



Custodial Receiverships

HOW THEY CAN HELP CLIENT PROTECTION FUNDS

RECOVER OR PROTECT ASSETS

Daniel R. Hendi, Director, NJ Lawyers' Fund

When a lawyer is suspended or disbarred and we seek to protect assets that may be compromised, it is rare that we find the office in pristine condition.



The offices look more like this.



Or this



Custodial Receivers

What is a Custodial Receiver in the Context of Client Protection?


A custodial receiver is a person who is appointed by a court of competent jurisdiction who reigns down and takes control over the practice and assets of a lawyer that died, resigned, became disabled, was suspended, or was disbarred and client trust funds were invaded.

In New Jersey, Rule 1:28-8 applies.

RULE 1:28-8. Custodial Receivers


Upon approval of the Board of Trustees pursuant to R. 1:28-1(c), the Director or an attorney designated to act on behalf of the Trustees may, upon the occasions set forth below, make application to an appropriate court for the appointment of a custodial receiver to take possession of the property of an attorney, including, but not limited to, property incident to the attorney's law practice. Provided the Trustees first find a reasonable probability that a claim or claims will be presented to the Fund on account of the alleged misconduct of the attorney, such application may be made in any of the following instances:

(a) Where an attorney has been disbarred or suspended by the Supreme Court, or where the attorney's resignation has been accepted by it, with prejudice;

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- (b)** Where the Trustees have received notice that a presentment has been or is about to be submitted against an attorney by a county ethics committee;
 - (c)** Where the Trustees have received notice that a criminal charge, whether by way of indictment or otherwise, has been or is about to be laid against an attorney;
 - (d)** Where an attorney shall admit the existence of defalcations with respect to clients' property, for which defalcations the attorney's misconduct shall have been responsible; and
 - (e)** Where credible evidence of such misconduct reaches the Trustees otherwise than as set forth above.

A custodial receiver may be empowered to:

- Examine the law practice files and records and obtain information as to any pending matters which may require attention;
- Take all steps necessary and reasonable to discover, recover, marshal and control any and all assets including those left at the location of his former law offices;
- Preserve assets until further orders are entered;
- Notify clients of the occurrence of events and inform them to obtain other legal counsel.
- Publish public notices and deliver notices to banks and others who may be affected of the occurrence of such event or events;
- Arrange for the surrender or delivery of clients' papers or property; and
- Do such other acts as the court may direct to carry out the receiver's purpose.

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- The court has exclusive authority over the custodial receiver until the receiver is relieved of the appointment, and custodial receivers should only last as long as assets are being marshalled for the benefit of the creditors, including the Fund.
 - Usually, receiverships are terminated after final accounting and an order of distribution.

An Attorney Trustee is not a Custodial Receiver.

- Compare to Trusteeship Rule 1:20-19.
 - A trustee is appropriate if a lawyer suddenly abandons the practice before any formal discipline has taken place, or suddenly passes without a transition plan.
 - A trustee can represent clients of the lawyer under trusteeship.
 - Misappropriation need not be involved when seeking a trustee appointment.
 - Anyone can seek the appointment of a trustee.
 - Usually requested by a local bar association, a party in interest, and even a landlord that needs to re-rent the premises.
 - When appropriate, the Fund may step in and ask for a trustee to be relieved and ask for a custodial receiver to be substituted to protect more assets than are usually covered in a trusteeship.



Sample Forms,

When filing an Order to Show Cause, it is always a good idea to call ahead and let the Assignment Judge know that an emergent petition for relief is about to be filed with the court.

Check off letter to Judge

September _____, 2019

Honorable ABC, J.S.C.
Administration Building
Brennan Court House
583 Newark Avenue
Jersey City, NJ 07306

**Re: Trustees of the Lawyer's Fund for Client Protection v. XXXXXXXX
Order Appointing Custodial Receiver**

Dear Judge ABC:

This matter has been scheduled for a hearing on Wednesday, September 25, 2019. Enclosed is the original and one copy of:

- Order to Show Cause
- Affidavit in Support of Order to Show Cause
- Verified Complaint
- Form of Order

We respectfully recommend Thomas Vxxxxxxx, Jr., Esq., of the firm Vxxxxxxx & Vxxxxxxx, as the Custodial Receiver appointment. Mr. Vxxxxxxx has previously worked in that capacity in Hudson County and is familiar with the tasks at hand.

