

Ruby

Strategies for Maximizing Restitution and Subrogation

Prepared by: Ruby Cochran and Ed Ehler
NJ Lawyers' Fund for Client Protection



*National Client Protection
Organization Fall Meeting*

September 11-12, 2008
Madison WI

Strategies for Maximizing Restitution and Subrogation

By Ruby Cochran & Ed Ehler

One way that a Fund can maintain its financial integrity is to maximize restitution and subrogation. The Model Rules support subrogation - see Rule 16. (Exhibit A). We can all agree that it would be helpful to get money into your Fund that does not involve raising your annual assessment. But how do you do it? What are the steps you should take? What programs may be available that you can use to get money from the respondents, or on their behalf? We have attempted to put together copies of useful articles from previous workshops, information about various programs that may also exist in some form in your state, and a variety of forms that we have used in our collection efforts to assist you. Discussion at the workshop will focus primarily on litigation.

The basic objective in your subrogation/litigation efforts is to maximize recoveries through procedures that accomplish that goal as efficiently as possible. This requires a broadened perspective on potential sources of recovery and creative approaches to tapping those sources. It is important to begin clarifying the subrogation picture as soon as possible, sometimes even before a claim is filed, taking action to position your Fund for recovery

In New Jersey, when an attorney is suspended or disbarred, their trust and business accounts are frozen. This may be one of the very first sources of subrogation that becomes available to your Fund. The language freezing the accounts is right in the disciplinary order, and it directs financial institutions to transfer all money to a trust fund operated by the Court itself. (Exhibit B). Since our Fund does not have jurisdiction to consider a claim until the attorney has been disciplined, many times these accounts are frozen before we receive the first claim against the attorney. This program safeguards the money until claims can be considered and paid. The money is frozen for the benefit of clients whose funds are traceable to the account and are still intact. If there are frozen funds that cannot be traced back to a specific client, in New Jersey the Client Protection Fund becomes the beneficiary of all frozen funds up to the amount of claims paid against the respondent. We'll come back to this later and explain when and how the Client Protection Fund can make a claim for this frozen money.

Once the Fund becomes aware that an attorney is in violation of ethical rules concerning client funds, the Fund may request that the Court appoint a custodial receiver to marshal and preserve the assets of the respondent, even before paying claims against the respondent. The Model Rules support this type of Judicial Relief - see Rule 17. (Exhibit C).

In some states a custodial receiver may act as an "attorney trustee", who acts to wind down a practice rather than marshal assets. In New Jersey a custodial receiver marshals the assets of the respondent, and the application for the appointment of a custodial receiver is made by an Order to Show Cause upon Verified Complaint. (Exhibit D). Custodial receivers answer only to the court so property (including frozen trust funds) can be released only by court order. Custodial receivers can recover and sell assets for the benefit of all creditors, including claimants and the Fund, so it is important that you provide notice of a claim against the income and assets of the practice.

In the rare instances where you learn that a respondent is attempting to abscond and/or fraudulently transfer assets, consideration should be given to filing an emergent Order to Show Cause seeking a Writ of Ne Exeat (civil arrest) and/or restraints against transfer of property and/or appointment of a Custodial Receiver.

In many cases a criminal investigation is conducted against the attorney as well as an ethics investigation. It is important to maintain contact with the various county prosecutors' offices throughout the investigation and cooperate where possible. One source of money for your Fund is restitution ordered by the criminal court and recorded on a Judgment of Restitution or the Judgment of Conviction (JOC). (Exhibit E). Notify the prosecutor and the sentencing judge of the Fund's interest in receiving restitution. (Exhibit F). Sometimes the claimant will be listed as the victim on the JOC and you will have to show the probation office proof that your Fund paid the victim and should be substituted for the victim. You may need to ask the prosecutor for assistance in obtaining a revised JOC. Once the JOC has been recorded you can rely on the assistance of the probation and parole offices to collect from the respondent while he/she is in their care/custody. Also, criminal court ordered restitution is one of the very few automatic exceptions to discharge, under section 523(a)(7) of the bankruptcy code, if a respondent should file for bankruptcy. Respondents tend to be their most cooperative in the phase of the criminal process just before sentencing in an effort to show the Judge that they deserve a lesser sentence.

In addition, the collection process can start when you get your very first call from a claimant. Dan Hendi wrote an article for a workshop in Santa Fe, NM, in 2005, which is reprinted in the material. (Exhibit G). This article discusses what questions to ask to get clues about the respondent's financial position and where assets may be hidden. One question should be whether a complaint was filed with the prosecutor so that your Fund can request that restitution be ordered by the criminal court, at times based on the estimated value of the claims received but not yet investigated.

Another potentially valuable question to ask of claimants is: how did the attorney steal their money? The answer to that question may lead you to other sources of recovery.

If the matter involves a forged endorsement or drawer's signature on a check, notification to the bank(s) of a claim pursuant to the applicable section(s) of the Uniform Commercial Code must be made. If the matter involves a real estate transaction, identifying the title insurance carrier and asserting a claim may be a source of recovery (Exhibit H). The respondent might have been bonded, in which case your Fund might recover from the bonding insurance coverage. If the respondent was employed by a law firm you may have an action based on vicarious liability or for negligent supervision. You should put the respondent's partner(s) or firm on notice of a claim and their potential liability, and requesting their response to the claim. (Exhibit I). You need to identify the malpractice carrier insuring the respondent's partner(s) or firm, and assert a claim for coverage under the policy. A partner/partnership of the respondent may be held liable for the loss, and the innocent partner may be covered by their malpractice insurance even if the respondent is not.

If the Respondent referred cases to another attorney as final discipline approached and is claiming entitlement to fees on a quantum meruit basis, contact the respondent to discuss assignment of those fees to the Fund in a consent judgment (Exhibit J – Consent Judgment paragraph re: assignment of fees), or if that fails, execute a judgment on respondent's right to receive those fees.

In all these situations you should get an affidavit from the claimant to support your legal action against these third parties. Once they become aware that your Fund intends to take legal action against them, the third parties may cover the loss directly to the victim rather than face litigation by the Fund.

You may wish to do a search for assets of the respondent utilizing some of the tools mentioned in an outline prepared for the workshop in Columbus, Ohio, in 2001. (Exhibit K). Also included is a list of other helpful websites. (Exhibit L).

Do not be discouraged if your respondent appears to have few, if any, assets. Periodically renew your search for assets and be available to new information. Your respondent may inherit part of an estate and your Fund may be able to recover on a judgment after several years of inactivity in the matter. You may collect from the respondent's estate upon their death. You can check with the county probate office to determine if any assets were included in the estate that can be used to recover on the judgment. If the respondent is deceased, it is important to determine who has been appointed as representative (executor/administrator) of the estate and provide notice of a claim against the estate.

At the time an award is granted, and as a condition of payment, our Fund obtains a Release, Assignment and Subrogation Agreement from the claimant. (Exhibit M).

This is the basis for much of our later collection efforts. Immediately update all of the parties mentioned above concerning the amount paid and assignment of rights, and making a specific demand for payment.

Once the Subrogation Agreement is obtained, the Fund can now make a claim on the frozen trust funds mentioned earlier. (Exhibit N). Other clients of the respondent, and indeed other creditors of the respondent, may also make a claim against the frozen trust and business account funds, and it is up to the court to sort out these claims. They may turn to your Fund for assistance in that effort as you are already familiar with the respondent's financial records. In New Jersey, an application to the Court for release of the frozen trust funds for the benefit of the clients may result in full payment to any clients who can trace their funds directly to the frozen funds (including the Fund for claims paid), and a pro-rata distribution of the remaining balance to the other victims who cannot trace their funds (including the Fund for claims paid).

Once the claims against the respondent have been paid, it is important to obtain a judgment against the respondent for the full amount of the claims paid. The Fund's right to obtain the judgment flows from the Release, Assignment and Subrogation Agreement from the claimant. If the claimant obtained a judgment against the respondent, request that they assign their rights under that judgment to the Fund. (Exhibit O). If there is pending litigation where the claimant is suing the respondent, consideration should be given to intervention in that action. If, in the odd case, the claim involved Claimant receiving a mortgage or other security interest in property owned by Respondent or a third party, assignment of that interest to the Fund. (Exhibit P). Consent to civil judgment is most easily obtained during the plea bargain process where respondents want to project cooperation to the sentencing judge. Many respondents will default; you should consider obtaining summary judgment.

To get the most benefit from the judgment you should include in your pleadings theories of fraud and defalcation. This will help your judgment survive a later filing for bankruptcy protection. (Exhibit Q). Exceptions to discharge are listed in Section 523 of the bankruptcy code. In New Jersey, when a judgment is docketed it will create a lien against real estate transfers that must be satisfied before the transaction can be completed. Create a mechanism to track your judgments by date; in New Jersey the Fund can pursue the debtor under the judgment for 20 years, and an unsatisfied judgment can be revived for another 20 years, but only before the original 20 year period expires.

The most efficient way to maximize subrogation recoveries is to consistently pursue reimbursement by way of the avenues set forth above, and not rely on litigation as the primary method.

If you initiate the above approaches early on, by the time you are ready to file suit you may well have recovered all or part of what is due, and you will be in a good position to assess the prospects that continued resort to those approaches, without litigation, will yield further recoveries. Also, that process likely provided information useful in determining who should be named as defendants in the lawsuit and what causes of action are available.

Many times the respondent, though the most culpable party, is the party least capable of satisfying a judgment. Hence, it is critical that you: 1) name as defendants all culpable parties, e.g., insurers, partners, law firms, companies owned/controlled by the respondent that were involved in the misconduct, the bank(s) on a forged endorsement/drawer's signature, aiders and abettors, and civil conspirators; 2) employ causes of action that increase the defendants' exposure, e.g., providing for awards of attorney's fees, treble damages or attachment of specific property owned by defendant; and 3) insulate the judgment from discharge in bankruptcy by insuring, to the extent possible, that it is entered on grounds of fraud/misappropriation, or other non-dischargeable ground. (As to these considerations see: Exhibit R – Complaint; Exhibit S – Complaint Counts – Unearned Retainer; Exhibit T – Causes of Action Beyond Misappropriation and Breach of Contract.)

As an aside regarding suits based on unearned retainer claims, note the prospect that a fee arbitration award may preclude the defendant from contesting the merits of the civil action. That is the case in New Jersey where no appeal is taken from the award and payment of the award is not made within thirty (30) days. (Exhibit U – N.J. Court R. 1:20A-3(e)). At that point the client has the right to apply for entry of a judgment reflecting the award in a pending civil action, or if none is pending, by way of a summary action. If the claimant has obtained a fee arbitration award and subsequently assigns rights to the Fund upon payment of the claim, the Fund acquires the claimant's right to entry of judgment under that rule, a streamlined procedure that allows no defense. However, there is a serious question as to whether that judgment would be excepted from discharge in bankruptcy. Hence, depending on how strong the defense is (i.e., how important it is to success on the merits that you nullify that defense), you may want to proceed on different grounds, particularly those that sound in fraud in the inception (solicitation of the retainer) or misappropriation (e.g., failing to deposit the retainer in the trust account, if that is required in your jurisdiction, or withdrawing funds not earned). See Exhibit S – Complaint Counts – Unearned Retainer.

Litigating a complex case against multiple viable defendants is beyond the scope of this presentation. If, as is often true, the case is limited to claims against the Defendant-Respondent, you will likely encounter a defendant who may not respond to the lawsuit or who will pick his or her fights along the way to disrupt and delay the process.

We suggest that you have the sheriff or process server serve interrogatories (Exhibit V) along with the summons and complaint. Thus service of the interrogatories is firmly established. If an answer to the complaint is not timely filed, apply to the court for entry of default. If answers to the interrogatories are not timely provided, apply to the court for an order compelling the answers and if they are not provided in accordance with the order, apply to the court for suppression of defendant's answer and defenses with prejudice. The procedures to follow to arrive at suppression with prejudice in your jurisdiction may differ from those in New Jersey (Exhibit W – N.J. Court R.4:23-5), but probably involve the basic formula of defendant's failure to respond to the interrogatories, entry of an order compelling defendant's response and defendant's violation of the order. If defendant subsequently attempts to vacate the default and file an answer to the complaint, such application will likely be denied or at least rendered ineffective given the suppression that resulted from the discovery violation.

Given that subsequent to entry of judgment, the defendant may "wake up" and attempt to vacate it, and given the difficulties sometimes encountered domesticating a default judgment in another jurisdiction, it is recommended that judgment be sought on a summary judgment motion. Courts exhibit a certain liberality in vacating default judgments and jurisdictions in which you may want to domesticate a default judgment exhibit a kind of suspicion that lurking behind the paper is a violation of due process. The summary judgment standard in New Jersey has been relaxed somewhat in favor of the moving party, allowing for entry of judgment if the full motion record demonstrates a prima facie case, even in the presence of a denial of an essential fact by the non-moving party. (Exhibit X – Summary Judgment Brief Point).

If the defendant attempts to oppose the motion, call to the court's attention the general rule that a party in default is not permitted to address the merits of the case. The court will likely bar or limit defendant's participation, or, to squelch a possible appeal, allow defendant's participation and grant your motion on the merits anyway. A liberal judge confronted with a vocal defendant, may actually entertain the notion that default be vacated. At very least this would require that defendant file an answer to the complaint and provide answers to interrogatories on an accelerated schedule. However, if the defendant wants the benefit of this relief, which would again even the playing field, the opposing party should be made even as well. Defendant's conduct having necessitated the filing of applications to the court for entry of default, suppression of the answer and defenses, and the summary judgment motion, you should request that the court condition any order vacating the default on defendant's payment of attorney's fees relating to those applications.

Some defendants will attempt to punish the plaintiff by filing meritless pleadings: answers, defenses, counterclaims and motions. Left unchecked, such conduct can become abusive and an unfair drain on your time.

Respond with a demand under the frivolous litigation rule in your jurisdiction (Exhibit Y – N.J. Court R. 1:4-8) that the pleading be withdrawn, setting the stage for the imposition of sanctions such as attorney's fees. Where you have a solid case, but a defendant that refuses to enter into a consent judgment, you may be able to motivate the defendant to settle by employing the offer of judgment rule in your jurisdiction. (Exhibit Z – N.J. Court R. 4:58-1, et. seq.). Make an offer under the rule for judgment in the full amount due. If defendant does not accept that offer and the outcome at trial is not at least 20% lower than your offer, defendant will be ordered to pay your attorney's fees and litigation costs incurred after non-acceptance. This is another way to move the case towards settlement by increasing the defendant's exposure.

A judgment should be docketed as soon as possible in every jurisdiction where the defendant owns property or works, in the manner prescribed by the jurisdiction for creating a lien on property and issuing process to enforce the judgment.

We encourage payment of the judgment by the respondent, choosing to work out a reasonable payment plan if possible. To that end, an article for the Atlantic Beach, NC, workshop of 2007 is reprinted here. (Exhibit AA). In addition, in New Jersey a creditor is allowed to obtain an information subpoena from the debtor/respondent every six months. (Exhibit BB). The information provided can also assist in determining what actions to take to enforce our rights under the judgment. We try to create an amicable agreement in as many cases as possible, as many of the respondents have difficulty dealing with the adversarial approach and any other "authoritative" position, but unfortunately that is not always possible.

The New Jersey Fund is fortunate to be able to participate in the State's Comprehensive Enforcement Program (CEP). (Exhibit CC). This program is also used by probation, parole, and child support. First we must make a written demand on the respondent for payment. If payment is not received or some sort of agreement is not worked out, we send a delinquency notice advising that the respondent may be summonsed to a hearing. (Exhibit DD). If we are not satisfied with the response, we will send a summons requiring that the respondent appear at a CEP hearing. (Exhibit EE). The hearing officer will review the respondent's financial position and failure to comply with a payment plan. Various actions can be ordered at the CEP hearing, or the hearing officer can require the respondent to appear at another hearing before a judge.

One of the features of CEP is that it allows the Fund to take punitive action to compel creation of, and compliance with, a payment plan. CEP allows for a variety of actions which include wage garnishments, requiring job searches, issuance of bench warrants, and re-listing for the next hearing. (Exhibit FF).

One of the most effective ways to encourage payment is the suspension of driving privileges if the respondent has ever had a license in New Jersey. The driving license suspension may impair the respondent's ability to renew their car insurance. We also send a copy of the suspension notice to the department of motor vehicles in the state where the respondent resides, if they have relocated, and have found this action to be successful in some cases. (Exhibit GG). Even if the state of residence cannot suspend the current driving privileges, some states will place an administrative hold on the file so that the license cannot be renewed until the matter calling for suspension is resolved.

