remember to ask what the NCPO can do for you! We are here to bolster Client Protection/Security Funds and help make your job easier – let us!



Have you renewed your membership for 2021?

What is your fund's most vexing problem? What is your biggest challenge?

What have you wanted to do to improve your fund, but haven't been able to? What are you being asked to do, but can't because of lack of staffing, funding or other resources?

Let NCPO help you answer these questions and more.

Annual individual membership is just \$25;

Organizational membership is \$200.

Contact Membership Chair Eileen Donahue

at edonahue@iardc.org **TODAY!**



"I'm just a bill" -

Schoolhouse Rock in Oregon Gets the Job Done

By Amber Hollister,
Oregon CSF Administrator & General Counsel

This article tells the story of Oregon's payee notification bill and its eventual passage.

Oregon's Client Security Fund was created by our legislature in 1967, at the request of Oregon lawyers, to establish a fund "to relieve or mitigate pecuniary losses to the clients of active members caused by dishonest conduct of those members in their practice of law." All active members pay annual assessments into the Fund, as set by the OSB's Board of Governors. The fund made its first award in 1969 and has continued its work ever since.

But the Oregon Fund's work has not been without significant challenges. From 2011 to 2012, the Client Security fund received claims that Bryan Gruetter -- a well-known and respected attorney -- had stolen over \$1 million dollars in settlement funds from his clients. By 2012, after Gruetter had resigned with disciplinary proceedings pending, his clients' claims well exceeded the Fund balance. To cope, the OSB delayed the payments of claims and increased the CSF member assessment to cover the losses and rebuild a reserve. Ultimately, Gruetter was sentenced to serve time in federal prison and the federal restitution judgment named the Fund as a victim. The OSB increased the Fund's reserve to \$1 million in hopes that would cover future claim spikes.

Again, in 2018 and 2019, a new wave of claims was projected to deplete the Fund's \$1 million dollar reserve. In 2018,

Lori Deveny, a former plaintiff's attorney, resigned while discipline

was pending. She is currently facing felony charges in both state and federal court. In all, Deveny is alleged to have stolen well over \$2 million in settlement funds from her clients; her trial is scheduled for later in the year. Claims from her victims -- many who had suffered devastating physical injuries -- led to a huge uptick in claims and awards that far exceeded the available reserve. To respond to this sharp outflow of funds, the Board of Governors allocated \$500,000 from the OSB's general fund to the Client Security Fund to pay outstanding claims and more than tripled the CSF assessment on members (from \$15 to \$50).

After these instances of lawyer defalcation emptied the coffers of Oregon's Client Security Fund not once but twice, the OSB Board of Governors asked the Client Security Fund to examine the existing rules and seek potential solutions. The CSF Committee's response was two-fold: first, the Committee recommended increasing the claim cap from \$50,000 to \$100,000 to allow additional reimbursement to victims of large thefts. Commensurate with that change, the Committee recommended pursuing payee notification in the hopes that it would deter the theft of settlement