Respectfully Submitted,

DANIEL R. HENDI

Enc.

ORDER TO SHOW CAUSE

**New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 West Market Street, P.O. Box 961
Trenton, NJ 08625-0961
(609) 815-3030 x52201
Daniel R. Hendi, Counsel for Plaintiff**

TRUSTEES OF THE NEW JERSEY
LAWYERS' FUND FOR CLIENT
PROTECTION,
Plaintiff

v.

XXXXXXXXXXXXXX,
Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - _____ COUNTY

DOCKET NO.

Civil Action

ORDER TO SHOW CAUSE

THIS MATTER, having been opened to the Court upon the application of the Plaintiff, NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION, Daniel R. Hendi, Counsel, appearing, and it appearing to the Court from the duly Verified Complaint and affidavit attached that the relief sought is appropriate for summary proceeding under Rule 4:67 et seq.

IT IS ON THIS _____ DAY OF _____, _____;

ORDERED that the defendant, or its counsel, Show Cause on the _____ day of _____, at 11:00 o'clock a.m., or as soon thereafter as counsel may be heard, before the Honorable Judge ABC, at the _____ County Court House, Justice Center, _____ Address _____, why an Order should not be entered for the following relief:

- A. Requiring the defendant to account concerning any and all of its assets;
- B. Requiring that the defendant provide a complete and detailed listing of each and every legal file in which it may have a financial or equitable interest as the former attorney of record;

C. Requiring the defendant to provide a complete and detailed listing of each and every attorney that it knows to be handling a legal matter that originated or that was referred by the defendant or its predecessor to the attorney;

D. Requiring the defendant to account concerning the nature, extent and identity of all its liabilities, including those liabilities which arose by reason of misappropriation and conversion of trust funds;

E. For an order temporarily restraining the defendant, his Executors and/or any personal representative or successor from conveying, hypothecating or otherwise transferring any assets or things of value which he owns wholly or may otherwise have an interest in;

F. For an order temporarily restraining and enjoining all creditors of the defendant, his Executors and/or any personal representative or successor, from instituting or prosecuting any suit, action or proceeding against the defendant, or against his properties or effects or thing that XXXXXXXXX might have had an interest in his lifetime, because of any liability alleged to be due and owing from the defendant, or because of any other matter or thing whatsoever;

G. For the appointment of a Custodial Receiver of the entire estate of the defendant, including his former law practice; and

H. For such other relief as is equitable and just under the circumstances.

IT IS FURTHER ORDERED that a copy of the Verified Complaint, Supporting Affidavit, and letter brief together with this Order be served upon the named defendant immediately care of XXXXXXXXX, Esq., XXXXXXXXX, Esq., and any other person or party in interest as the Court may direct.

Hon. Judge ABC

**Affidavit in
Support of
Order for
Appointment
of Custodial
Receiver**

**New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 West Market Street, P.O. Box 961
Trenton, NJ 08625-0961
(609) 815-3030 x52201
Daniel R. Hendi, Counsel for Plaintiff**

TRUSTEES OF THE NEW JERSEY
LAWYERS' FUND FOR CLIENT
PROTECTION,
Plaintiff

v.

XXXXXXXXXXXXXX,
Defendant

STATE OF NEW JERSEY
COUNTY OF _____ ss .

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - _____ COUNTY

DOCKET NO.

Civil Action

**AFFIDAVIT IN SUPPORT OF ORDER FOR
APPOINTMENT OF CUSTODIAL RECEIVER**

- 1) I am Counsel to the Board of Trustees of the New Jersey Lawyers' Fund for Client Protection ("Fund").
- 2) The Fund, created by the Supreme Court of New Jersey pursuant to R. 1:28-1, et seq., exists to reimburse former clients of disbarred or suspended lawyers, money that was entrusted to them and then misappropriated.
- 3) Pursuant to R. 1:28-8 the Trustees may make application to an appropriate court for the appointment of a Custodial Receiver to take possession of the property of a suspended or disbarred lawyer, provided that the Trustees first find a reasonable probability that a claim or claims will be presented to the Fund on account of the attorney's alleged misconduct.