If our collection efforts have not been successful and no payments have been received for at least six months, New Jersey has another program that can be used to obtain money on behalf of the respondents. SOIL stands for Set-Off of Individual Liability, and is operated by the State's Department of the Treasury, Division of Revenue. SOIL provides the opportunity to seize State Income Tax refunds and property tax rebates that are owed by the State to the respondents and remit those tax refunds to the Client Protection Fund to be applied against the debt of the respondent. This program is only available to governmental agencies and in New Jersey, the Fund is a committee of the New Jersey Supreme Court. (Exhibit HH).

Unfortunately, a respondent may decide that their debts are overwhelming and that they have no other recourse but to file for bankruptcy protection. Reading the rules and bankruptcy code is very much like reading tax code, and it can be confusing. Attached is a brief summary of some of the Federal Rules of Court that was prepared while dealing with a Chapter 7 adversary proceeding in bankruptcy court in New Jersey. (Exhibit II). The local rules mentioned in this summary are for New Jersey only, please review your local rules. This summary is not meant to be comprehensive and is merely a roadmap to give you a general sense of direction as you attempt to navigate through the court rules. If the respondent is in the military they are also protected by the Servicemembers' Civil Relief Act. (Exhibit JJ).

The Fund, as a creditor, must file a Proof of Claim not later than 90 days after the first date set for the meeting of creditors. (Exhibit KK). The official form must be used and it is available on the internet at www.uscourts.gov. Check to see if your district's bankruptcy court requires electronic filing. You will need the ability to save your documents in PDF format to file electronically and the bankruptcy court offers training classes on electronic filing. If you decide to contest the dischargeability of the debt owed to your Fund in a Chapter 7 bankruptcy, you must deliver your complaint, summons, and notice of pretrial conference to the bankruptcy clerk early enough so that you can have them issue the summons in time for you to serve the summons and complaint on the debtor within the number of days specified in your local rules (120 days for New Jersey). The form for the summons is also available on the website. (Exhibit LL).

Exceptions to discharge are listed in Section 523 of the bankruptcy code. (Exhibit MM). For a Fund that has a JOC that orders restitution by a criminal court, the exception to discharge should be automatic under section 523(7). For a Fund that obtained a judgment based on a finding of fraud or defalcation, a complaint to determine non-dischargeability of certain debts of the debtor must be filed citing section 523(a)(2)(A) and section 523(a)(4) of the bankruptcy code. (Exhibit NN). If the debtor does not respond to your Complaint, file an application for entry of default, and an application for entry of an order for non-dischargeability and judgment by default. (Exhibit OO). If the debtor responds to your complaint, be sure to respond to any counter claims made in a timely manner or the debtor may file for default against your Fund. You could also file a summary judgment motion. You may have to conduct discovery and prepare for trial, proving your underlying case all over again in this new forum. If the underlying judgment was obtained as the result of a trial, and the issues in bankruptcy court are the same issues in the underlying trial, you may file a motion for summary judgment citing issue preclusion and collateral estoppel in the bankruptcy matter. (Exhibit PP).

In a Chapter 13 bankruptcy, the debtor will file a proposed repayment plan that may provide for less than full payment of the debts. This payment plan may modify the rights of holders of secured claims. The debtor may modify the plan at any time prior to confirmation without court approval. When a modification is filed, it becomes the plan.

The payment plan must be approved by the court. The court shall hold a hearing on confirmation of the plan not earlier than 20 days and not later than 45 days after the date of the meeting of creditors. Creditors, including the Fund, have a right to object to the repayment plan by filing an objection to the plan. If the objecting party does not appear at a confirmation hearing to argue its objection, the court may overrule the objection without considering its merits. The court is required to confirm the plan if all requirements stated are met, and the debtor and creditors are then bound by the plan. If certain conditions are met, the plan may be modified after confirmation; please refer to the bankruptcy code. (Exhibit QQ).

Unless the court orders otherwise, the debtor shall begin making payments not later than 30 days after the date of the filing of the plan or the order for relief. The payments are retained by the bankruptcy trustee until the plan is confirmed. If the plan is confirmed, the trustee will distribute the payments. If the plan is not confirmed, the trustee will return the payments to the debtor, with certain conditions stated in the code.

Exhibit RR is a summary/checklist: Subrogation/Litigation Through Entry of Judgment. Feel free to reproduce it and use it in any manner that is helpful to you.

We have attempted to provide a broad overview on the topic of restitution and subrogation with adequate exhibits to provide a guideline for new subrogation programs or examples of ways to enhance an already established program. We hope you find it helpful.

EXHIBIT "A"

Member Login

American Bar Association

Defending Liberty, Pursuing Justice



ABA Home
Join
Web Store
About the ABA

Search: This Entity

[Advanced Search](#)

[Print This](#) | [E-mail This](#)

[Topics A-Z](#)



Center for Professional Responsibility

CPR Home
Membership
Calendar/CLE
Publications & Videos
Reports & Initiatives
Canons
Centennial Celebration
Lawyer Ethics & Professionalism
Lawyer Regulation
Judicial Ethics & Regulation
Client Protection
Consumer Resources
Contact Information
Site Map

Model Rules for Lawyers' Funds for Client Protection

RULE 16 RESTITUTION AND SUBROGATION

- A. A lawyer whose dishonest conduct results in reimbursement to a claimant shall be liable to the Fund for restitution; and the Board may bring such action as it deems advisable to enforce such obligation.
- B. A lawyer whose dishonest conduct has resulted in reimbursement to a claimant shall make restitution to the Fund including interest and the expense incurred by the Fund in processing the claim. A lawyer's failure to make satisfactory arrangement for restitution shall be cause for suspension, disbarment, or denial of an application for reinstatement.
- C. As a condition of reimbursement, and to the extent of the reimbursement provided by the Fund, a claimant shall be required to provide the Fund with a transfer of the claimant's rights against the lawyer, the lawyer's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the claimant's loss.
- D. Upon commencement of an action by the Board as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.
- E. In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another entity that may be liable for the claimant's loss, the claimant shall be required to notify the Board of such action.
- F. The claimant shall be required to agree to cooperate in all efforts that the Board undertakes to achieve restitution for the Fund, and to repay the Fund if claimant is subsequently reimbursed from another source an amount that exceeds the difference between the principal misappropriated and the Fund award. Such repayment shall not exceed the amount of the Fund award.

Comment

As fiduciaries of the Fund, the Board has the obligation to seek restitution, in appropriate cases, for reimbursement paid to claimants. Successful restitution efforts can enlarge the Fund's financial capacity to provide reimbursement to eligible claimants, and also reduce the need to increase assessments on lawyers to finance the operations of the Fund.

The Board may seek restitution by direct legal action against the lawyer, as well as by the enforcement of rights provided by subrogation and assignment against the lawyer, the lawyer's estate, or any other person or entity who may be liable for the claimant's loss.

Paragraph A is a statement of the Fund's right to seek restitution from the lawyer whose dishonest conduct resulted in a payment of reimbursement. Paragraph A

creates an obligation on the dishonest lawyer to reimburse the Fund for all payments made by the Fund to the lawyer's clients. Under Paragraph B, the making of restitution to the Fund by the dishonest lawyer is a condition precedent to the lawyer's continued practice of law.

Paragraph C requires the Board to establish a subrogation policy that requires claimants who receive reimbursement from the Fund to contractually transfer to the Fund their rights against the lawyer and any other person or entity that may be liable for the loss which the Fund reimbursed. This ordinary transfer of rights by subrogation is to extent of the reimbursement provided by the Fund.

Paragraphs D and E provide for appropriate notice and joinder of parties in subrogation actions by the Fund, or by a claimant, where the claimant has received less than full reimbursement from the Fund.

Paragraph F requires a claimant agree to cooperate with the Fund in its efforts to secure restitution.

The provisions of Paragraphs C, D, E, and F will ordinarily be incorporated in the Fund's subrogation agreement with the claimant.

Subrogation agreements should be carefully drawn to maximize the Board's creditor rights. In appropriate cases, subrogation should be supplemented with a full or partial assignment of specific rights possessed by a claimant, such as a payee's rights as a party to a negotiable instrument, or as a judgment creditor.

The Board should seek the enactment of local law, if necessary, to enhance the Fund's creditors rights. One example is a statutory grant of subrogation rights once the Fund reimburses a claimant's loss. A statutory right of subrogation can effectively supplement contractual subrogation, and may eliminate the need for individual agreements.

Another enhancement that local law might provide a Fund is an automatic lien upon payment of restitution. The lien can serve a two-fold purpose: enabling the Board to intercept restitution which the lawyer is obligated to pay a claimant and preventing claimants from receiving double payments for their losses.

Although most collection efforts directly against the lawyer will not be immediately successful as a practical matter, it is important that the Fund acquire the claimant's rights when it pays reimbursement. A transfer of rights has the potential for a later recoupment of restitution, and to prevent a claimant's double recovery for the same loss.

Lawyer disciplinary agencies, increasingly require lawyers to make restitution to Funds, or to clients, as a condition of discipline or for reinstatement to practice. See, *ABA Model Rules for Lawyer Disciplinary Enforcement* (1999).

The Board, through the exercise of subrogation and assignments rights, can also recover restitution from collateral sources, including law partners.

▼ Next - RULE 17 JUDICIAL RELIEF

▼ Table of Contents

[Back to Top](#)

[TOPICS A-Z](#)

[WEB STORE](#)
[CONTACT ABA](#)

[ABA CALENDAR](#)



American Bar Association | 321 N. Clark St. | Chicago, IL 60654-7598 | 800.285.2221
ABA Copyright Statement ABA Privacy Statement Web Site Feedback

EXHIBIT "B"

FILED

MAR 27 2002

SUPREME COURT OF NEW JERSEY

-154 September Term 2001

Stephen W. Lunn
CLERK

IN THE MATTER OF	:	
THOMAS H. EVERETT, III,	:	ORDER
AN ATTORNEY AT LAW	:	
(Attorney No. 000331984)	:	

THOMAS H. EVERETT, III, of CALDWELL, who was admitted to the bar of this State in 1984, having tendered his consent to disbarment as an attorney at law of the State of New Jersey, and good cause appearing;

It is ORDERED that THOMAS H. EVERETT, III, is disbarred by consent, effective immediately; and it is further

ORDERED that respondent's name be stricken from the roll of attorneys and that he be permanently restrained and enjoined from practicing law; and it is further

ORDERED that all funds, if any, currently existing in any New Jersey financial institution maintained by THOMAS H. EVERETT, III, pursuant to Rule 1:21-6 shall be restrained from disbursement except on application to this Court for good cause shown and shall be transferred by the financial institution to the Clerk of the Superior Court, who is directed to deposit the funds in the

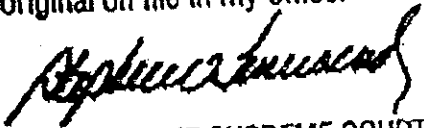
Superior Court Trust Fund pending further Order of this Court; and
it is further

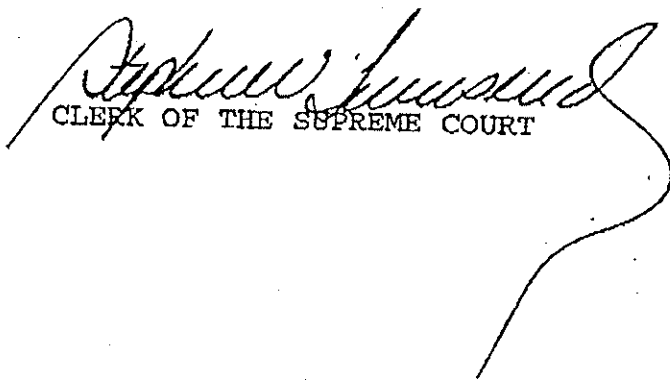
ORDERED that respondent comply with Rule 1:20-20 dealing with
disbarred attorneys; and it is further

ORDERED that respondent reimburse the Disciplinary Oversight
Committee for appropriate administrative costs incurred in the
prosecution of this matter.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice,
at Trenton, this 27th day of March, 2002.

The foregoing is a true copy of the
original on file in my office.


CLERK OF THE SUPREME COURT
OF NEW JERSEY


CLERK OF THE SUPREME COURT

THIS DOCUMENT HAS A COLORED BACKGROUND AND MICROPRINTING. THE REVERSE SIDE INCLUDES AN ARTIFICIAL WATERMARK.

SUPERIOR COURT OF NEW JERSEY

TRUST FUND
P.O. BOX 980
TRENTON, NJ 08625-0980

PNC BANK, N.A.
60-162/433

17636

August 21, 2008

PAY TO THE ORDER OF NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION FUND

Two Hundred Forty-Five Thousand Seventy-Four Dollars and 74/100

IN THE MATTER OF vs. THOMAS E EVERETT, III
Docket Number SWS-D-154-01

VOID 180 DAYS AFTER THIS DATE

Swanne K Johnson
Kevin M. Ke

AUTHORIZED SIGNATURE



⑈017636⑈

SUPERIOR COURT OF NEW JERSEY

TRUST FUND
P.O. BOX 980
TRENTON, NJ 08625-0980

17636

ATTACHED CHECK IS IN COMPLIANCE WITH ORDER AS STATED BELOW. PLEASE DETACH BEFORE PRESENTING.

Order Date: July 21, 2008

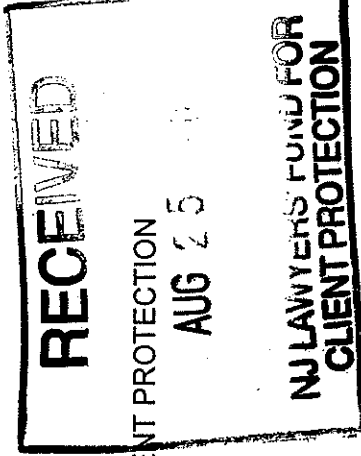
Regarding: IN THE MATTER OF vs. THOMAS E EVERETT, III

Docket Number: SWS-D-154-01

NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION

ATTN: EDWARD T EHLER, ESQ

PO BOX 961
TRENTON, NJ 08625-



Principal of Trust: \$209,627.96
Interest: \$35,446.78
Net Amount of Check: \$245,074.74
Check Date: 8/21/2008

EXHIBIT "C"

[Member Login](#)



ABA Home
Join
Web Store
About the ABA

Search: This Entity

[Advanced Search](#)

[Print This](#) | [E-mail This](#)

[Topics A-Z](#)



Center for Professional Responsibility

CPR Home
Membership
Calendar/CLE
Publications & Videos
Reports & Initiatives
Canons
Centennial Celebration
Lawyer Ethics & Professionalism
Lawyer Regulation
Judicial Ethics & Regulation
Client Protection
Consumer Resources
Contact Information
Site Map

Model Rules for Lawyers' Funds for Client Protection

RULE 17 JUDICIAL RELIEF

- A. The Board may make application to the appropriate court for relief to protect the interests of claimants or the Fund where:
 - 1. the assets of clients appear to be in danger of misappropriation or loss, or to secure the claimant's or Fund's rights to restitution or subrogation; or
 - 2. the lawyer disciplinary agency has failed to exercise jurisdiction.
- B. A court's jurisdiction in such proceedings shall include the authority to appoint and compensate custodial receivers to conserve the assets and practices of disciplined, missing, incapacitated and deceased lawyers.

Comment

Occasionally a situation arises in which the protection of clients and the Fund requires the appointment of a custodial receiver to wind down the practice and to preserve assets. Rule 17 makes explicit the Board's authority to seek just such a remedy as is available under state law. It is anticipated that the Rule would be adapted to seeking equitable remedies in each jurisdiction.

▼ [Next - RULE 18 CONFIDENTIALITY](#)

▼ [Table of Contents](#)

[Back to Top](#)

[TOPICS A-Z](#)

[WEB STORE](#)
[CONTACT ABA](#)

[ABA CALENDAR](#)



EXHIBIT "D"

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) 292-8008
Daniel R. Hendi, Senior Counsel, for Plaintiff
(CPF 886)

TRUSTEES OF THE NEW JERSEY : SUPERIOR COURT OF NEW JERSEY
LAWYERS' FUND FOR CLIENT : CHANCERY DIVISION
PROTECTION, : OCEAN COUNTY
: DOCKET NO. _____
Plaintiff : CIVIL ACTION
v. :
GARY S. BENINSON, : ORDER TO SHOW CAUSE
Defendant :

THIS MATTER, having been opened to the Court upon the application of the Plaintiff, NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION, Daniel R. Hendi, Senior 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 , 2002;

ORDERED that the Defendant, or its counsel, Show Cause on the _____ day of _____, 2003, at _____ o'clock ____m., or as soon thereafter as counsel may be heard, before the Honorable Eugene D. Serpentelli, A.J.S.C., or his designee, the Honorable _____, J.S.C., at the Ocean County Court House, 118 Washington Street, PO Box 2191, Toms River, New Jersey, 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 Gary S. Beninson might have had an interest in 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.
- 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 Christopher Porrino, Esq., of Greenbaum, Rowe, Smith, Ravin, Davis & Himmel, LLP, and any other person or party in interest as the Court may direct.