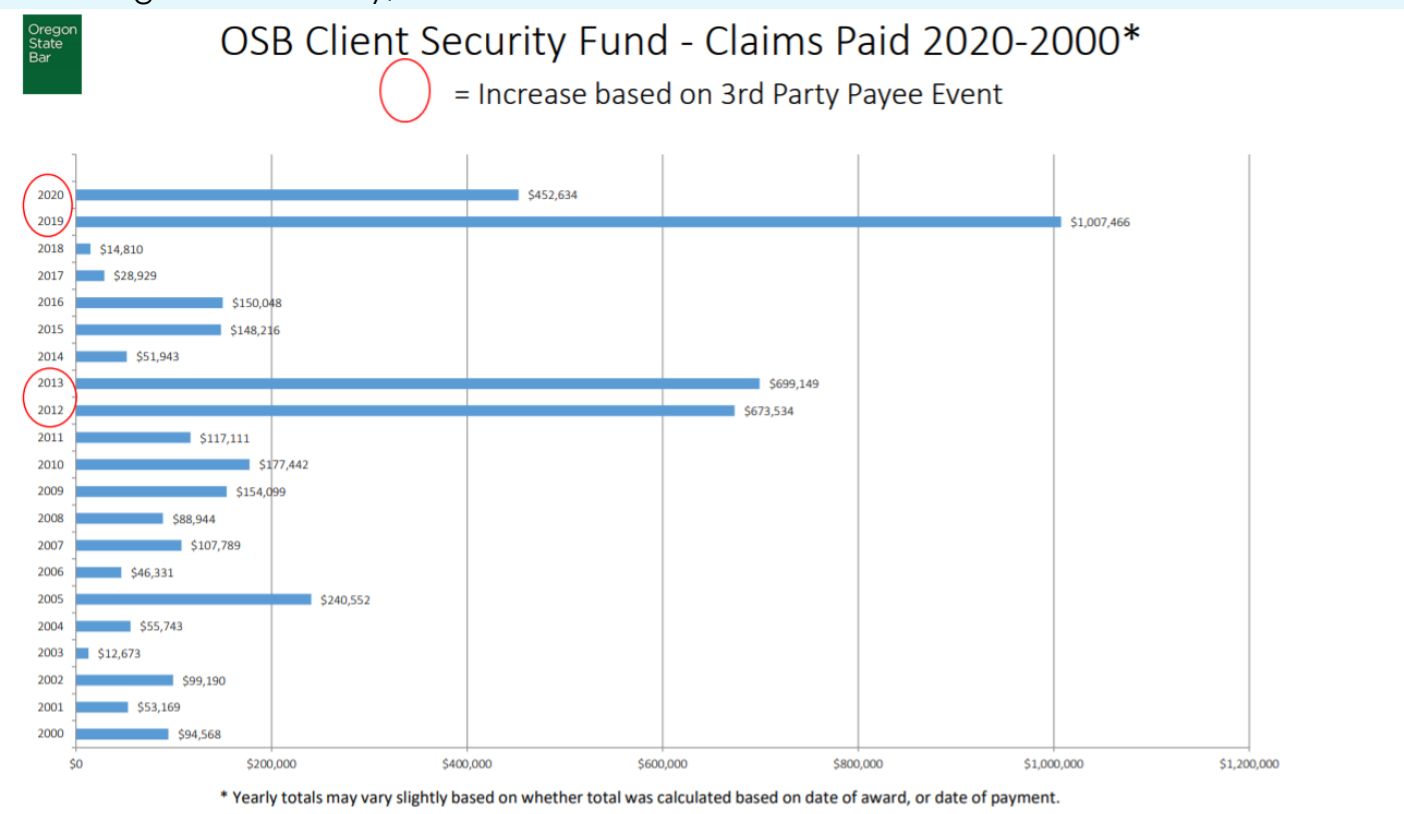


funds. Based on the Committee's recommendation, the Board of Governors sought to pursue both recommendations. The rest is history.

The Pitch and the Sticking Points

SB 180 is closely based on the ABA model payee notification law -- it establishes a straightforward process for insurance companies to notify claimants who are natural persons when an insurance payment is made to a third party, including their attorney, to cover a loss

caused by their insured. In legislative testimony, the Client Security Fund Committee Chair, Stephanie Thompson, together with OSB staff, successfully emphasized the consumer protection power of the bill, outlining the harm to vulnerable clients and the cost of remedying lawyer theft. In particular, testimony emphasized the pattern of opportunistic theft by a handful of lawyers that could be deterred through payee notification with the following graphic:



During the bill's journey through both chambers, two major concerns were raised by stakeholders and addressed by the OSB. First, insurers' counsel expressed concern that in order to comply with the notification requirement they would be required to engage in contact with represented parties, in violation of their professional obligations under Rule of Professional Conduct 4.2. To allay this concern, the bill was amended to provide explicit authority for insurance companies

to communicate directly with a represented claimant for the limited purpose of informing them when settlement funds have been distributed to their lawyer. See ABA Model Rule of Professional Conduct 4.2 (permitting communication with a represented party that is authorized by law).