4) XXXXXXXXXXXX was an attorney at law of New Jersey who, to the best of the undersigned's knowledge, was admitted to practice in New Jersey on December 18, 1990.

5) On August 2, 2019, the New Jersey Supreme Court entered an Order suspending XXXXXXXXXXXX, and on September 24, 2019, another Order was entered by the Court wherein he was disbarred (**Exhibit "A"**).


6) As of this date, there are five (5) claims filed with the Fund alleging a total loss in excess of \$650,000, one claim was approved and paid in the sum of \$118,218.99, and one claim was rejected. The remaining claims are under investigation.

7) The one-year time limit rule to file claims will expire August 2, 2020 and the Fund expects to receive additional claims because we mailed out at least ten (10) claim forms to former clients that alleged misconduct by XXXXXXXXXXXX.

8) At the time of his suspension, XXXXXXXXXXXX maintained trust and business accounts at _____ bank.

9) When XXXXXXXXXXXX's trust and business accounts were frozen by Order of the Supreme Court, _____ Bank wrote to Ethics stating that they froze a total of \$35,000 from both accounts (**Exhibit "B"**).

10) In a *cursory* review of Mr. XXXXXXXXXXXX's trust and business accounts for 2017 through 2019, it appeared that XXXXXXXXXXXX moved considerable money from his trust account to his business account on a regular basis and lived off these trust funds.



11) On August 20, 2019, I contacted the John Hancock Mutual Life Insurance Company (hereinafter "John Hancock") and was advised that policy number 1234567 was a type called "Modified Preferred 100", and that the insured was XXXXXXXXXXXX. I was also advised that the last premium payment was by check in the sum of \$832.70, paid on July 28, 2019.

12) In the cursory review that I referred to above, I saw a business account check dated July 25, 2019, payable to John Hancock Mutual Life for \$832.70 immediately following a transfer from the trust account. (**Exhibit "C"**).

13) I am in the process of conducting a more detailed analysis of the trust and business records, but it already appears that clients' trust funds were used to pay personal expenses as is evident from trust checks, No. 3492, 3493 and 3494 totaling the sum of \$73,334.00, for the purchase of a yacht for himself

14) I am in the process of conducting a more detailed analysis of the trust and business records, but it already appears that clients' trust funds were used to maintain XXXXXXXXXXXX's life insurance policy, pay personal expenses, and purchase a luxury vessel (**Exhibit "D"**).

15) As the sources and usage of funds from the attorney trust account is developed, it is likely that we will find that other property was bought and/or maintained with trust funds. Indeed, I have already discovered numerous checks to one A. Grimiss, a private mortgagee who holds a mortgage lien on Mr. & Mrs. XXXXXXXXXXXX's home. Mr. Grimiss is now represented by Mr. ZZZZZZZZZZ.

16) It is probable and likely that Mr. ZZZZZZZZZZ's duties as attorney trustee will conflict with his obligations to his client(s) who are owed money by XXXXXXXXXXXX or his estate.

17) We seek to preserve all assets of the XXXXXXXXXXXX estate by appointment of a Custodial Receiver because, unlike an attorney trustee, a Custodial Receiver can represent the interest of all the creditors on behalf of the Court and marshal all assets, but he or she is not permitted to represent any of the former clients of XXXXXXXXXXXX.

18) This Affidavit is made in support of the Fund's Order to Show Cause and to place restraints upon the defendant's assets and appoint a custodial receiver.

Daniel R. Hendi

Sworn to before me this
____ day of *September*, 2019.

A Notary Public of the
State of New Jersey

**Verified
Complaint for
Appointment
of Custodial
Receiver –
Rule 1:28-8**

**New Jersey Lawyers’ Fund for Client Protection
Richard J. Hughes Justice Complex
25 West Market Street, P.O. Box 961
Trenton, NJ 08625-0961
(609) 815-3030 x52201
Daniel R. Hendi, Counsel for Plaintiff**

**TRUSTEES OF THE NEW JERSEY
LAWYERS’ FUND FOR CLIENT
PROTECTION,
Plaintiff**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - _____ COUNTY**

DOCKET NO.

v.