Hon. _____, J.S.C.

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) 292-8008
Daniel R. Hendi, Senior Counsel, for Plaintiff
(CPF 886)

-----		SUPERIOR COURT OF NEW JERSEY
TRUSTEES OF THE NEW JERSEY	:	CHANCERY DIVISION
LAWYERS' FUND FOR CLIENT :		OCEAN COUNTY
PROTECTION,	:	
	:	DOCKET NO. _____
Plaintiff	:	
	:	CIVIL ACTION
v.	:	
	:	VERIFIED COMPLAINT
GARY S. BENINSON,	:	FOR APPOINTMENT OF CUSTODIAL
	:	RECEIVER PURSUANT TO <u>R.</u> 1:28-8
Defendant	:	

Plaintiff, 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. Defendant, Gary S. Beninson (hereinafter referred to as "Beninson"), was admitted to the Bar of the State of New Jersey in 1980, and maintained an office for the practice of law in Toms River, New Jersey, Ocean County, New Jersey.
3. On May 15, 2003, the Supreme Court of New Jersey entered an Order suspending the Defendant, Beninson.
4. The Fund has received one (1) claim so far alleging a loss of \$2,259.00 as a result of alleged misappropriation of funds by Beninson.
5. In addition to the claims set forth in Paragraph 4, it is reasonably anticipated that

other claims will be filed with the Fund because there were twelve (12) requests for claim forms made by former clients or wards of Beninson, alleging additional losses in excess of \$880,000.00.

6. The exact total sum that the Fund will pay on account of the alleged misconduct of the Defendant cannot be determined at this time because it is relatively early in the in the disciplinary process. Under R. 1:28-3(a)(3) claims can be made within 1 year from the date of suspension, and the Trustees of the Fund have the discretion to allow late filings, for cause.

7. In addition, a Motion was recently made by Selective Insurance Company alleging potential exposure in excess of \$3.5 million in bonds written on behalf of Beninson.

8. The assets of the Defendant 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 and creditors allegedly victimized by Beninson.

9. 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 take possession of the property of an attorney, "including, but not limited to property incident to the attorney's law practice".

WHEREFORE, Plaintiff respectfully demands judgment:

- A. Requiring the Defendant to account concerning any and all of his assets;
- B. Requiring that the Defendant provide a complete and detailed listing of each and every legal file in which he has 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 he knows is handling a legal matter that originated or that was referred by the Defendant to the attorney;
- D. Requiring the Defendant to account concerning the nature, extent and identity of all his liabilities, including those liabilities which arose by reason of misappropriation and conversion of trust

funds;

E. For an Order temporarily restraining the Defendant from conveying, hypothecating or otherwise transferring any assets or things of value which he owns wholly or may otherwise have either an equitable or possessory interest in;

F. For an Order temporarily restraining and enjoining all creditors of the Defendant from instituting or prosecuting any suit, action or proceeding against the Defendant, or against his properties or effects, 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 law practice;

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

New Jersey Lawyers' Fund for Client Protection

By: _____
DANIEL R. HENDI, ESQ.
Senior Counsel

Dated:

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 Gary S. Beninson; 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

**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) 292-8008
 Daniel R. Hendi, Senior Counsel, for Plaintiff
 (CPF 886)**

-----		SUPERIOR COURT OF NEW JERSEY
TRUSTEES OF THE NEW JERSEY	:	CHANCERY DIVISION
LAWYERS' FUND FOR CLIENT :		OCEAN COUNTY
PROTECTION,	:	
	:	DOCKET NO. _____
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	ORDER APPOINTING CUSTODIAL
	:	RECEIVER
GARY S. BENINSON,	:	
	:	
Defendant	:	

THIS MATTER having come before the Court on _____, 2003, 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 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 rights of clients, assets, chose in action, estate and law practice and other things of value of the Defendant, Gary S. Beninson, 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 substantial and irreparable injury will be suffered by the creditors and the former clients of the Defendant, Gary S. Beninson, 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;

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 Custodial Receiver in taking possession of and managing said property.

(f) that on notice to the Custodial Receiver, all persons with claims against Gary S. Beninson 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 Gary S. Beninson or against any of the assets in which Gary S. Beninson has an interest shall be on application to the Court on ten (10) days notice to Custodial Receiver, or with the consent of the Custodial Receiver.

(g) that such Custodial Receiver shall publish notice of his Custodial Receivership in a newspaper of general circulation in the Ocean 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 Custodial Receiver appointed herein, and to his creditors. This Order may otherwise be modified or enlarged by the Custodial Receiver, after hearing, upon eight (8) days notice to all parties interested in the assets and estate of the Defendant.

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

HON. _____, J.S.C.

EXHIBIT "E"

JOEL P. KRAEMER
Defendant (Specify Complete Name)

- Judgment of Conviction
- Change of Judgment
- Order for Commitment
- Indictment/Accusation Dismissed
- Judgment of Acquittal

[REDACTED] DATE OF BIRTH
879444B S.B.I.#
3/24/93 DATE OF ARREST
7/6/93 DATE IND/ACC FILED
7/6/93 DATE OF ORIGINAL PLEA

ADJUDICATION BY: DATE
 GUILTY PLEA 7/6/93
 JURY TRIAL
 NON-JURY TRIAL
 Dismissed/Acquitted

NOT GUILTY GUILTY ORIGINAL PLEA

ORIGINAL CHARGES

IND/ACC No.	Count	Description	Degree	Statute
93-07-00673-A	1	theft by failure to make required disposition	2	2C:20-9

FINAL CHARGES

Count	Description	Degree	Statute
-------	-------------	--------	---------

SAME AS ABOVE.

It is, therefore, on 11/09/93 ORDERED and ADJUDGED that the defendant is sentenced as follows:

The Judgment of Conviction dated 10/22/93 is amended, insofar as the restitution, as follows: Ellen Sims, \$500.00; The Chester Partnership, \$325.00; Chicago Title \$663.00; Chicago Title \$128,655.65; Bernhard Ernst \$25,000.00; Steven Hecker \$20,055.50; Barbara Martin \$15,000.00 totalling \$189,699.15. Payable to Client Security Fund: Zahanna Pivnick, \$23,000.00; Estate of David Rosenheim, \$40,000.00; Robert Kane \$1,164.44; Jeanette Wiegand \$7,410.77, totalling \$75,575.21 payable to Client Security Fund. TOTAL AMOUNT OF RESTITUTION DUE \$261,274.36. All other conditions set forth in the Judgment of Conviction dated 10/22/93 to remain in effect.

It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.

Defendant is to receive credit for time spent in custody (R.3:21-8).

TOTAL NO. DAYS DATES (From/To)

Defendant is to receive gap time credit for time spent in custody (N.J.S.A. 2C:44-5b(2))

TOTAL NO. DAYS DATES (From/To)

Total Custodial Term _____ Institution _____ Total Probation Term _____

Total FINE \$ _____

Total RESTITUTION \$ 261,274.36

If the offense occurred on or after December 23 1991, an assessment of \$50 is imposed on each count which the defendant was convicted unless the box below indicates a higher assessment pursuant to N.J.S.A. 2C:43-3.1. (Assessment is \$30 if offense is on or after January 9, 1991, unless a higher penalty is noted. Assessment is \$25 if offense is before January 9, 1986.)

Assessment imposed on

count(s) _____

is \$ _____ each.

Total VCCB Assessment \$ _____

Installment payments are due at the rate

of \$ _____ per _____

beginning _____

(DATE)

If any of the offenses occurred on or after July 9, 1987, and is for a violation of Chapter 35 or 36 of Title 2C.

1) A mandatory Drug Enforcement and Demand Reduction (D.E.D.R.) penalty is imposed for each count. (Write in # times for each.)

____ 1st Degree @ \$3000 ____ 4th Degree @ \$750
____ 2nd Degree @ \$2000 ____ Disorderly Persons or Petty
____ 3rd Degree @ \$1000 ____ Disorderly Persons @ \$500

Total D.E.D.R. Penalty \$ _____

Court further ORDERS that collection of D.E.D.R. penalty be suspended upon defendant's entry in to a residential drug program for the term of the _____

2) A forensic laboratory fee of \$50 per offense is ORDERED. _____ Offenses @ \$50.

Total LAB FEE \$ _____

3) Name of Drugs involved _____

4) A mandatory driver's license suspension of _____ months is ORDERED.

The suspension shall begin today, _____ and end _____

Driver's License Number _____

(IF THE COURT IS UNABLE TO COLLECT THE LICENSE, PLEASE ALSO COMPLETE THE FOLLOWING.)

Defendant's Address _____

Eye Color _____ Sex _____ Date of Birth _____

The defendant is the holder of an out-of-state driver's license from the following jurisdiction _____. Driver's license # _____

Your non-resident driving privileges are hereby revoked for _____ Months.

If the offense occurred on or after February 1, 1993 and the sentence is to probation or to a State Correctional facility, a transaction fee of up to \$1.00 is ordered for each occasion when a payment or installment payment is made. (P.L. 1992, c. 169)

NAME (Court Clerk or Person who prepares this form)
MARY L. ALESSI

TELEPHONE NUMBER
201-285-6442

NAME (Attorney for Defendant at Sentencing)
S.M. CHRIS FRANZBLAU, ESQ.

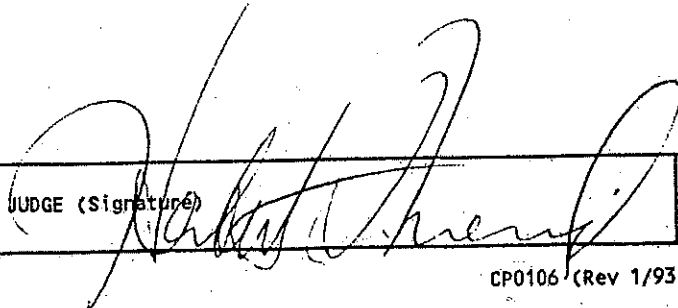
STATEMENT OF REASONS

SEE STATEMENT OF REASONS IN JUDGMENT OF CONVICTION DATED 10/22/93.

NOV 19 3 30 PM
RECEIVED
DEPT. OF CORRECTIONS
SUPERVISOR

JUDGE (Name)
HERBERT S. FRIEND, J.S.C.

JUDGE (Signature)



DATE 11/9/93

Administrative Office of the Courts
State Bureau of Identification

COPIES TO: CHIEF PROBATION OFFICER, STATE POLICE, AOC CRIMINAL PRACTICE DIVISION, DEPT OF CORRECTIONS or COUNTY PENAL INSTITUTION

CP0106 (Rev 1/93) Replaces LR-34 & LR-35
CDR 4 (Rev 1/93)

EXHIBIT "F"

NEW JERSEY LAWYERS' FUND
FOR
CLIENT PROTECTION

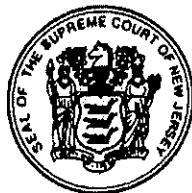
TRUSTEES

JEAN M. RAMATOWSKI CHAIR
TINA E. BERNSTEIN, VICE CHAIR
EMMETT E. PRIMAS, JR. TREASURER
SUSAN E. LAWRENCE
JAMES H. LASKEY
LUIS R. SANCHEZ
FRANK C. FARR

ASSISTANT TREASURER
CHRISTINA P. HIGGINS

STREET ADDRESS:

25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625



MAILING ADDRESS:

RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 961
TRENTON, N.J. 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

DEPUTY DIRECTOR
DANIEL R. HENDI

SENIOR COUNSEL
EDWARD T. EHLER

DEPUTY COUNSEL
RUBY D. COCHRAN

(609) 984-7179
CLAIMS: (609) 292-8008
BILLING: (609) 292-8079
FAX: (609) 394-3637

August 20, 2007

David Yucht, Assistant Prosecutor
Bergen County Prosecutor's Office
Justice Center
10 Main Street
Hackensack, New Jersey, 07601-7681

Re: Estate of [REDACTED] vs. Eugene Cavallo
ND-277:1-07

Dear Mr. Yucht:

I appreciate the input you provided regarding the recent indictment of Eugene Cavallo, Esq. The Fund has been presented with a claim against Cavallo in the amount of \$500,000, filed on behalf of [REDACTED] as Trustee of the trust created by the Will of [REDACTED]. I enclose a copy of the Statement of Claim.

We are in the process of reviewing and investigating this claim. When that process is completed, we will prepare the matter for consideration by the Fund Trustees. If the Trustees grant an award to the claimant, the Fund will compensate the claimant, who in turn will assign all rights to the Fund. The Fund then seeks to recover the amount paid. One form of recovery is by way of restitution ordered in a criminal case involving the attorney. Hence, kindly note the Fund's interest in restitution and in receiving notice of any plea, sentencing or restitution hearing in the case.

Kindly also provide a copy of your file regarding Eugene Cavallo. This will assist the Fund in evaluating and preparing the claim. If there is a copy charge, kindly advise.

Your cooperation is appreciated.

Very truly yours,

EDWARD T. EHLER

ETE:dp

NEW JERSEY LAWYERS' FUND
FOR
CLIENT PROTECTION

TRUSTEES

JEAN M. RAMATOWSKI CHAIR
TINA E. BERNSTEIN, VICE CHAIR
EMMETT E. PRIMAS, JR. TREASURER
SUSAN E. LAWRENCE
JAMES H. LASKEY
LUIS R. SANCHEZ
FRANK C. FARR

ASSISTANT TREASURER
CHRISTINA P. HIGGINS

STREET ADDRESS:
25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625



MAILING ADDRESS:
RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 961
TRENTON, N.J. 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

DEPUTY DIRECTOR
DANIEL R. HENDI

SENIOR COUNSEL
EDWARD T. EHLER

DEPUTY COUNSEL
RUBY D. COCHRAN

(609) 984-7179
CLAIMS: (609) 292-8008
BILLING: (609) 292-8079
FAX: (609) 394-3637

February 25, 2008
Via Fax & Regular Mail
Fax: (732) 745-2791

Brian Gillet, Assistant Prosecutor
Middlesex County Prosecutor's Office
25 Kirkpatrick Street - 3rd Floor
New Brunswick, New Jersey 08901

**RE: Richard R. Thomas, II
Our File: CPF-925**

Dear Mr. Gillet:

The New Jersey Lawyers' Fund for Client Protection has concluded its investigation of the claim filed by [REDACTED] against Richard R. Thomas, II. The Trustees have granted [REDACTED] an award in the amount of \$16,349.66. I enclose a copy of the fully executed Release, Assignment and Subrogation Agreement for your file. The Fund seeks restitution in this amount.

Currently, there are no other claims pending with our office against Richard Thomas. Kindly advise if your office is aware of any other victims and, when available, provide me with the date of the sentencing hearing.

Thank you for your assistance in this matter.

Very truly yours,

EDWARD T. EHLER

ETE:d
Encl.

LETTER TO JUDGE RE RESTITUTION

Dear Judge :

It is my understanding that sentencing in the above matter is scheduled for July 23, 2008 and that defendant will be ordered to pay restitution to the New Jersey Lawyers' Fund for Client Protection ("Fund") in the amount of \$11,100. Brian D. Gillet, Esq. advised that a question was raised concerning payments received by the Fund against the amount owed in restitution.

The short answer is that no payments have been received and the entire amount, \$11,100, is due. However, the short answer requires some explanation.

The Fund paid one claim against Thomas in the amount of \$16,349.66 and, as required by Fund rules, the claimant assigned her rights to the Fund. Thomas was suspended from the practice of law on May 3, 2005 and disbarred on November 28, 2006. At the time he was suspended his trust account was frozen containing \$20,072.98 in client funds and those funds were transferred to the Superior Court Trust Fund. On April 11, 2008, the Fund filed with the New Jersey Supreme Court a Petition to Release Funds pursuant to R. 1:20-23. Under that rule, if the Petition is granted, notice will be published requiring persons who claim ownership in the funds to file proof of ownership with the Court. Persons who successfully prove ownership will receive a disbursement from those funds in the amount proven. When that process is completed, if funds remain, the Fund would have priority over those funds to the extent that it has paid claims against Thomas. At present, the Fund's Petition to Release Funds is pending and hence, the process of publication and submission of proof of ownership has not even commenced.