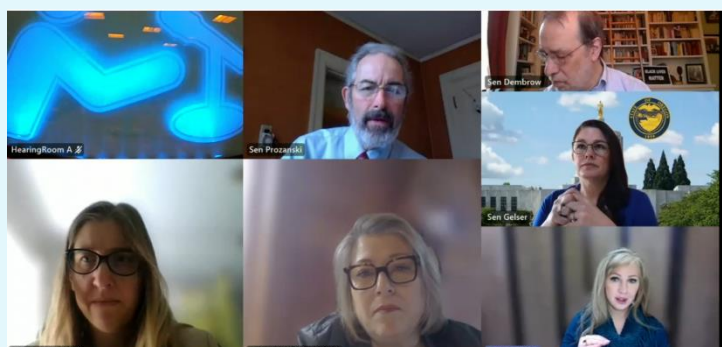
Second, some attorneys expressed concern that the content of the notification would be overbroad and

could impact the attorney-client relationship. The bar responded to this request by amending SB 180 to require insurance companies to only either provide claimants a copy of any letter accompanying a third-party payment or a separate notification that included specific enumerated information -- a statement that the insurer has paid a settlement, the insurer's name, date of payment, amount paid, claim number -- without more. With this change in place, those concerns were put to rest.

at the recommendation of the CSF Committee, the OSB's Board of Governors recently voted to amend Oregon's CSF Rule to double the cap for reimbursement of claims to \$100,000 per claimant, effective January 1, 2022 (the same date on which SB 180 becomes effective). The Board has also elected to raise the Fund's reserve to \$1.25 million.

Oregon's \$50,000 claim cap had been in existence since 1993. The 2022 cap increase will help account for the impacts of inflation over the past three decades and ensure Oregon's CSF cap is more in line with that of similarly situated states.

Ultimately, the successful passage of SB 180 could not have happened without the backing of a committed team that was determined to increase consumer protection for clients. By engaging and responding to the concerns of stakeholders, demonstrating support from the Oregon Attorney General and the NCPO, the OSB Client Security Fund was able to achieve a legislative change that we hope will deter catastrophic lawyer theft and protect clients for many years to come.



Legislating via zoom - Oregon State Senators hear testimony from Fund Administrator, Amber Hollister (bottom left)

For fund administrators interested in the details, Oregon's bill language, proposed amendments, written testimony and the history of the measure is available online at <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB180>. SB 180 will become effective January 1, 2022.

Doubling the Claims Cap

Based on the experiences in other states, the OSB Client Security Fund is optimistic that adopting payee notification will help reduce the likelihood, scope and extent of consumer harm in the context of lawyer theft of settlement funds. With this in mind,



Unlike any other organization, the focus of NCPO is client protection. NCPO members know the unique nature and challenges funds face. They want client protection done well.

Register **TODAY** - - -

NCPO Virtual Workshop Set for September 20, 2021

Claims brought before client protection funds come in all shapes and sizes. Cultures, ethnicities, religions and traditions all play a part in how clients interact with their attorneys. They can also impact the losses suffered by client victims of attorney misconduct. How do client protection professions recognize these nuances in claims? How do they insure that claim decisions take these factors into account?

Judge Sohail Mohammed, Presiding Criminal Judge in Passaic County, New Jersey Superior Court will share his wealth of experience dealing with litigants of diverse cultures and backgrounds during NCPO 2021 Virtual Workshop on Monday, September 20, 2021 from 1 – 4:30 p.m. The workshop is free to NCPO members and includes CLE credits for attending the keynote presentation by Judge Mohammed. Register on the NCPO website at [2021 NCPO Workshop | ncpo](https://www.ncpo.org/2021-NCPO-Workshop)



NCPO is honored to welcome Judge Mohammed to speak on how statutory “western” law frequently interacts with cultural and religious precepts in diverse ethnic communities. He has extensive experience both in private practice and on the

bench in cases where ethnic and cultural norms were pivotal factors, including immigration and citizenship, marriage, dowry, divorce and asset distribution matters.