Civil Action

**XXXXXXXXXXXXX,
Defendant**

**VERIFIED COMPLAINT FOR
APPOINTMENT OF CUSTODIAL
RECEIVER – RULE 1:28-8**

The Trustees of the New Jersey Lawyers’ Fund for Client Protection, with their principal office and place of business at the Richard J. Hughes Justice Complex, 25 West Market Street, Trenton, New Jersey, says:

1. The New Jersey Lawyers’ Fund for Client Protection, was created by the Supreme Court of New Jersey pursuant to R. 1:28-1, *et seq.*, of the Rules governing the Courts of New Jersey.
2. XXXXXXXXXX, was admitted to the Bar of the State of New Jersey in 1990, and maintained an office for the practice of law in Any Town, New Jersey, Ocean County, New Jersey.
3. On August 2, 2019, the Supreme Court of New Jersey entered an Order suspending XXXXXXXXXX, and on September 24, 2019, the Supreme Court of New Jersey entered an Order disbaring XXXXXXXXXX.
4. The Fund has received five (5) claims alleging a loss of over \$650,000.00 as a result of alleged misappropriation of funds by XXXXXXXXXX. To date, one claim was rejected; one claim was approved in the sum of \$118,218.99; and the rest are pending full investigation.



5. Under R. 1:28-3(a)(3) claims can be made within one (1) year from the date of suspension and, therefore, more claims may be filed before the deadline and the exact total sum that the Fund will pay on account of the alleged misconduct of the defendant cannot be determined at this time.

6. Defendant, XXXXXXXXXX, is believed to have assets that were created or preserved from client funds of his former law practice.

7. One particular asset into which funds have been traced is XXXXXXXXXX's interest in an entity called The Fox's Den Restaurant, Inc., (hereinafter "FDR") in Lake Worth, New Jersey.

8. Records so far have evidenced that money from the sale of Client A's home was controlled by XXXXXXXXXX and deposited into the business account of FDR.

9. It is not clear at this time who the actual officers of FDR are, as documents provided showed XXXXXXXXXX to be the President and Jane Doe to be the sole Director (**Exhibit "A"**).

10. The assets of the Defendants should be conserved until the value of all valid claims can be determined, or until further Order of the Court, to protect Claimants and former clients allegedly victimized by XXXXXXXXXX.

11. Pursuant to R. 1:28-8 of the Rules governing the Courts of New Jersey, the Trustees may make application to an appropriate Court for the appointment of a Custodial Receiver, to protect the property of former clients of an attorney, "including, but not limited to property incident to the attorney's law practice" (emphasis added).

WHEREFORE, Plaintiff respectfully demands:

A. Entry of an Order temporarily restraining the Defendants or their agents or legal representatives from conveying, hypothecating or otherwise disbursing or transferring money or assets in which XXXXXXXXX has an interest in;

B. Entry of an Order directing the Defendant or his attorney or assigned agent or legal representative to only disburse the net proceeds of sale of any asset that is recovered hereunder only upon proper Motion to the Court and upon Notice to the Plaintiff, New Jersey Lawyers' Fund for Client Protection, and the appointed Custodial Receiver;

C. For an Order appointing a Custodial Receiver to represent the interest of all creditors of the Defendants and to marshal the assets of the Defendants, pursuant to R. 1:28-8; and

D. For such further relief as the Court may deem equitable and just.

**NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION**

Dated: _____

By: _____
DANIEL R. HENDI, ESQ.
Counsel

VERIFICATION

I, Daniel R. Hendi, of full age, verify that:

I am Counsel to the New Jersey Lawyers' Fund for Client Protection and am responsible for handling claims against XXXXXXXXX; and, I have read the foregoing Complaint and the allegations contained therein are true to the best of my knowledge, information and belief.