Not only has the Fund yet to receive a payment, it is uncertain what, if any, payment will result from the pending Petition to Release Funds, inasmuch as it cannot be predicted to what extent the funds might be reduced based on successful claims by persons claiming an interest in the funds. The Petition to Release Funds will be amended to reflect a credit to Thomas in the amount of restitution payments received from Thomas, and any funds received by way of the Petition will be credited against the total amount owed by Thomas. The prospect that the Fund may receive a payment from the frozen trust funds should not operate to relieve Thomas from the obligation to pay restitution owed a victim. Thomas' obligation to make restitution is primary and is necessary to satisfy an important purpose of the criminal justice system.

The Fund's pending Petition and civil action should not operate to relieve Thomas from the obligation to pay restitution. There is no danger that the Fund will receive a "double recovery." Any payments received by the Fund - whether pursuant to the Petition, or through a recovery in the civil action, or by way of restitution - will be credited against the total amount owed.

There is no reason why Thomas should not now be ordered to pay restitution to the Fund in the amount of \$11,100.

EXHIBIT "G"

Enforcement Of A Fund's
Subrogation Rights

11:10 to 11:40 a.m. Session

SANTA FE',
NEW MEXICO

-WORKSHOP-

APRIL 1, 2005

Daniel R. Hendi, Esq.
Senior Counsel NJ Lawyers' Fund

FIRST CALL FROM CLAIMANT	RECEIPT OF FILED CLAIM FORM	INVESTIGATION OF CLAIM	PRESENTATION TO THE BOARD OF TRUSTEES	FILE THE COMPLAINT	CONDUCT DISCOVERY	JUDGMENT	POST JUDGMENT DISCOVERY	COLLECTION CONTINUES
<p>In addition to claim questions, ask respondent. Habits, lifestyle (gambling, infidelity, etc.). Client might know.</p>	<p>Meet with all claim counsel and discuss the claim(s). Share information learned or heard about the subject respondent. Get ideas about how to proceed from colleagues.</p>	<p><u>Opportunity to set to:</u> Know your claimant to evaluate for future litigation. Communicate with prosecutor and get involved with the criminal process to ensure restitution order.</p>	<p>Hearing, bring everybody in. Or ... Administrative Determination (on the papers).</p>	<p>As soon as possible after the deadline has passed for each respondent and all claims are disposed of by the Board vs. Respondent and collateral sources.</p>	<p>Round up your claimants, keep them informed, and motivate them for possible trial (remember, they already got their money). Obtain necessary proofs not obtained during investigation of claim.</p>	<p>By the Court after trial or by Summary Judgment Motion. Or: By Default (good). By Consent (better). By Assignment from a claimant that already sued the respondent.</p>	<p>Information subpoena. Deposition of respondents-debors and anyone else that knows anything. Hire private investigator. Use collection lawyer/agency.</p>	<p>Follow up with probation dept. for new judgments that are about to expire. Look for new enforcement type laws (NJ has Comprehensive Enforcement Program (CEP)).</p>

**PROCESSING CLAIMS IN
ANTICIPATING of SUBROGATION**

Daniel R. Hendi, Senior Counsel
New Jersey Lawyers' Fund for Client Protection

I: Before the Claim is Filed:

When a call is made to the fund about a loss, it is important that the person taking the call be trained to conduct a preliminary interview of the Claimant, to obtain information not only about the loss itself, but also about the Respondent and his/her lifestyle and spending habits. The initial interview is the best place to ask pointed questions about these topics because if the Claimant knows anything, it is most likely that he/she will share the information with you at that time, when their sense of action and cooperation with a "government body" is at its highest.

Types of questions that you can ask at intake that can help you later in subrogation are:

The obvious:

1. Claimants' name(s), address (if P.O. Box, get a street address), and all telephone numbers to reach them at all times.
2. Full name of the Respondent attorney.
3. The exact amount of the claimed loss and any remarks about how that loss was calculated. Ask if there was an accounting made by an accountant, prosecutor, Ethics or even the Respondent him/herself.
4. Whether the Claimant complained to the disciplinary board, and whether the Claimant's loss was one of the matters in the Respondent's discipline. If that is the case, then most of the investigative work will have been performed for you already.
5. Whether the Claimant complained to the prosecutor and, if so, whether the Claimant's allegations are being investigated by that Office.

Though the information in Nos. 4 & 5 is information that you can get on your own, asking it at intake will give you a sense of the Claimants' involvement and level of sophistication. It may also make you privy to information that some prosecutors or investigators already know but may not want to share with you in the early stages of a criminal prosecution.

The not so obvious and probing questions:

You may also want to ask the following questions at intake with an eye to future litigation and potential collateral sources that may exist:

1. *How long have you known the Respondent, or how long has respondent represented you?* Establish the relationship between the claimant and the respondent and try to get a handle on how much latitude the client gave to the lawyer. This is important to rebut inferences from collateral sources that the respondent acted in accordance with past practices. For example, if you sue over a forged check and allege that the claimant did not authorize the respondent to sign it, you do not want to learn after the case starts that in other business relationships the respondent routinely signed claimant's name on behalf of the client.
2. *Have you ever met with the Respondent socially, or ever been to his or her home?* The client may have seen valuable items such as art-work or jewelry.
3. *Do you know what type of vehicle the Respondent drove; how did he dress?* Generally, a claimant that pays attention to the car or dress style of a respondent may have other information about the respondent that may serve useful to your investigation, such as the quality of Respondent's lifestyle.

4. *Was the Respondent married? Did you ever meet his/her spouse? Are they still together? When you get this information, don't be shy to contact the respondent's spouse, especially if you believe that infidelity was involved. Jilted spouses are great source of information.*
5. *Did the Respondent have any children? Do you know their ages? An asset searcher once taught me that often-times assets are hidden in children's names, either directly or corporate. If corporate, look for checks made to a corporation in the combined names of the children (for example, Sue and John might be the S&J Corp or the SUJO Corp.)*
6. *Do you know where the Respondent vacationed? A search of public records in the state or county where the lawyer was known to vacation each year might reveal some assets.*
7. *Did you ever observe anyone else (other lawyers) in the office when you were there? This goes to whether a Partnership existed that the Claimant might not have been sensitive to since he or she only dealt with one lawyer. Or even a supervision problem between a principal and agent, or master-servant.*

In addition to the above, I like to use two additional forms to obtain information and supplement the Statement of Claim that we send out. The "*Supplemental Statement*" in "**Exhibit 1**" goes a little bit into details that are sometimes missing from the claim form itself because the claimant may have overlooked it. If the claim involves an allegation of an unearned fee, then we also send an "*Unearned Retainer Certification*" as in "**Exhibit 2**"

II: After the claim is filed:

Your claim investigation should also include gathering information and documents early in the process to help you identify possible collateral sources liable for the loss. For Example:

1.) Forgery:

In the course of developing the claim for presentation to the Board of Trustees, obtain a copy of the insurer's file with respect to the settlement of the underlying case. For example, obtain a copy of the canceled check(s), release(s), assignments to third parties regarding an interest in settlement proceeds. Most important, when you get a check, that is the time to get an Affidavit of Forgery from the loss payee (the claimant).

Most homeowners are aware that a homeowner's policy will protect against such occurrences as fires, thefts and smoke damage. But many folks with property insurance, would probably be surprised to learn that they are also protected against losses resulting from receiving counterfeit money, unauthorized use of credit cards, and **check forgery**. We have found such protection in policies for homeowners, renters and condominium unit owner's. Your Fund should consider making the claimant file a claim with their insurers before paying an award, especially if you are not going to pursue the collateral source (depository or drawee banks).

Standard coverage in a policy cover losses of up to \$1,000.00 on "securities, **checks**, cashier's checks, traveler's checks, money orders and other negotiable instruments, accounts, deeds, evidence of debt, letters of credit, notes or other bank notes, manuscripts, passports and tickets."

2.) Partnership or employer liability:

Get copies of all letters received by client to determine from the letterhead whether a partner existed during the period of representation. (Note, that holding one's self out as a partner can create partnership by estoppel.) Sometimes, a lawyer may suspect that a partner or subordinate is doing something wrong but won't report him/her; they just end the relationship and the dishonest lawyer goes elsewhere with the victim's file. It is imperative that the dates of partnership or relationship be established to determine collateral liability. Note, insurers will not cover theft, but a partner's or a lawyer's negligent supervision over the trust account, or another, may be a covered event.

3.) Real estate and title insurance cases: Real estate closings can occur in one of many ways in the United States, depending on local practices.

In New Jersey, for example, in the southern part of the State closings or settlements are handled through title insurance agencies. In the northern part of the State, it is customary for lawyers to handle all aspects of a closing as the agent for the title insurer, the client, and even the lender. Title insurance is a collateral source because the approved lawyer handled the closing.

Subpoena the lender's entire file and look for: the lender's instructions to the settlement agent (the attorney), and the title company's closing service letter (a/k/a closing protection letter). Some title companies, when confronted about a loss due to a dishonest lawyer will already have given the lender what it needed to sell the loan in the secondary market, but tell you that there is no coverage for the claimant because the PREMIUM WAS NOT PAID, NO INSURANCE WAS ORDERED FOR THE CLAIMANT, OR THAT THE POLICY ONLY COVERED THE SELLER. These are Red Herrings and you should never give up without a good legal fight. For liability of a title insurer as a result of attorney theft see Sears v. Rose, 134 N.J. 326 (1993), and Clients Protection Fund v. Security Title and Guaranty CO., 134 N.J. 326 (1993)

4.) Bonding insurance.

If the case involves an estate, a partnership, or a special court appointment such as a bankruptcy trustee or guardianship of a minor or incompetent, look for bonding insurance.

5.) Age considerations. How old is the claimant/victim?

If a case settled involving injuries to a minor, some states require "friendly hearings". A "friendly hearing" is a non-contested court proceeding wherein the judge hears testimony about the settlement with the benefit of an expert report or testimony, and the court then approves or rejects it. If a settlement is endorsed by a parent or a guardian of a minor, but not the Court, it may be unenforceable as to the minor and the paying entity may be required to pay again.

The statute of limitations for minors begins to toll when the minor reaches the age of majority.

6.) Build good relationships.

Prosecutors. Develop a good relationship with prosecutors and the investigators. The information you obtain from these

individuals may help your claim process and subrogation. Also, a good rapport with the prosecutor will get your Fund named in the criminal restitution order, which will be important for future collections, including bankruptcy.

Defense counsel. Many times, defense counsel will advise the Respondent to cooperate with the Fund so they can report to a sentencing judge that the "defendant is cooperating and looking to repay his or her obligation". A good defense lawyer will be cautious as to what he or she can deliver but it's a good idea to be receptive when the overture is made as it will facilitate your investigation and collection.

But be cautious if the respondent is willing to reimburse a lot prior to criminal sentencing. This oftentimes means that there is a victim out there that no one else knows about yet and the respondent may be continuing to use "Peter's money to pay his debt to Paul". Remember, unless you can get a representation about where the money is coming from, there might be an elderly person who entrusted the respondent with his or her assets or an estate that the respondent was handling, and in both cases the money did not pass through the trust account.

Probation/Parole. If the Respondent pleads while there are claims pending, it is important that you maintain good contact with the probation and parole to get what you need while the respondent is

petitioning for early release. For example, NJ has "ISP" (Intensive Supervision Program) which allows criminals to be eligible for release after only serving 3 months. Your relationship with the probation office can result in having restitution payments made as a condition of release in ISP. Same is true with parole. When the respondent checks in with his or her parole officer, the officer can ask the respondent if he's been keeping up with his Fund payments. Good contacts and periodic letters to the parole officer help in this regard because those letters are maintained in the file and checked when contact is made.

The Claimant(s). Too often, we hear the claimant tell what a fine person the respondent was (or even is). If the claim process did not go as smooth as hoped, those words of admiration for the respondent may come back to hurt you at trial. Maintaining a good relationship throughout the claim process with the claimant will go a long way toward availability for trial and cooperation in the future.

III: Subrogation Process:

COMPLAINT. As soon after all claims against a single respondent are paid, and all Release, Assignments and Subrogation Agreements ("Exhibit 3") are in your file, file a complaint against the respondent ("Exhibit 4"). Generally, these complaints are defaulted upon and judgment is entered as a matter of routine. If you do nothing else, get a recorded judgment against the respondent; you may be surprised to find the person back on their feet after a few years. As a tip, try to get a summary judgment rather than a default judgment against your defendant.

COLLECTION. There are many ways to collect and this paper will only cover some of the basics. The first and most common step that we use is to allow the respondent the opportunity to make an arrangement to pay on his or her own an amount that they feel comfortable paying with the approval of the Trustees. An Information Subpoena as in "Exhibit 5" is a good tool to start discussions. The information in it is basic and useful to verify the reasonableness about a proposed payment plan.

The second way is to be a bit more proactive and get a wage execution if the respondent is employed. Local court rules will guide you through the process for filing wage executions and notices required. You can also employ the services of a collection agency and make a business decision as to whether to pay a collector 15% to 30% of the recovery. One word of caution, however, is to give collectors the file only *after* you have made your own attempts to contact the respondent directly as many are willing to make some arrangement with you.

With regard to in-house collections, New Jersey Client Protection Fund attorneys are fortunate in that we are able to locate respondents, witnesses, and assets by use of a search tool called *LexisNexis Law Enforcement Solutions*. The site allows searches by name only, with additional info that can be added to supplement the search such as: approximate age, state of residence, S.S. number, last known address and other fields. Once on the site, you can locate neighbors, individuals living in the same household, the names of all people using a particular SS number, and detailed information about lien holders, and judgments against the parties or property searched.

In addition, the Fund uses information credit reporting agencies such as TRW and InfoSearch. These companies provide you a credit history and an "Inquiry" section which is useful. We have had success subpoenaing companies that made inquiries into a respondent's credit history in hopes of extending credit whereby they had in possession a credit application with all sorts of good information about what the respondent was earning, where, and how.

Lastly, professional asset searchers are a valuable tool you can employ when you suspect that a respondent is hiding his assets. In addition to forensic accounting services, these individuals can locate real estate, bank accounts, cars, planes, and other items. See for example the following web

site, www.checkmatereports.com.

Bankruptcy: I will not say much about this now as it is a topic unto itself. Suffice it to say for now that some respondents file for bankruptcy protection early, and your claimants may have already received a Notice of Bankruptcy, and sat on it. Ask that information from your claimant.

If that is the case, or if you want to avoid the entire bankruptcy forum, work hard up front to protect yourself by involving yourself in the criminal process. Have your Fund recognized as a victim, and get restitution ordered. Restitution is not dischargeable under bankruptcy rules and depending on your jurisdiction and judge, the sentencing order can require the criminal defendant to enter into a consent civil judgment as part of the restitution process.

Conclusion:

Restitution does two things for a Client Protection Fund. First, it lets respondents know that their misdeeds will not go unanswered or be without financial consequences, even if long term.

Secondly, in addition to the obvious benefit of recovering money for the Fund that replenishes assets and protects its financial integrity, restitution also sends a strong message to the public, to your State's highest court which regulates all courts and lawyers, and to members of the bar in good standing. The message is that your Fund cares about fixing the breach of confidence to harmed clients that impacts upon everyone in the system.

7. Did you receive any type of statement or receipt from the Respondent for any money that you gave to him?

8. Did you or anyone on your behalf authorize the Respondent to write checks to himself or sign your name on checks on your behalf, in any account?

9. Did Respondent tell you what or how the money held would be used?

10. State the date of and describe your last contact with the Respondent.

11. How much money did the Respondent return to you?

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

CPF#

CLAIMANT _____

RESPONDENT _____

CERTIFICATION OF UNEARNED RETAINER/FEE

The following information is provided in support of my (our) claim before the Client Protection Fund.