After the 9/11 attacks, Judge Mohammed served as a liaison between law enforcement authorities and New Jersey's Islamic community, working with the U.S. Attorney's Office and the FBI in building relations with Muslim Americans. He was involved in training over 7,000 members of the law enforcement community regarding Islamic culture and practices and co-founded the American Muslim Union.

REGISTER TODAY TO LEARN MORE!

Workshop agenda

In addition to Judge Mohammed's presentation, the workshop will feature NCPO's “Town Hall” session during which each jurisdiction is asked to report on the state of their fund. Come prepared to take advantage of the combined experience of NCPO members to get fresh perspectives on difficult claims and challenges facing your fund.

The annual presentation of the Isaac Hecht Award for excellence in the field of client protection will honor 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 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.

To nominate a future Hecht award recipient, contact Mike Harmon at michael.harmon@arcourts.gov.

NCPO's annual meeting will provide updates on the new programs and initiatives found in this newsletter (including the speakers bureau, grants, outreach and membership).

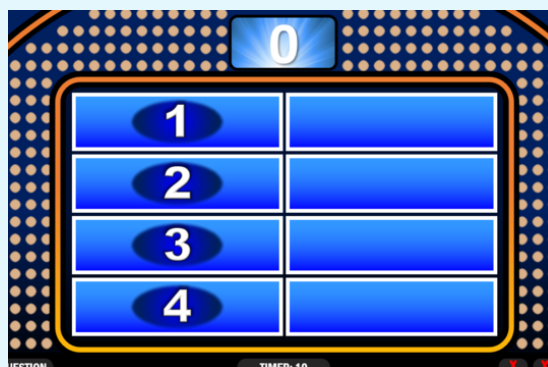
“And the survey says....”

NCPO Regional V.P.'s to call in July

What are the greatest needs of the client protection community? What are funds' biggest weaknesses? What threatens their existence?

analysis in early August. The hope is that the first results will be shared during NCPO's virtual workshop on September 20, 2021.

These are the questions a short new survey will seek to answer during July 2021. The answers will help NCPO identify specific ways it can use its resources – both human and financial – to help funds become stronger and more effective.



The survey (reprinted in full below) is not intended to duplicate or replace the ABA Triennial Survey. Rather, the goal is to facilitate NCPO's support for funds and innovative ways to meet the needs of the client protection community.

Throughout July regional vice presidents will be contacting the funds within their areas to administer the survey, which is intended to take only about 15 minutes. The VP's will send the data collected back to NCPO's grant working group for

The survey is open to all funds – feel free to complete it below and return your answers to Mike Miyahira at mike@bus-strategies.com to be a part of this new NCPO initiative.

National Client Protection Organization, Inc. A Survey to help build stronger funds, based upon the Standards for Evaluating Lawyers' Funds for Client Protection

There are four fundamental building blocks for any Fund that strives for excellence:

- (1) An organizational structure that secures the Fund's independence;
- (2) Steady, secure, and adequate funding;
- (3) Accessibility; and
- (4) Responsiveness to the need.

NCPO was founded in 1998 to assist all client protection funds in serving the public. Its Standards were adopted in June 2006, and endorsed *in toto* as official policy of the U.S. Conference of Chief Justices. Please join our shared quest for excellence and effectiveness in protecting law clients by answering the following questions.

A: ORGANIZATIONAL STRUCTURE.

1. How is your Fund organized?

- a. Is it a trust, run by its own Board of Trustees? _____
- b. If not, is it run by a Committee or a Board of Commissioners?

Other: _____.

c. Does your Fund have a staff? _____ How many employees?

- i. Full-time _____ Part-time _____
- ii. If some staff members are part-time or shared, how many hours per week, per person are exclusively for Fund functions?