DANIEL R. HENDI

**Order
Appointing
Custodial
Receiver**

**New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 West Market Street, P.O. Box 961
Trenton, NJ 08625-0961
(609) 815-3030 x52201
Daniel R. Hendi, Counsel for Plaintiff**

**TRUSTEES OF THE NEW JERSEY
LAWYERS' FUND FOR CLIENT
PROTECTION,**

Plaintiff

v.

**XXXXXXXXXXXXXX,
Defendant**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - _____ COUNTY**

DOCKET NO.

Civil Action

**ORDER APPOINTING CUSTODIAL
RECEIVER**

This matter having come before the Court on September ____, 2019, Daniel R. Hendi, Esquire, attorney for plaintiff, Trustees of the New Jersey Lawyers' Fund for Client Protection, appearing, and a Verified Complaint having been filed herein, and in the presence of Daniel R. Hendi, Esq., and having placed on notice all parties in interest, and it appearing from the Verified Complaint that it is essential in order to conserve and preserve the assets, choses in action, estate and law practice and other things of value of the defendant, XXXXXXXXXX, that this court take jurisdiction forthwith and appoint a Custodial Receiver pursuant to R. 1:28-8, and it further appearing from the Verified Complaint that immediate,

substantial, and irreparable injury will be suffered by the plaintiffs and other creditors and the clients of the defendant, XXXXXXXXX, unless this court intervenes at once, and further that great waste and loss will be avoided by the granting of the restraints herein contained, and good cause being shown for the making of this Order;

IT IS on this _____ day of _____, _____, **ORDERED:**

a) that _____, Esquire, an attorney at law of the State of New Jersey, and a member of the firm of _____ be and is hereby appointed Custodial Receiver of the entire estate of XXXXXXXXX, including his law practice, and is hereby directed forthwith to take possession of all the books, papers, and records of the defendant, which he can ascertain, of the law practice of the defendant, and anything of value whatsoever, and hold the same until further order of this court, except that the said Receiver shall have authority to take such steps with respect to the law practice of the said XXXXXXXXX as may be necessary for the protection of the clients and creditors of XXXXXXXXX;

b) that the said Receiver, before entering upon his duties as such Receiver, take such oath as is prescribed by law and give bond to the Superior Court of New Jersey in the sum of \$_____ conditioned by the faithful performance of his duties, to be approved as to form and sufficiency therein in accordance with the rules of this court;

(c) that the Receiver use a bank located at a place convenient to him but in New Jersey and same must be insured by the Federal Deposit Insurance Corporation, and the bank be and the same is hereby designated as the depository for the funds of the trust estate in which all funds going into the hands of such Receiver shall be deposited, in which said funds shall be withdrawn therefrom only by check or warrant, serially numbered, to be signed by the said Receiver;

d) that such Receiver may take all steps which he shall deem to be necessary and reasonable to discover, recover, marshal and control any and all assets of XXXXXXXXXX and such Receiver shall further assume any assets or property of XXXXXXXXXX left at the location of his former law offices;

e) that until further order of this Court, the said defendant and his agents and employees be and are hereby restrained from selling, assigning, transferring, mortgaging, hypothecating or in any manner disposing of any of his assets or anything of value belonging to him, or from interfering with said Receiver in taking possession of and managing said property.

f) that on notice to the Receiver, all persons with claims against XXXXXXXXXX may take such steps in prosecution of their claims as they deem reasonably necessary to protect their interests up to but not inclusive of the attainment of a judgment and that any entry of any judgment against XXXXXXXXXX or against any of the assets in which XXXXXXXXXX has an interest shall be on application to the Court on ten (10) days notice to the Receiver, or with the consent of the Receiver;

g) that such Receiver shall publish notice of his receivership in two (2) newspapers of general circulation in the xxxxxxxxxx County area;

h) that this Order may be dissolved, enlarged or modified after hearing upon eight (8) days notice, given by the said defendant to the Receiver appointed herein, and to his creditors. This Order may otherwise be modified or enlarged by the Receiver, after hearing, upon eight (8) days notice to all parties interested in the assets and estate of the defendant; and

i) that the Receiver shall file a report of the inventory of assets within thirty (30) days of the date of motion to dissolve receivership.

Hon. Judge ABC