1. How much money did you pay the Respondent \$ _____ Dates of Payment ? _____
 List Dates of Payment. _____
 How was payment made? Cash _____ Check _____ Other _____ (Attach proof of payment, copy of receipt, copy
 front & reverse sides of cancelled check, etc.)
 Was this to be the entire fee? _____
 If not, state the entire fee quoted by Respondent. _____

2. What kind of case was Respondent to handle? _____

3. Briefly describe the current status of this matter. _____

4. Have you hired another attorney to complete this matter? _____
 If so, give name and address of new attorney. _____

What is the fee arrangement between you and the new attorney? _____

State amount of payment and date of payment to the new attorney. _____

5. How many times did you meet with the Respondent? _____
 Briefly describe each meeting giving the date such meeting took place, how long it lasted, what was discussed, etc. Please be
 specific. (Use additional sheets if necessary) _____

6. Briefly describe any major telephone calls with Respondent. _____

7. Did Respondent ever prepare any legal papers for you? _____
 If so, list them and tell whether, to your knowledge, they have been filed or used. _____

If you are in possession of such documents, please attach a copy of the same to your Statement of Claim Form.

8. Did Respondent make any Court appearances on your behalf? _____. If so, briefly describe giving the date he
 appeared, the name of the Judge and the reason for the Court appearance. _____

I (we) certify that the above statements are true. I am (we are) aware that if any of the foregoing statements are willfully false,
 I am subject to punishment.

Dated: _____

Dated: _____

EXHIBIT 2

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

TRUSTEES

**WILLIAM E. HINKES, CHAIR
ROBERT J. DEL TUFO, VICE CHAIR
ALAN L. WILLIAMS
PATRICIA B. ROE
ALFRED T. GIULIANO, TREASURER
EMMETT E. PRIMUS, JR.
TINA E. BERNSTEIN**



**DIRECTOR & COUNSEL
KENNETH J. BOSSONG**

**SENIOR COUNSEL
DANIEL R. HENDI
WILLIAM J. THOMAS**

**DEPUTY COUNSEL
JOANNE M. DIETRICH**

**ASSISTANT TREASURER
CHRISTINE P. HIGGINS**

**RICHARD J. HUGHES JUSTICE COMPLEX
P. O. BOX 961
TRENTON, NJ 08625-0961**

**FUND SECRETARY
RUBY D. COCHRAN**

STREET ADDRESS:

**25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625-0961**

**CLAIMS: (609) 292-8008
FAX: (609) 394-3637**

DANIEL.HENDI@JUDICIARY.STATE.NJ.US

CPF # _____

RELEASE, ASSIGNMENT AND SUBROGATION AGREEMENT

This Agreement is between the NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION, Richard J. Hughes Justice Complex, 25 West Market Street, P. O. Box 961, Trenton, New Jersey 08625 and John and Jane Doe, 21 Prospect Street, Anytown, New Jersey 01234.

The Trustees of the New Jersey Lawyers' Fund for Client Protection, pursuant to R. 1:28-3, having considered the claim of John and Jane Doe, arising from the dishonest conduct of former attorney, Dewey Cheatem, it is now mutually agreed:

1. The New Jersey Lawyers' Fund for Client Protection will pay to John and Jane Doe, the sum of \$50,000 upon execution of this Agreement by all parties.

2. On behalf of their heirs, executors, administrators and assigns, John and Jane Doe, release the New Jersey Lawyers' Fund for Client Protection, its successors and assigns, from all claims.

Further, John and Jane Doe, certify that they will lend their complete cooperation to the New Jersey Lawyers' Fund for Client Protection in any legal action brought by the Fund or on their behalf against Dewey Cheatem, any other appropriate party, to recover these monies and that payment of said monies is contingent upon such cooperation.

EXHIBIT 3

4. John and Jane Doe, hereby assign to the New Jersey Lawyers' Fund for Client Protection their rights, claims and interests against Dewey Cheatem, or any other party involved in the transaction giving rise to this claim up to the amount actually paid hereunder. They understand that nothing herein shall obligate the Fund to pursue the rights assigned to it under this Agreement and, therefore, any recovery or attempt to secure recovery pursuant to this assignment of rights shall be at the sole option of the Trustees. Any recovery of principal in connection with this claim by the New Jersey Lawyers' Fund for Client Protection above the sum paid to them by the Fund, less reasonable costs, expenses and fees incurred by the Fund, shall be paid over to John and Jane Doe.

ATTEST:

NEW JERSEY LAWYERS' FUND FOR
CLIENT PROTECTION

Secretary

Chair, Board of Trustees

JOHN DOE

JANE DOE

State of :
County of : ss.

Be it remembered that on this _____ day of _____, 2004, before me, the subscriber, personally appeared John and Jane Doe, and who I am satisfied are the persons named herein and who executed the above instrument, and signed, sealed and delivered the same as their voluntary acts and deeds, for the uses and purposes therein expressed.

New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 W. Market Street, P.O. Box 961
Trenton, New Jersey 08625-0961
(609) 984-7179
DANIEL R. HENDI, Senior Counsel
CPF- ##### _____

NEW JERSEY LAWYERS' FUND FOR
CLIENT PROTECTION,

Plaintiff

v.

DEWEY CHEATEM,
Defendant

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION-CIVIL PART
COUNTY

DOCKET NO.
CIVIL ACTION

COMPLAINT

The Plaintiff, New Jersey Lawyers' Fund for Client Protection, an entity established by the Supreme Court of New Jersey under R. 1:28-1 et seq., located at the Richard J. Hughes Justice Complex, 25 West Market Street, P. O. Box 961, Trenton, New Jersey 08625-0961, complaining against the Defendant _____, says:

1. The Plaintiff was established to reimburse clients for losses caused by the dishonest conduct of members of the Bar of New Jersey.
2. Defendant, _____, maintained an office for the practice of law at 604 Central Avenue, East Orange, New Jersey.
3. Defendant was temporarily suspended (*Or Disbarred*) from the practice of law on _____ (*Optional language if additional discipline took place* →) and disbarred from the

EXHIBIT 4

practice of law on _____.

4. In or about date of check, and thereafter, while representing John Doe and Jane Doe, Defendant embezzled, misapplied and converted to his own use the sum of \$50,000.00 given to him as payment for settlement of a personal injury case that he was entrusted to handle on their behalf.

5. In or about date of payment and thereafter while representing Paula Jones, Defendant embezzled, misapplied and converted to his own use the sum of \$2,500.00 given to him as payment for legal services for which Defendant failed to perform.

6. In or about date of payment while representing Barbara Eden, Defendant embezzled, misapplied and converted to his own use the sum of \$7,500.00 given to him as payment for legal services for which Defendant failed to perform.

7. The individuals named in paragraphs 4 through 6 of this Complaint filed claims with Plaintiff because of the dishonest conduct of the Defendant and the Plaintiff has paid a total of \$60,000.00 in these claims against Defendant.

8. Pursuant to R. 1:28-1 et seq. of the Rules Governing the Courts of New Jersey, the Plaintiff has paid the claims of the individuals named in paragraphs 4 through 6 and has received assignments of all of their rights, claims and interests against the Defendant.

9. To date Plaintiff has made recovery in the amount of \$5,000 from collateral sources and funds previously frozen in the Superior Court of New Jersey Trust Fund.

10. The Defendant owes to the Plaintiff the sum of \$55,000.00 for claims paid on behalf of Defendant's former clients.

WHEREFORE, Plaintiff demands judgment against the Defendant, Clark, for damages in the amount of **FIFTY-FIVE THOUSAND AND 00/100 DOLLARS (\$55,000.00)** plus interest from the date of entry of Judgment and costs of suit.

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

BY:
DANIEL R. HENDI
, ESQ.

Dated: April 1, 2005.

DESIGNATION OF TRIAL COUNSEL

Daniel R. Hendi, Esq., Senior Counsel, is hereby designated as trial counsel in the referenced matter.

JURY DEMAND

Plaintiff hereby demands trial by jury as to all issues pursuant to R. 4:35-1.

**IMPORTANT NOTICE
PLEASE READ CAREFULLY**

**New Jersey Lawyers Fund for Client Protection
Richard J. Hughes Justice Complex
25 West Market Street, P. O. Box 961
Trenton, NJ 08625-0961
Daniel R. Hendi, Esq., Senior Counsel
(609) 292-8008**

NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION-CIVIL PART MERCER COUNTY
PLAINTIFF,	:	DOCKET NO. MER-L-123-04
v.	:	JUDGMENT NO. J-12345-05
HEYWOOD CHAPAYME	:	CIVIL ACTION
DEFENDANT	:	CPF- 1234
	:	INFORMATION SUBPOENA

THE STATE OF NEW JERSEY TO:

Mr. Heywood Chapayme
50 Riverdale Ave. - Apt. 10-J
Yonkers, NY 10701

Judgment was entered against you in the Superior Court of New Jersey on March 28, 2005, in the amount of \$100,000.00, plus any applicable interest and costs, and the lien was recorded in the amount of \$100,000.00 on March 30, 2005 under the docket number(s) referenced above. The amount of \$100,000.00 remains due and outstanding, plus any applicable interest and costs.

Attached to this Information Subpoena is a list of 17 questions that court rules require you to answer within 14 days from the date you receive this subpoena. If you do not answer the attached questions within the time required, the opposing party may ask the court to conduct a hearing in order to determine if you should be held in contempt. You will be compelled to appear at the hearing and explain your reasons for your failure to answer.

If this judgment has resulted from a default you may have the right to have this default judgment vacated by making an appropriate motion to the court. Contact any attorney or the clerk of the court for information on making such a motion. Even if you dispute the judgment you must answer all 17 of the attached questions.

EXHIBIT 5

You must answer each question giving complete answers, attaching additional pages if necessary. False or misleading answers may subject you to punishment by the court. However, you need not provide information concerning the income and assets of others living in your household unless you have a financial interest in the assets or income. Be sure to sign and date your answers and return them to the address in the upper left hand corner within 14 days.

Dated: April 1, 2005

Daniel R. Hendi, Esq.
New Jersey Lawyers' Fund for
Client Protection

Donald Phelan, Clerk
Superior Court of New Jersey

VIA FIRST CLASS MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

1. Full name _____
2. Address _____

3. Birthdate _____
4. Social Security # _____
5. Driver's license # and expiration date _____

6. Telephone # _____
7. Full name and address of your employer _____

(a) Your weekly salary: Gross _____ Net _____
(b) If not presently employed, name and address of last employer.

8. Is there currently a wage execution on your salary?
Yes _____ No _____
9. List the names, addresses and account numbers of all bank accounts on which your name appears.

10. If you receive money from any of the following sources, list amount, how often and the name and address of the source:

<u>Type</u>	<u>Amount & Frequency</u>	<u>Name & Address Source</u>
Alimony	_____	_____
Loan Payments	_____	_____
Rental Income	_____	_____
Pensions	_____	_____
Bank Interest	_____	_____
Stock Dividends	_____	_____

11. Do you receive Social Security benefits?
Yes _____ No _____

12. Do you own the property where you reside?
Yes _____ No _____ If Yes, state the following:

- (a) Name of the owner or owners _____
- (b) Date property was purchased _____
- (c) Purchase price _____
- (d) Name and address of mortgage holder _____
- (e) Balance due on mortgage _____

13. Do you own any other real estate?
Yes _____ No _____ If Yes, state the following for each property:

- (a) Address of property _____
- (b) Date property was purchased _____
- (c) Purchase price _____
- (d) Name and addresses of all owners _____
- (e) Name and address of mortgage holder _____
- (f) Balance due on mortgage _____
- (g) Name and addresses of all tenants and monthly rental paid by each tenant. _____

14. Does the present value of your personal property which includes automobiles, furniture, appliances, stocks, bonds, and cash on hand, exceed \$1,000?

Cash on hand: \$ _____

Other personal property: (Set forth make, model and serial number. If financed, give name and address of party to whom payments are made).

Item	Date Purchased	Purchase Price	If Financed Balance Still Due	Present Value

15. Do you own a motor vehicle?
 Yes _____ No _____ If Yes, state the following for each vehicle owned:
 (a) Make, model and year of motor vehicle _____
 (b) If there is a lien on the vehicle, state the name and address of the lienholder and the amount due to the lienholder _____
 (c) License plate # _____
 (d) Vehicle identification # _____

16. Do you own a business?
 Yes _____ No _____ If Yes, state the following:
 (a) Name and address of the business _____
 (b) Is business a Corporation _____, sole proprietorship _____ or partnership _____?
 (c) The name and address of all stockholders, officers and/or partners _____
 (d) The amount of income received by you from the business during the last twelve months _____

17. Set forth all other judgments that you are aware of that have been entered against you and include:

Creditor's Name	Creditor's Attorney	Amount Due	Name of Court	Docket #

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

 Heywood Chapayme

Dated: _____

EXHIBIT "H"

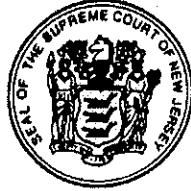
NEW JERSEY LAWYERS' FUND
FOR
CLIENT PROTECTION

TRUSTEES

JEAN M. RAMATOWSKI CHAIR
TINA E. BERNSTEIN, VICE CHAIR
EMMETT E. PRIMAS, JR. TREASURER
SUSAN E. LAWRENCE
JAMES H. LASKEY
LUIS R. SANCHEZ
FRANK C. FARR

ASSISTANT TREASURER
CHRISTINA P. HIGGINS

STREET ADDRESS:
25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625



MAILING ADDRESS:
RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 961
TRENTON, N.J. 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

DEPUTY DIRECTOR
DANIEL R. HENDI

SENIOR COUNSEL
EDWARD T. EHLER

DEPUTY COUNSEL
RUBY D. COCHRAN

(609) 984-7179
CLAIMS: (609) 292-8008
BILLING: (609) 292-8079
FAX: (609) 394-3637

August 16, 2007

Christine E. Potter, Esq.
Fidelity National Title
6 Becker Farm Road
Roseland, NJ 07068

**RE: Our File: [REDACTED] vs. Victor Musto Our File: CPF-927:3-06
Claim Control No.: 228142
Insured: Advisors Mortgage Group, LLC
Property: 39 Hannah Lee Road, Barnegat, NJ 08005**

Dear Ms. Potter:

I enclose copies of my April 27, 2007, June 7, 2007 and August 1, 2007 letters to you. We still are without a response from Fidelity Title regarding payment of the Department of Labor lien in the amount of \$4,419.36.

We have been holding consideration of this claim in abeyance pending a response from Fidelity, but it is unfair to the claimant to further delay this matter. If I do not receive a written response from Fidelity within fourteen (14) days of the date of this letter, it will be assumed that Fidelity is denying coverage as to Musto's failure to payoff this lien.

This claim will be on the agenda for the September 19, 2007 meeting of the Fund's Trustees, who, I anticipate, will grant an award to the claimant in the amount of \$4,419.36. The claimant will then assign his rights to the Fund and the Fund will pursue reimbursement from Fidelity.

The documents and information already in your possession provide an ample basis to confirm coverage. I now enclose a copy of the Decision of the Disciplinary Review Board, dated December 27, 2005, which was the basis for Musto's disbarment. The [REDACTED] matter is discussed beginning on Page 7.

██████ vs. Musto
August 16, 2007
Page Two

Fidelity's responsibility to cover this loss is clear under the principles set forth in Sears Mortgage Corporation v. Rose and Kaiser, 134 N.J. 326 (1993) and Clients' Security Fund vs. Security Title and Guarantee Co., 134 N.J. 358 (1993). Those cases also provide for an award of attorneys' fees to the successful claimant pursuant to R.4:42-9(6). Fund counsel has and will continue to expend time pursuing this claim against Fidelity. If Fidelity promptly undertakes coverage of this loss, the Fund will likely not seek attorney's fees. If the matter is not resolved without further delay any resolution thereafter must include payment of a reasonable attorney's fee for all time expended by Fund counsel pursuing this claim.

Very truly yours,

EDWARD T. EHLER

ETE:d
Encl.
cc: Denis M. Miller, Esq. (Mercerville Office)

EXHIBIT "I"

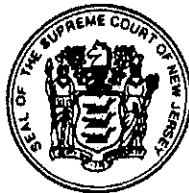
NEW JERSEY LAWYERS' FUND
FOR
CLIENT PROTECTION

TRUSTEES

JEAN M. RAMATOWSKI, CHAIR
TINA E. BERNSTEIN, VICE CHAIR
EMMETT E. PRIMAS, JR. TREASURER
SUSAN E. LAWRENCE
JAMES H. LASKEY
LUIS R. SANCHEZ
FRANK C. FARR

ASSISTANT TREASURER
CHRISTINA P. HIGGINS

STREET ADDRESS:
25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625



MAILING ADDRESS:
RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 961
TRENTON, N.J. 08625-0961

August 25, 2008

Via Facsimile: (609)344-4009
and Regular Mail

Billie J. Moore, Esq.
501 Scarborough Drive
Suite 305
Egg Harbor Twp., NJ 08234

RE: [REDACTED] vs. Avis Cole Williams
CPF-957:3-08

Dear Ms. Moore:

By letter dated July 15, 2008 you were provided with a copy of the above-referenced claim which was recently filed with the Fund against Respondent, Avis Cole Williams.