_____.

iii. Who leads your staff's daily operation? (Name & title)

2. Who oversees your Fund? To whom is it beholden? (*Select one*)

- d. Your State's highest court
- e. Your State's Bar Association/Law Society
- f. Your State's Legislature
- g. A department of your State's executive branch
- h. Other _____

3. Operations

- a. How well does your claims management system work? _____
- b. Do you control an automated claims management system that tracks and monitors progress of each claim? _____
- c. Do you have staffing issues? What are they? Does the Fund's staff report to the Fund's Board? Who hires and fires?

B: FUNDING:

1. How is your Fund funded? Select all that apply.

- a. Periodic assessment. State frequency of assessment _____, and amount assessed _____
- b. Budget line item of a larger organization.
- c. Other _____

2. Does your Fund have a reserve?

- i. Yes
- ii. No

If yes, is the reserve a trust that can accumulate from year to year and generate interest income for the Fund?

- i. Yes
- ii. Yes, but with a cap of _____
- iii. No

3. Is your Fund's reserve (or other assets or income) vulnerable to diversion for other purposes? _____

C: ACCESSIBILITY:

1. Claims to your Fund come prompted by: (*Select all that apply*)

- a. Advertising and general proactive outreach
- b. Referrals from prosecutors or disciplinary agencies
- c. Lawyers and judges
- d. Internet
- e. All of the above
- f. Other: _____

2. Outreach: Your Fund provides the following: (*Select all that apply*)

- a. Annual Reports shared with the public
- b. Press releases or other notices of awards made to victims
- c. Brochures (in how many languages? _____)
- d. A website – If so, please provide the web address: _____
- e. Educational outreach to members of the bar and the public
- f. Articles for the local bar or other local news media to publish
- g. All of the above
- h. Other _____

3. Are the number of claims submitted to your Fund proportionately lower than other Funds of comparable size? _____

D: RESPONSIVENESS:

1. In an average year, we receive.

- a. Less than 25 claims per year
- b. Between 25 and 50 claims per year.
- c. Between 50 and 100 claims per year.
- d. Between 100 and 300 claims per year.
- e. Between 300 and 500 claims per year.
- f. More than 500 claims per year. About _____

2. How often does your Fund meet to consider claims? _____

3. On average, the time between receipt and payment of valid, eligible claims is: (*Assume typical claim with proofs to be gathered*)

- a. Less than three months.
- b. Between 3 months and 6 months.
- c. Between 6 months and 9 months.
- d. Between 9 months and 12 months.
- e. Between 12 months and 18 months.

f. More than 18 months. About _____.

4. The main reason for my reply to the above is because:

- a. We have sufficient staff and support to process claims.
- b. We do not have sufficient staff to process claims.
- c. The Board does not meet often enough to address the claims that are ready to be presented.
- d. The Fund cannot afford to pay valid claims more quickly.
- e. The number of claims processed in the stated period is good enough for our purposes.
- f. Other _____

5. Is there any reason to believe your Fund is not meeting the need of law clients harmed by dishonest lawyers in your jurisdiction? Is there *anything* not already mentioned that hinders your Fund in making deserving clients whole (e.g. per claim or per attorney caps, last resort, etc.)? _____

6. What's the worst problem facing your Fund; how can NCPO help?

Jurisdiction _____

Name and contact info of person providing answers

Thank you!



New Renewal Charge Bolsters Kentucky's \$7 Per Year Fee



By Ashleigh N. Bailey, Deputy
Bar Counsel, Kentucky Bar
Association

In March 2020, Kentucky amended SCR 3.030(3)(a) regarding "Membership, practice by nonmembers and classes of membership", specifically *pro hac vice* fees. After requiring the out-of-state attorney to pay a per case fee equal to the annual dues amount paid to the Kentucky Bar Association, the amendment to the rule states in pertinent part, "...the attorney shall pay a renewal fee every year until the case is concluded." Prior

to the amendment, the rule required only a one-time fee.