At the time of the events comprising this claim you and Avis Cole Williams were members of the same firm, Cole Williams & Moore, LLC. As such, the Fund takes the position that each of you is jointly and severally liable for the loss asserted by the Claimant, [REDACTED] and hence, is treating you as a Co-Respondent along with Avis Cole Williams.

If the Trustees of the Fund make an award in connection with this claim, the Fund will be assigned and subrogated to the rights of the Claimant against you. We will, thereafter, take all necessary actions to obtain repayment. Please be guided accordingly.

If you wish to respond or defend this claim, you should do so, in writing, on or before **August 15, 2008.**

Very truly yours,

EDWARD T. EHLER

ETE:dp
cc: Avis Cole Williams (via regular mail)

(If primary Respondent is a firm associate, basis is vicarious liability (respondeat superior), which also provides joint and several liability).

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

DEPUTY DIRECTOR
DANIEL R. HENDI

SENIOR COUNSEL
EDWARD T. EHLER

DEPUTY COUNSEL
RUBY D. COCHRAN

(609) 984-7179
CLAIMS: (609) 292-8008
BILLING: (609) 292-8079
FAX: (609) 394-3637

EXHIBIT "J"

CONSENT JUDGMENT – PARAGRAPH RE ASSIGNMENT OF FEES

(2) Defendant hereby assigns to Plaintiff all rights and interests he possesses to receive attorney's fees and agrees to cooperate with Plaintiff in the collection of such fees. Any amounts thus collected will be credited against the Judgment amount.

EXHIBIT "K"

HOW TO DO FINANCIAL ASSET INVESTIGATIONS

Ruby D. Cochran, Accountant & Secretary to the Board
New Jersey Lawyers' Fund for Client Protection

OBTAINING IDENTIFIERS

- . Many records use date of birth as the identifier
 - driving records
 - criminal files
 - medical records
 - academic records
 - professional licenses
 - civil lawsuit records
 - birth certificates
- . Social security number
 - credit files
 - information brokers
 - may be used as the driver's license number in some states
 - discover possible home state (helpful in locating property)
 - banks & other financial institutions
 - professional licenses
 - state tax collection agencies
 - internal revenue service
 - academic records
 - employers' payroll files
 - military & veteran's records
 - medicare & medicaid, as well as social security
- . Correct full name
 - get the correct spelling
 - search under variations of the name
 - search under spouse's or mother's maiden name
 - search under ex-spouse's name, maiden name
 - search under both parts of a hyphenated surname
 - search under married children's names for transferred assets
- . Address histories
 - may assist in locating assets in those other states or locales
- . Get information from voter registration records for target & spouse
- . Check telephone directories for several years
 - may indicate property ownership
 - helps to locate relatives
- . Courthouse files
 - read answers to interrogatories
 - read responses to requests for production
 - check accident reports
 - municipal court records

- probate records of close relatives
- bankruptcy court
- . Newspaper archives for articles regarding target
- . Financial statements from lenders, landlords & licensing agencies may reveal assets

IDENTIFYING RELATIVES & ASSOCIATES

- . Professional licenses require references
- . Local newspapers archive for articles
- . Telephone directories, local & from place of birth
- . Check motor vehicle files by address to see who lives with target
- . Auto accident reports
- . Voter registration files
- . Public filings with county clerk
 - military discharges
 - UCC filings
 - tax liens
 - various licenses
- . National databases
 - DataTimes
 - NEXIS/LEXIS
 - InfoTrac
 - Newsbank Electronic Index
 - OCLC (online computer library center) as publish books pay royalties
 - RLIN (research libraries information system)
 - Various information brokers can offer access to systems not available to others
 - CDB Infotek
 - Allows for integrated, multi state searches of bankruptcy, judgments, Tax liens, UCC filings and corporate information
 - Interstate Public Filings
 - SEC filings
 - interview the neighbors

SOURCES FOR INDIVIDUALS (not mentioned above)

- . National Aircraft Title records
- . Corporate filings
- . Real property records
- . National newspaper index
- . Legal resource index
- . DataTimes
- . Information America
- . Divorce case files
- . Business public filings
- . Parks & Wildlife Dept may maintain a list of boat ownership
- . Grantor/Grantee records
- . National Mover's Index

- . Dun & Bradstreet
- . Merlin information services
- . Area Wage Surveys (DOL) may reveal if income is under stated

INFORMATION BROKERS & OTHER SOURCES

- . National Association of Legal Investigators
- . World Association of Detectives
- . State investigator organizations
- . Better Business Bureau
- . Business directories for your state
- . Standard & Poor's

VISITING SUBJECT'S PREMISES

- . Contact real estate agent to get approximate home values in that development
- . Drive by residence, look for vehicles
 - cars
 - RVs
 - ATVs
 - jet skis
 - boats
- . Is the name of a business indicated on signs or vehicles
- . Are there multiple electric meters and entrances, is there a rental property?
- . Check police records regarding burglaries
- . Is there a contractors lien for home improvements
- . Drive by on trash day & take the trash
- . Neighbors may lead you to other off site assets

FINDING HIDDEN ASSETS (common hiding places)

- . Making extra payments on home mortgage
- . Payments to universal whole life or annuity policies
- . Purchasing savings bonds, cashier's checks, & traveler's checks
- . Limited partnerships
- . Dissolved corporations may still be holding assets
- . Collectibles
- . Stockbroker accounts
- . Safe deposit boxes
- . Offshore/foreign accounts
- . Assets held in other names
- . Payments to IRS (resulting in a large refund)
- . Sweetheart lawsuits (kickbacks)

BASIC BUSINESS ASSET SEARCH

- . Secretary of State will have an incorporation file
- . Check with vendors and suppliers for deposits they hold
- . Check with customers regarding payments, where do they get sent

- . Is the corporation merely the alter ego of the target, can you pierce the corporate veil
- . Have supplies been stockpiled to drain cash
- . Are personal assets located at the business address (look for recreational vehicles, etc)

EXHIBIT "L"

The following Internet sites can be useful to our Probation staff:

www.bop.gov
Federal Bureau of Prisons - has inmate locator and can link to other correction sites.

www.taxrecords.com
search for probationers whom own property in N.J. and the tri-state area.

www.ancestry.com
provides search engine for looking up deceased clients.

www.searchsystems.net
public records locator - can search everything from property searches to sex offenders.

www.infospace.com
use white pages to locate probationers and obtain addresses.

www.firstgov.gov
has links to all Federal and State agencies.

www.state.nj.us
New Jersey's Home Page - has links to all state agencies and departments, directories, even lottery results.....

www.corrections.com
has corrections information and links to different Probation and Parole organizations.

www.ncjrs.org
National Criminal Justice Reference Service - acts as a search engine for all kinds of court information.

EXHIBIT "M"

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

TRUSTEES
THOMAS W. SUMNERS, JR., CHAIR
KYRAN CONNOR, VICE CHAIR
BRENDA J. STEWART, TREASURER
AUREA VASCONCELOS
ROBERT J. GILSON
SUSAN E. LAWRENCE
JOHN MCFEELEY, III

ASSISTANT TREASURER
FRANK C. FARR

STREET ADDRESS:
25 WEST MARKET STREET
TRENTON, N.J. 08625-0961



RICHARD J. HUGHES JUSTICE COMPLEX
P. O. Box 961
TRENTON, NJ 08625-0961

February 18, 1999

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

SENIOR COUNSEL
DANIEL R. HENDI
WILLIAM J. THOMAS

**DEPUTY COUNSEL
& SECRETARY**
MICHAEL T. MCCORMICK

**CLAIMS: (609) 292-8008
FAX: (609) 394-3637**

Mrs. Julie Lewis Corcoran
143 Littleton Road
Morris Plains, NJ 07950-2533

**Re: Julie Lewis Corcoran v. Maria P. Fornaro
CPF-698:2-98**

Dear Mrs. Corcoran:

The Trustees of the Client Protection Fund have carefully considered your claim against Maria P. Fornaro at their February 17, 1999 meeting. At that time they voted to award you \$2,300.00 in full satisfaction of your claim against Ms. Fornaro.

Enclosed you will find one original and one copy of a Release, Assignment and Subrogation Agreement. Please sign both the original and the copy before a notary public and return both to me so that payment of this claim may be processed.

Please keep in mind that under the Agreement's terms we may have to rely on your help in our efforts to recover the money being paid to you. While we will do everything we can to minimize any inconvenience, you could possibly be called upon to testify in deposition or at trial. Since this award is conditioned on your cooperation, please call if you have any reservation about making such a commitment.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Daniel R. Hendi".

DANIEL R. HENDI

Enc.
DRH:lic
WAWP\RELEASE\FEB-99\CORCORAN.698

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

TRUSTEES
THOMAS W. SUMNERS, JR., CHAIR
KYRAN CONNOR, VICE CHAIR
BRENDA J. STEWART, TREASURER
AUREA VASCONCELOS
ROBERT J. GILSON
SUSAN E. LAWRENCE
JOHN MCFEELY, III

ASSISTANT TREASURER
FRANK C. FARR

STREET ADDRESS:
25 WEST MARKET STREET
TRENTON, N.J. 08625-0961



RICHARD J. HUGHES JUSTICE COMPLEX
P. O. BOX 961
TRENTON, NJ 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

SENIOR COUNSEL
DANIEL R. HENDI
WILLIAM J. THOMAS

**DEPUTY COUNSEL
& SECRETARY**
MICHAEL T. MCCORMICK

CLAIMS: (609) 292-8008
FAX: (609) 394-3637

RELEASE, ASSIGNMENT AND SUBROGATION AGREEMENT

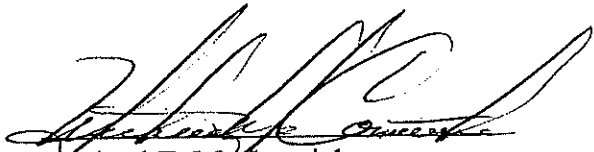
This Agreement is between the NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION, Richard J. Hughes Justice Complex, 25 West Market Street, P. O. Box 961, Trenton, New Jersey 08625 and Julie Lewis Corcoran, 143 Littleton Road, Morris Plains, New Jersey 07950-2533.

The Trustees of the New Jersey Lawyers' Fund for Client Protection, pursuant to R. 1:28-3, having considered the claim of Julie Lewis Corcoran, arising from the dishonest conduct of her former attorney, Maria P. Fornaro, it is now mutually agreed:

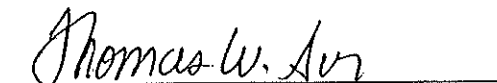
1. The New Jersey Lawyers' Fund for Client Protection will pay to Julie Lewis Corcoran the sum of **\$2,300.00** upon execution of this Agreement by all parties.
2. On behalf of her heirs, executors, administrators and assigns, Julie Lewis Corcoran releases the New Jersey Lawyers' Fund for Client Protection, its successors and assigns, from all claims.
3. Further, Julie Lewis Corcoran certifies that she will lend her complete cooperation to the New Jersey Lawyers' Fund for Client Protection in any legal action brought by the Fund or on its behalf against Maria P. Fornaro, or any other appropriate party, to recover these monies and that payment of said monies is contingent upon such cooperation.

4. Julie Lewis Corcoran hereby assigns to the New Jersey Lawyers' Fund for Client Protection all her rights, claims and interests against Maria P. Fornaro, or any other party involved in the transaction giving rise to this claim. She understands that nothing herein shall obligate the Fund to pursue the rights assigned to it under this Agreement and, therefore, any recovery or attempt to secure recovery pursuant to this assignment of rights shall be at the sole option of the Trustees.

ATTEST:


Michael T. McCormick
Secretary

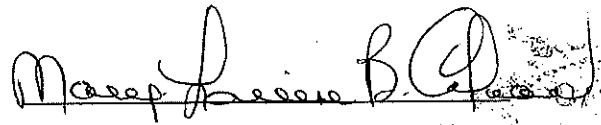
NEW JERSEY LAWYERS' FUND FOR
CLIENT PROTECTION


Chair, Board of Trustees


Julie Lewis Corcoran

State of New Jersey :
County of : ss.

Be it remembered that on this 23 day of Feb, 1999, before me, the subscriber, personally appeared Julie Lewis Corcoran, who I am satisfied is the person named in and who executed the above instrument, and acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.



MARY-LOUISE B. CALNAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 16, 2000

EXHIBIT "N"

1:20-23. Release of Restrained Funds in Attorney Accounts

- **(a) Petition for Release of Funds.** A party claiming a right to attorney trust or business account funds or to other funds that have been restrained from disbursement by Supreme Court Order shall make any application for release of those funds to the Supreme Court. The petitioning party shall file an original plus eight copies of a verified petition setting forth the standing of the petitioner to make the application and the factual basis for the claim that the funds sought are the property of the petitioner. Relevant documentation shall be appended to the petition. Legal argument, if any, in support of the petitioner's contentions shall be submitted separately in the form of a brief.
- **(b) Notice.** Two copies of the petition shall be served on the disciplined attorney, the Disciplinary Review Board, the Office of Attorney Ethics, the Lawyers' Fund for Client Protection, any attorney-trustee appointed pursuant to Rule 1:20-19, and any other parties in interest. Proof of service shall be filed with the petition.
- **(c) Response to Petition.** Parties served with the petition shall have ten days within which to file and serve nine copies of a response.
- **(d) Supreme Court Action; Publication.** If the Court determines the claimed funds are the property of the petitioner or of any other claimant, it shall enter an appropriate Order directing disbursement. The Court may make the release of funds subject to prior general notice by publication.
- **(e) Priority Over Remaining Funds.** If the actual ownership of the funds cannot be established by clear and convincing evidence, the Lawyers' Fund for Client Protection shall have priority over the funds to the extent it has been subrogated to the rights of claimants against the Fund. If the Fund does not make a claim or if satisfaction of its claim does not exhaust the funds that have been restrained, the Disciplinary Oversight Committee shall have priority over the remaining funds to satisfy unpaid costs assessed against the disciplined attorney.

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

TRUSTEES

JEAN M. RAMATOWSKI, CHAIR
TINA E. BERNSTEIN, VICE CHAIR
EMMETT E. PRIMAS, JR., TREASURER
SUSAN E. LAWRENCE
JAMES H. LASKEY
LUIS R. SANCHEZ
FRANK C. FARR

ASSISTANT TREASURER
CHRISTINA P. HIGGINS

ADDRESS FOR COURIERS &
DELIVERY SERVICES ONLY:
25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 961
TRENTON, N.J. 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

DEPUTY DIRECTOR
DANIEL R. HENDI

SENIOR COUNSEL
EDWARD T. EHLER


DEPUTY COUNSEL
RUBY D. COCHRAN

(609) 984-7179
CLAIMS: (609) 292-8008
BILLING (609) 292-8079
FAX: (609) 394-3637

April 23, 2007

MEMORANDUM

TO: Stephen W. Townsend
Clerk, Supreme Court of New Jersey

FROM:  Kenneth J. Bossong

RE: Petition Regarding Disbursement of Frozen Assets
In the Matter of Thomas H. Everett, III

Background

The New Jersey Lawyers' Fund for Client Protection ("Fund") has paid a total of \$751,503.05 in five claims against Thomas H. Everett III, and recovered nothing thus far by way of subrogation. The restraint of accounts that accompanied Mr. Everett's discipline froze \$209,627.96 in his accounts. The Fund petitioned the Court for release of this money in the normal course. The Court entered an Order on February 6, 2007 that \$209,627.92 plus accrued interest be transferred to the Fund from the Superior Court Trust Fund if no further claim upon that money were made in the traditional 30-day period following publication of notice. Notice was published in the *New Jersey Law Journal* and *New Jersey Lawyer* ("Notice"). Two parties came forward; three are discussed.

Wells Fargo Home Mortgage

Jacob Osher, Esq. wrote to the Fund on behalf of his client, Wells Fargo Home Mortgage. A copy of his letter of February 23, 2007 (without attachments) is provided at Exhibit A. Daniel Hendi, Esq., replied to Mr. Osher on behalf of the Fund. His (also without attachments) is Exhibit B.

As Mr. Hendi explains, Wells Fargo's situation is governed by the quirk that its \$175,000 arrived at the trust account *after* it had been frozen with its prior contents already transferred to the Superior Court Trust Fund. Thus, there seems no reasonable doubt that Wells Fargo's money is in that account to this day, and that it is *not* in the money at issue in this Petition. A separate Petition from Wells Fargo to the Court for an Order disbursing the \$175,000 in that account to Wells Fargo would meet no opposition from the Fund.

The Estates of Katherine and Virginia Hawkins

The Fund paid an award of \$70,250 to the Estate of Virginia Hawkins and \$250,000 to the Estate of Katherine Hawkins on August 26, 2004. The award to Virginia's estate was limited by the per claimant maximum, the Trustees having found an otherwise compensable loss of \$497,143. Although a response to this specific Notice was not filed by these claimants, they are mentioned because various entities involved in the estates have continued their efforts to recover more for their clients, including requests for reconsideration by the Fund. For example, the Trustees declined to recognize beneficiaries of the estates as individual claimants and denied separate claimant status to a trust of Virginia Hawkins because it was never funded. Pursuit of collateral sources was far more fruitful for the estates, however, as litigation against Lloyd's of London yielded a total of \$687,221.43 for the two estates.

The claims involve transactions over many years, both before and after the deaths of Virginia and Katherine, making any degree of certainty in the facts difficult. Resolving uncertain issues in favor of the estates, the number developed for the total amount of principal misappropriated has been \$895,243. (Their civil claims, including interest, fees, costs, and damages – items not cognizable by the Fund or relevant to frozen trust assets – far exceeded this amount.)

Because the Fund's awards of \$320,250 combined with the Lloyd's recovery of \$687,221.43 exceed the principal stolen, the estates of Hawkins do not have a loss as to principal left to assert against the frozen assets.

The Estate of Frost

This claim is distinguishable from other Everett claims, including those of the estates of Hawkins. Attached as Exhibit C is the March 2, 2007 reply of William B. Butler, Esq., on behalf of his client, the Estate of Grace Frost, to the published Notice. The Fund's award to the Frost Estate of \$250,000 was limited by the per claimant maximum, the Trustees having found an otherwise compensable loss of \$745,632.20. The estate was able to recover only \$139,888.20 of this nearly half-million dollar shortfall from Lloyd's of London. Thus, this claimant's total recovery, between the Fund and collateral sources, still falls short of its total loss as to misappropriated principal by \$355,744 – more than the frozen assets available for distribution.

Conclusion

The Trustees vigorously pursue replenishment of the money paid in awards, as empowered by R.1:28-5(b), and would be pleased to receive the substantial sum available here for the benefit of future victims. It must be conceded, however, that Mr. Butler has a point on behalf of the Estate of Frost. While entitlement to this specific money cannot be traced by this claimant, the issue is whether the Fund should collect it while knowing there is a victim of Mr. Everett who has not been made whole as to principal. Given the Fund's mission and ultimate goal of seeing all victims made

whole, the Trustees do not read the per claimant maximum in the Fund's Regulations as requiring that the Fund recover before such victims under these circumstances. The Regulations are silent on the point. Arguments can be made, perhaps, for any of three dispositions of the money: entirely to the Estate of Frost, entirely to the Fund, or shared in some pro rata fashion.

In Goldberg v. New Jersey Lawyers' Fund for Client Protection, 932 F.2d 273 (3rd Cir. 1991), the Third Circuit held that a title insurance company, having paid claims similar in nature to those paid by the Fund, share in distribution of frozen assets with the Fund *pro rata*. It would seem that victims should do no worse, at least, than collateral sources of recovery.

The argument that only the Fund should take is a simple one: If no one else can trace, the general rule is that the Fund has priority under R.1:20-23(e). Given that the Fund is the repository of all trust claims against respondents, the provision is grounded in sound public policy. Two points are clear from the rule's language, however: (1) the contest it is addressing is between the Fund and all other creditors of Respondent; and (2) the Fund's rights derive from those of compensated victims to which it is subrogated.

The Fund respectfully suggests that the Court set aside its previous Order disbursing to the Fund all proceeds from the restrained accounts of Thomas Everett, for a full consideration of the application of the Estate of Frost, which the Fund does not oppose. As to all other parties, of course, the Fund continues to assert its priority. The Trustees emphasize that the position taken here is strictly limited to circumstances in which a victimized **client** has **proven** an amount of **misappropriated principal** that exceeds their ability to compensate by operation of the Fund's maximums. Public policy should not favor the Fund recovering before such persons.

SHIMBERG & FRIEL, P.C.

ATTORNEYS AT LAW

41 South Haddon Avenue, Suite 5
Haddonfield, NJ 08033

Telephone (856) 857-0700 • Fax (856) 857-1166

CHARLES SHIMBERG **
KATHLEEN D. FRIEL *
ANNE E. WALTERS *

JOCELYN MARGOLIN BOROWSKY **
Of Counsel

United Plaza
30 South 17th Street • 18th Floor
Philadelphia, PA 19103

M. LOU GARTY *
Of Counsel

* ALSO MEMBER PA BAR
* ALSO MEMBER NY BAR

February 23, 2007

VIA OVERNIGHT DELIVERY

Attn: Daniel Hendi
New Jersey Lawyers' Fund For Client Protection
Richard J. Hughes Justice Complex
P.O. Box 961
Trenton, NJ 08625-0961

Re: In Re the Matter of Funds Restrained in the Attorney Accounts
of Thomas E. Everett, III Attorney Number (000331984)

Dear Mr. Hendi:

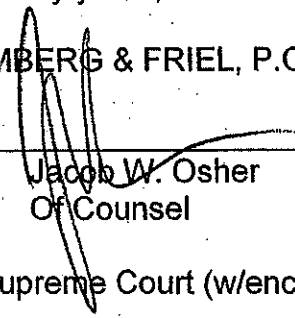
Per our conversation of February 23, 2007, I am writing to give notice that Wells Fargo Home Mortgage is objecting to disbursement of funds in the above matter to the New Jersey Lawyers' Fund For Client Protection and that we intend to file a claim for the money owed, plus interest and attorney fees, on behalf of Wells Fargo Home Mortgage. I have attached to this correspondence a completed Statement of Claim. Per your instruction, this correspondence is also being copied to Gail Haney, Deputy Clerk, of the New Jersey Supreme Court.

I am in the process of notifying the Title Insurance Company of the potential claim against them and am further obtaining certain information you requested during our telephone call.

I thank you for the time you took with me on the phone. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

SHIMBERG & FRIEL, P.C.

By: 
Jacob W. Osher
Of Counsel

JWO/mwd
Enclosure

cc: Gail Haney, Deputy Clerk, NJ Supreme Court (w/enc.)
(Via Overnight Delivery)



NEW JERSEY LAWYERS' FUND
FOR
CLIENT PROTECTION

TRUSTEES

JEAN M. RAMATOWSKI CHAIR
TINA E. BERNSTEIN, VICE CHAIR
EMMETT E. PRIMAS, JR. TREASURER
SUSAN E. LAWRENCE
JAMES H. LASKEY
LUIS R. SANCHEZ
FRANK C. FARR

ASSISTANT TREASURER
CHRISTINA P. HIGGINS

STREET ADDRESS:
25 WEST MARKET STREET
5TH FLOOR, NORTH WING
TRENTON, N.J. 08625



MAILING ADDRESS:
RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 961
TRENTON, N.J. 08625-0961

DIRECTOR & COUNSEL
KENNETH J. BOSSONG

DEPUTY DIRECTOR
DANIEL R. HENDI

SENIOR COUNSEL
WILLIAM J. THOMAS

DEPUTY COUNSEL
RUBY D. COCHRAN

(609) 984-7179
CLAIMS: (609) 292-8008
BILLING: (609) 292-8079
FAX: (609) 394-3637

March 1, 2007
Via Fax & Regular Mail
Fax: (856) 857-1166

Jacob W. Osher, Esq.
Shimberg & Friel, P.C.
41 South Haddon Avenue
Suite 5
Haddonfield, New Jersey 08033

**RE: Wells Fargo vs. Thomas Everett, III
CPF-845:7-03**

Dear Mr. Osher:

Thank you for your February 23, 2007, letter objecting to the order releasing frozen funds from the Superior Court Trust Fund, and also contained a *Statement of Claim* form. Actually, our records show that your client, Wells Fargo, filed that *Statement of Claim* on August 4, 2003, and that it was discontinued on October 2004.

To trace assets, you attached to your letter a bank statement that at first glance appeared to show that your client's \$175,000 wire transfer was part of the \$209,505.62 turned over to the Superior Court Trust Fund Unit when Everett's trust account was frozen in March of 2002. However, a closer look at the bank statement shows that after the money was sent to the Superior Court Trust Fund Unit on March 25, 2002, the balance was \$0, and then increased to \$175,000 on March 29, 2002 as a result of Wells Fargo's \$175,000 wire transfer that date. Therefore, it seems your client's funds are still in the bank, not the Superior Court. We have been able to trace your client's \$175,000 thru at least June 2002, where the balance remained at that time at \$175,000. I believe that the bank erred in not forwarding that sum to the Superior Court Trust Fund early on.

EXHIBIT " B "

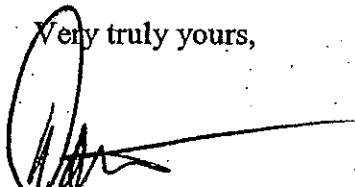
Wells Fargo vs. Thomas Everett
March 1, 2007
Page Two

It is incumbent upon your client to petition the Supreme Court for the release of the \$175,000 and trace its rights to that money. In a nut shell, your client's funds were not "stolen", were never transferred to the Superior Court Trust Fund, and it appears that they remain frozen at First Union Bank, n/k/a Wachovia Bank.

Lastly, it appears that Wells Fargo has no claim to the money that is the subject of the Fund's Petition for Release of Funds before the Supreme Court which you read about in the legal publications.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "DRH", with a long horizontal line extending to the right.

DANIEL R. HENDI

DRH:dp

Encl.

Filename/p

WILLIAM B. BUTLER

ATTORNEY AT LAW
501 LENOX AVENUE
WESTFIELD, NEW JERSEY 07090

Telephone (908) 233-4400

Telecopier (908) 233-4465

March 2, 2007

Kenneth J. Bossong, Esq.
Director and Counsel
New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
P. O. Box 961
Trenton, New Jersey 08625-0961

Re: Estate of Grace M. Frost - CPF-845:1-02
Claim to Fund for \$209,627.92 together with Accrued Interest
Ordered by the New Jersey Supreme Court on February 6, 2007
to be Transferred to the New Jersey Lawyers' Fund for Client Protection

Dear Mr. Bossong:

This office represents C. Alan Frederick, Administrator CTA of the Estate of Grace M. Frost. I enclose original and two copies of Claim to Fund regarding the above-entitled matter. Thomas H. Everett III, who was Mrs. Frost's lawyer, stole from her while she was alive. Mr. Everett was disbarred at the end of March 2002 and his trust account with First Union Bank was frozen. Shortly thereafter First Union transferred \$209,505.62 to the Superior Court Trust Fund.

On February 6, 2007 the New Jersey Supreme Court entered an Order granting the petition of the New Jersey Lawyers' Fund for Client Protection ("Lawyers' Fund") and ordered that \$209,627.92 (I cannot account for the minor discrepancy in the dollar amount) be transferred from the Superior Court Trust Fund to the Lawyers' Fund. The Supreme Court Order further directed that any person who had a claim to said funds should notify the Lawyers' Fund in writing. It is the purpose of this letter-memorandum to notify the Lawyers' Fund of the claim of the Frost Estate in the amount of \$209,627.92 together with accrued interest.

EXHIBIT C

FACTS

1. The Frost Estate petitioned the Lawyers' Fund to be reimbursed to the maximum amount permitted. The Lawyers' Fund initially determined that the Estate had suffered a loss of \$515,388.25 (November 20, 2002) for thefts committed by Mr. Everett. The Lawyers' Fund increased this amount to \$745,632.20 (March 23, 2005).
2. In December of 2002 the Frost Estate and the Lawyers' Fund entered into an agreement known as "Release, Assignment and Subrogation Agreement" a copy of which is attached hereto and marked Exhibit A. After the execution of this Agreement, the Lawyers' Fund forwarded \$250,000 to the Frost Estate.
3. Attached hereto and marked Exhibit B is page 2 of letter dated August 22, 2006 from William James Thomas (Senior Counsel to the Lawyers' Fund) to Stephen W. Townsend, Clerk of the Supreme Court of New Jersey. Page 2 sets forth other funds the Lawyers' Fund paid to former clients that Mr. Everett stole from. Page 2 also indicates that the Frost Estate filed a petition for release of restrained funds with the New Jersey Supreme Court on July 3, 2002. The Lawyers' Fund filed a petition on March 3, 2003, and a similar petition was filed by the Estates of Virginia Hawkins (daughter) and Katharine Hawkins (mother) on May 13, 2005.
4. The Hawkins' Estates filed a petition with the Lawyers' Fund. The Lawyers' Fund found that Mr. Everett stole \$70,250 from the Estate of Virginia Hawkins and paid her estate that amount. The Lawyers' Fund found that Mr. Everett stole \$497,143 from Katharine Hawkins and paid her estate \$250,000.
5. Although it is not clear, it appears from the June 23, 2006 letter (page 6) from Mr. Thomas to Judge John C. Kennedy (in association with the restitution hearing regarding Mr. Everett's sentencing associated with his guilty plea to criminal theft) that the Lawyers' Fund eventually determined that the total thefts from both Virginia and Katharine Hawkins amounted to \$916,868.
6. The Frost Estate obtained two judgments against Mr. Everett but there was overlapping regarding stolen property: judgment on March 21, 2003 in the amount of \$681,869 and judgment on September 26, 2003 in the amount of \$139,888.20.
7. The Hawkins Estates obtained a judgment against Mr. Everett in the amount of \$687,221.43.

8. The Frost Estate made a claim upon Lloyd's of London (Mr. Everett's malpractice carrier). Lloyd's filed a declaratory judgment action seeking a determination that it was not responsible for these judgments. The Frost Estate and the Hawkins' Estates counter-claimed and all parties moved for summary judgment. After comprehensive briefing and oral argument, Judge Stephen J. Bernstein determined that Lloyd's was responsible to the Frost Estate to satisfy the \$139,888.20 judgment but not the \$681,869 judgment and that Lloyd's was responsible to the Hawkins' Estates to satisfy in full their judgment in the amount of \$687,221.43. This determination was upheld by the Superior Court, Appellate Division. Lloyd's eventually satisfied these judgments.

9. On August 22, 2006 Mr. Thomas wrote Stephen W. Townsend, the Clerk of the Supreme Court, and convincingly demonstrated that none of the former clients from whom Mr. Everett stole could establish by clear and convincing evidence that the money stolen could be traced to the \$209,505.62 held by the Superior Court Trust Fund. Mr. Thomas requested that these funds be transferred to the Lawyers' Fund.

10. On September 29, 2006 the Frost Estate wrote Mr. Townsend and concurred with Mr. Thomas' conclusions as set forth in his August 22, 2006 letter and thereby withdrew its petition for release of restrained funds.

11. The Frost Estate and the Hawkins' Estates had advised Mr. Thomas that they were seeking part or all of the monies held by the Superior Court Trust Fund. On September 21, 2006 Mr. Thomas advised the undersigned that the Lawyers' Fund had met on September 20, 2006 and discussed the competing claims to these monies by the Frost Estate and the Hawkins' Estates. Mr. Thomas advised that the Lawyers' Fund had determined that it would not take into consideration counsel fees expended by the Hawkins' Estates and the Frost Estate in prosecuting the claim against Lloyd's. Mr. Thomas advised that the Lawyers' Fund would not determine how the monies held by the Superior Court Trust Fund would be distributed until the Supreme Court acted on its petition for release of restrained funds.

12. On February 6, 2007 the Supreme Court granted the petition of the Lawyers' Fund and ordered that the monies together with accrued interest should be paid and transferred from the Superior Court Trust Fund to the Lawyers' Fund. That Order is attached hereto and marked Exhibit C.