Recently, our Board of Governors voted to transfer the proceeds of the *pro hac vice* fees to our Client Security Fund, resulting in an approximately \$200,000.00 deposit into the Fund to be used for awards. This is excellent news for our Fund as we have been hit hard in recent years with catastrophic events with multiple Respondent attorneys, coupled with our only \$7.00 per attorney annual registration fee.



Are you on the Listserv?

If not, you should be!

The ABA listserv has created a network with client protection professionals across the United States and Canada. It's FREE and open to all – ABA membership is not required.

Share ideas on difficult claims, funding challenges, outreach methods, litigation and creative ideas for improving your practice and strengthening your fund.

Members want to know your challenges and success stories. Joining the conversation is easy – just send an email to either Mike McCormick at michael.mccormick@njcourts.gov or Stephanie Custard at Stephanie.custard@americanbar.org

Please join us!

ABA UPDATE

By Stephanie D. Custard,
Associate Counsel | Center for Professional Responsibility

The ABA Committee on Public Protection in the Provision of Legal Services (PPPLS) hosted its 36th Annual Client Protection Forum virtually on June 4, 2021. The Committee would like to sincerely thank all of the NCPO members who attended. A special thanks to those of you who volunteered as speakers for one of the programs. Registered attendees have the opportunity to rewatch any programs or download program materials using the original link until July 4, 2021.



The PPPLS Committee is currently collecting responses for the 2021 Salary Survey of Administrators of Lawyers' Funds for Client Protection. Responses to this survey are anonymous and results are published as averages for small, medium, and large jurisdictions based upon the number of lawyers currently admitted. If you would like to be a part in this important survey, please contact Stephanie Custard at stephanie.custard@americanbar.org

The PPPLS Committee held a formal meeting on June 11, 2021. The Committee discussed the success of the Forum, voted in favor of supporting several Resolutions from other CPR entities which will be introduced at this summer's Annual meeting, and set an action items agenda for several upcoming projects. This was the last meeting for Committee members Minerva Elizaga and Michael Larson who have both served three years on the Committee and will be rotating off at the end of the 2020-2021 term. Their work for and dedication to the Public Protection Committee is much appreciated and they will deeply missed.

The PPPLS Committee voted to move its bi-annual UPL School to 2022 when it can resume being held as a live event in Chicago. The Committee hopes that you'll join us for this always well-attended event next year. Be on the lookout for programming updates and more details soon!

Well-Being “After Party” Moves Institute Forward

By Lindsey Draper

NCPO liaison & Vice President for Diversity, Equity, and Inclusion, Institute for Well-Being in Law

In the months since the founding of the Institute for Well-Being in Law, creation of the organizational structure and identification of those who will actively advance the mission of the Institute have been the primary activities of the founders.

In those months, the extremely successful *Well-Being in Law* observance took place May 3-7, 2021, followed by a series of in-depth explorations of topics raised during the Week's sessions at what was denominated an “After-Party.”

Throughout the development of the Institute's structure, the *Well-Being in Law* website has continued to grow and offer resources and information for those seeking additional understanding of both challenges facing the well-being movement and progress made since the 2017 publication of the National Task Force Report. The website

(<https://lawyerwellbeing.net>) includes links to the reports prepared by state task forces as well as to beneficial programs such as *Mindful Mondays* hosted by the Mindfulness in Law Society.

One of the highlights of the website is the series of podcasts ([Path To Well-Being In Law – Institute For Well-Being In Law \(lawyerwellbeing.net\)](https://lawyerwellbeing.net) available on the site. As of the end of June 2021, there are fifteen podcasts that begin with a discussion of the inception of the movement and include well-being discussions relating to law schools, practitioners, and members of the judiciary.

I invite all members of the Client Protection community to explore the website and return to it often as the Institute continues to spread the importance of Lawyer Well-Being and institutionalize efforts to improve the profession.



*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