ARGUMENT

The following numbers are associated with the **Frost Estate**:

	\$745,632.20	Lawyers' Fund determination of thefts by Everett
Deduct	\$250,000.00	Received from Lawyers' Fund
	<u>139,888.20</u>	Judgment against Lloyd's
	\$389,888.20	
	\$745,632.20	
	- <u>389,888.20</u>	
	\$355,744.00	Frost out of pocket

The following numbers pertain to the **Hawkins' Estates**:

	\$916,868.00	Total thefts from estates
Deduct	\$ 70,250.00	Paid to Estate of Virginia Hawkins by Lawyers' Fund
	250,000.00	Paid to Estate of Katharine Hawkins by Lawyers' Fund
	<u>687,221.43</u>	Paid to Hawkins' Estates by Lloyd's in satisfaction of
	\$1,007,471.43	Judgment
	\$1,007,471.43	
	- <u>916,868.00</u>	
	\$ 90,603.43	Excess payment to Hawkins' Estates

Attached hereto and marked Exhibit D is letter dated April 29, 2003 to the undersigned from Mr. Thomas. As indicated above, the original amount of thefts by Mr. Everett was increased from \$515,388.65 to \$745,632.20. In this letter Mr. Thomas advises the undersigned that all monies from whatever sources including the Superior Court Trust Fund Unit would be paid to the Frost Estate until that estate was made whole.

I quote from the first paragraph of Mr. Thomas' April 29, 2003 letter:

"This matter was discussed by the Trustees of the New Jersey Lawyers' Fund for Client Protection at their meeting of April 23, 2003. The Trustees confirmed that any recovery by the Fund would be paid over to the Estate of Frost, including any recovery from the Superior Court Trust Fund Unit, until the estate is made whole."

As indicated above, the Frost Estate is still out of pocket \$355,744.00. All other former clients of Mr. Everett have been made whole and the Hawkins' Estates have received an excess.

In all my conversations with Mr. Thomas, which began in the early part of 2002, I was advised that it was the intention of the Lawyers' Fund that all claims by the Lawyers' Fund to monies from whatever source would be subordinate to the claims of victims until those victims were made whole.

This concept is set forth in paragraph 5 of the Release, Assignment and Subrogation Agreement (Exhibit A) entered into between the Frost Estate and the Lawyers' Fund on December 17, 2002 after which the Lawyers' Fund paid the Frost Estate \$250,000. Paragraph 5 states as follows:

"5. The New Jersey Lawyers' Fund for Client Protection has concluded that the Estate of Grace M. Frost suffered a loss of at least \$515,388.25.* The rules that govern the New Jersey Lawyers' Fund for Client Protection limit the award to only \$250,000.00. Accordingly, any recovery in litigation, by settlement or judgment, shall first be paid over to the Estate of Grace M. Frost until the total recovery to the Estate, inclusive of the \$250,000.00 award herein, equals \$515,388.25. Any recovery above that shall be paid over to the New Jersey Lawyers' Fund for Client Protection until it has been reimbursed in full for its \$250,000.00 award plus appropriate litigation costs. Any recovery above that shall be paid to the Estate of Grace M. Frost."

* Later increased to \$745,632.20

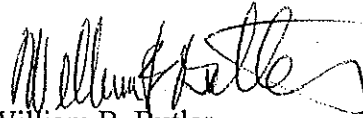
The Lawyers' Fund, pursuant to R.1:28-3(c), has fixed \$250,000 as the maximum amount that can be paid to one claimant. It is respectfully suggested that this limit pertains to monies received by the Lawyers' Fund from contributions by members of the Bar pursuant to R.1:28-2(a). A distinction should be drawn between monies that come to the Lawyers' Fund pursuant to the mandatory contributions by members of the Bar and monies that come to the Lawyers' Fund, as in this case, from the Superior Court Trust Fund.

Mr. Everett used his trust account as a vehicle to steal from Mrs. Frost. In many cases, as power of attorney, he drew checks on Frost accounts payable to his trust account or would sell Mrs. Frost's securities and deposit the monies into his trust account. He would then draw checks on the trust account payable to his attorney's account in satisfaction of statements for legal services that were never rendered. The monies in Mr. Everett's trust account at the time of his disbarment were being held by him for the benefit of his clients. No other former client, other than the Frost Estate, is entitled to the monies that were held by the Superior Court Trust Fund because, as indicated above, all other claimants have been made whole.

The Frost Estate will give a Partial Satisfaction of Judgment to the Lawyers' Fund regarding the \$681,869 judgment. For the reasons set forth above, it is respectfully requested that after the Lawyers' Fund receives the \$209,627.69 together with accrued interest, it then pay these monies to the Frost Estate. Even after this payment, the Frost estate will not be made whole. The Frost Estate will seek the balance owed to it at the restitution hearing before Judge Kennedy which has not yet been conducted.

If the Lawyers' Fund has any questions regarding the contents of this claim, the undersigned will be happy to appear before it at any time convenient to the Lawyers' Fund.

Respectfully submitted,



William B. Butler,
Attorney for C. Alan Frederick,
Administrator CTA of the
Estate of Grace M. Frost

WBB:ia

cc: Daniel R. Hendi, Esq.
Robert A. Smith, Esq., Attorney for Hawkins' Estates
Mr. C. Alan Frederick

EXHIBIT "O"

**New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 W. Market Street, P.O. Box 961
Trenton, New Jersey 08625-0961
Edward T. Ehler, Senior Counsel
(609) 777-3198; CPF-845**

C. ALAN FREDERICK, Administrator for
the Estate of Grace Frost

Plaintiff/Creditor

v.

THOMAS H. EVERETT, III

Defendant/Debtor

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSETCOUNTY
DOCKET NO. L-001623-2
JUDGMENT NO.: J-78787-3

CIVIL ACTION
PARTIAL ASSIGNMENT OF
JUDGMENT

TO THE CLERK OF THE ABOVE-NAMED COURT:

WHEREAS, Judgment was entered in the above-entitled action in favor of the Plaintiff, C. Alan Frederick, Administrator for the Estate of Grace Frost, against Thomas H. Everett, III, in the amount of \$681,869.00, as appears by the record thereon in the Civil Judgment and Order Docket as Judgment No.: J-78787-3.

SAID Judgment is hereby partially assigned in the amount of \$250,000.00 by the Plaintiff, C. Alan Frederick, Administrator for the Estate of Grace Frost, as Assignor, to the New Jersey Lawyers' Fund for Client Protection, as Assignee, whose address is Richard J. Hughes Justice complex, 25 West Market Street, P.O. Box 961, Trenton, New Jersey 08625-0691, for good and valuable consideration.

AND the said Assignor hereby constitutes and appoints the Assignee as the Assignors' true and lawful attorney, irrevocable, with power of substitution and revocation, for the use and at the proper cost and charge of the said Assignee, to ask, demand and receive, and to sue out executions, and to take all lawful means for the recovery of the money due or to become due on the said judgment up to the sum assigned; and on payment to acknowledge satisfaction or discharge the same.

EXHIBIT "P"

ASSIGNMENT OF MORTGAGE

THE ASSIGNOR

residing at located at

herein designated as the Assignor,
for and in consideration of the sum of

Dollars

and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents assign to

residing or located at

herein designated as the Assignee,
a certain Mortgage dated _____, made by

The property covered by the mortgage is located in the _____ of
In _____

County, New Jersey. This mortgage was recorded on
in the office of the County of Recording Officer of

County, New Jersey, in book _____ of mortgages on page
The original amount of the mortgage was \$ _____ 0.00

Together with the Bond, Note or other Obligation therein described, and the money due and to grow due thereon, with the interest. **To have and to hold** the same unto the said Assignee forever, subject only to all the provisions contained in the said Mortgage and the Bond, Note and other Obligation. **And** the said Assignor hereby constitutes and appoints the Assignee as the Assignor's true and lawful attorney, irrevocable in law or in equity, in the Assignor's name, place and stead but at the Assignee's cost and expense, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as the Assignor might or could do if these presents were not made. **And** the Assignor covenants, that there is now due and owing upon the said Mortgage and the Bond, Note or other Obligation secured thereby, the sum of \$ 0.00 dollars principal with interest thereon to be computed at the rate of _____ percent per year from _____, and that there are no set-offs, counterclaims or defenses against the same, in law or in equity, nor have there been any modifications or other changes in the original terms thereof, other than as stated herein.

In all references herein to any parties, persons, entities or corporations the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as to the text or the within instrument may require.

Signatures. I agree to the terms of this Assignment. If the Assignor is a corporation, its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

(Seal)
(Seal)

STATE OF NEW JERSEY, COUNTY OF
I CERTIFY that on

SS.:
, 2008

personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument; and,
- (b) executed this instrument as his or her own act.

(Print name and title below signature)

STATE OF NEW JERSEY, COUNTY OF
I CERTIFY that on

SS.:
, 2008

personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument as _____ of the entity named in this instrument; and,
- (c) executed this instrument as the act of the entity named in this instrument.

(Print name and title below signature)

<i>Assignment of Mortgage</i>	<i>Dated:</i> _____
TO	<i>Record and Return To:</i>

EXHIBIT "Q"

New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 W. Market Street, P.O. Box 961
Trenton, New Jersey 08625-0961
Joanne M. Dietrich, Esq., Deputy Counsel
(609) 984-7179; CPF-698

NEW JERSEY LAWYERS' FUND FOR	:	SUPERIOR COURT OF NEW JERSEY
CLIENT PROTECTION	:	LAW DIVISION-CIVIL PART
	:	MERCER COUNTY
PLAINTIFF	:	
	:	DOCKET NO. MER L-
v.	:	
	:	CIVIL ACTION
MARIA P. FORNARO	:	
	:	COMPLAINT
DEFENDANT	:	

The Plaintiff, New Jersey Lawyers' Fund for Client Protection, an entity established by the Supreme Court of New Jersey under R. 1:28-1 et seq., located at the Richard J. Hughes Justice Complex, 25 West Market Street, P. O. Box 961, Trenton, New Jersey 08625-0961, complaining against the Defendant, Maria P. Fornaro, says:

1. The Plaintiff was established to reimburse clients for losses caused by the dishonest conduct of members of the Bar of New Jersey.
2. Defendant, Maria P. Fornaro, maintained an office for the practice of law at 41 Elm Street, Suite 1W, Morristown, New Jersey.
3. Defendant was admitted to the practice of law in 1989. The Defendant was suspended for a period of three (3) months effective March 24, 1998. The Defendant was reprimanded on July 15, 1999. The Defendant was suspended from the practice of law for two years retroactive to December 5, 1999. Finally, Defendant was suspended from the practice of law for a period of three

(3) years effective February 20, 2003.

4. In or about 1992, and thereafter, while representing Julie Lewis Corcoran, Defendant Fornaro, embezzled, misapplied and converted to her own use the sum of \$2,300.00 given to her in payment for legal services for which the Defendant failed to perform.

5. The individual named in paragraph 4 of this Complaint filed a claim with Plaintiff because of the dishonest conduct of the Defendant and the Plaintiff has paid a total of \$2,300.00 in this claim against Defendant.

6. Pursuant to R. 1:28-1 et seq. of the Rules Governing the Courts of New Jersey, the Plaintiff has paid the claim of the individual named in paragraph 4 and has received an assignment of all of her rights, claims and interests against the Defendant.

7. To date Plaintiff has not made recovery from Defendant or any other source towards the outstanding balance due to the Plaintiff.

8. The Defendant owes to the Plaintiff the sum of \$2,300.00 for the claim paid on behalf of Defendant's former clients.

WHEREFORE, Plaintiff demands judgment against the Defendant, Fornaro, for damages in the amount of **TWO THOUSAND THREE HUNDRED and 00/100 (\$2,300.00)** plus interest from the date of entry of Judgment and costs of suit.

NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION

BY: _____
JOANNE M. DIETRICH, ESQ.

Dated: March 26, 2003.

DESIGNATION OF TRIAL COUNSEL

Joanne M. Dietrich, Esq., Deputy Counsel, is hereby designated as trial counsel in the referenced matter.

JURY DEMAND

Plaintiff hereby demands trial by jury as to all issues pursuant to R. 4:35-1.

CERTIFICATION

I hereby certify pursuant to R. 4:5-1 that, to my knowledge, the matter in controversy is not the subject of any action pending in any court nor is there any pending arbitration proceeding, nor is any such action or arbitration contemplated. I further certify that there are no other parties who should be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

JOANNE M. DIETRICH, ESQ.

Dated: March 26, 2003.

K:\JoanneD\Fornaro\Complaint.wpd

EXHIBIT "R"

New Jersey Lawyers' Fund for Client Protection
Richard J. Hughes Justice Complex
25 W. Market Street, P.O. Box 961
Trenton, New Jersey 08625-0961
Edward T. Ehler, Esq., Senior Counsel
(609)-633-2435; CPF-811

NEW JERSEY LAWYERS' FUND FOR
CLIENT PROTECTION

PLAINTIFF,

v.

CARL J. VALORE, VALORE LAW FIRM,
P.C., VALORE CHARTERED LAW
OFFICES, BEVERLY L. VALORE, JOHN
DOE I, II, III, etc., . . . , said names of John
Doe being fictitious, RICHARD ROE I, II,
III, etc., . . . , said names of Richard Roe being
fictitious

DEFENDANTS.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-CIVIL PART
MERCER COUNTY

DOCKET NO.

CIVIL ACTION

COMPLAINT

The Plaintiff, New Jersey Lawyers' Fund for Client Protection, an entity established by the Supreme Court of New Jersey under R. 1:28-1, et seq., located at the Richard J. Hughes Justice Complex, 25 West Market Street, P.O. Box 961, Trenton, New Jersey 08625-0961, complaining against the Defendants, says:

GENERAL ALLEGATIONS

1. The Fund is an entity created by the Supreme Court of New Jersey under the provisions of R. 1:28-1, et seq. of the Rules of Court to provide protection for the clients of all attorneys practicing in the State. It is administered by a panel consisting of seven Trustees who are appointed by the Supreme Court and entrusted to administer the disbursement of funds as well as the recoupment of funds under its subrogation rights enumerated in R. 1:28-5.

2. Carl J. Valore, (hereinafter "Valore"), was admitted to practice law in the State of New

Jersey in 1960, and maintained offices to practiced law at 2106 New Road, Linwood, NJ 08221.

3. Valore was disbarred by consent on December 20, 2001. (**Exhibit A:** Order entered on December 20, 2001).

4. Valore was indicted and he plead guilty on February 17, 2004 to six counts of theft, and failing to make required payments and distributions of entrusted money. (**Exhibit B: (1)** Indictment, **(2)** Plea Form and **(3)** Judgment of Conviction).

5. Defendants, John Doe I, II, III, etc., . . . , are fictitious names of persons and/or business entities who participated in, directly or indirectly, or who are otherwise legally responsible for, any of the unlawful conduct described hereinafter.

6. Richard Roe I, II, III, etc., . . . , are fictitious names of persons and/or business entities who obtained an interest in any money and/or property derived, directly or indirectly, from the unlawful conduct described hereinafter.

COUNT ONE

(Jennifer Scarpa (Kalita) and Gabriel Scarpa)

1. Plaintiff repeats the General Allegations and incorporates the same herein.
2. Valore was retained by Rosemary Scarpa to handle her medical malpractice suit, but she died on April 14, 1979, before the case went to trial. A settlement was reached in 1984 for \$715,000.
3. Valore also drafted the will of Rosemary Scarpa, in which he named himself the executor and the trustee of a testamentary trust established in the will. The trust benefited Jennifer and Gabriel Scarpa.
4. As trustee of the testamentary trust, Valore loaned money to other clients, paid himself fees, misappropriated funds, and thereby depleted the trust.
5. Jennifer Scarpa, as beneficiary of the trust, sought an account of the trustees. An

accounting was ordered on July 27, 1994. The trustees were to produce an account of the trust on August 19, 1994.

6. The accounting resulted in a consent order of judgment in favor of Jennifer Scarpa and Gabriel, Plaintiff/Beneficiaries of the Estate of Rosemary Scarpa. Valore and Patricia Gorgo were discharged as trustees.

7. Claimant, Jennifer Scarpa (Kalita) filed a claim with the Plaintiff, the New Jersey Lawyers' Fund for Client Protection, seeking the money misappropriated by Valore as trustee of the estate of Rosemary Scarpa.

8. Plaintiff, the New Jersey Lawyers' Fund for Client Protection investigated the claim and determined that Valore committed dishonest conduct while acting in a fiduciary capacity in his administration of the Estate of Rosemary Scarpa.

9. Due to the uncertainty as to the total value of all claims pending against Valore, the Plaintiff rendered an award of \$75,000.00 but could only pay fifty percent (50%) of the found compensable loss suffered by the Estate of Rosemary Scarpa. Plaintiff paid claimant \$37,500 on or about December 13, 2002, and the balance on December 15, 2006.

10. Pursuant to R. 1:28-1, et seq. of the New Jersey Court Rules, as a condition of paying the claimant, the New Jersey Lawyers' Fund for Client Protection received assignment of her rights, claims, and interests against Valore

11. Valore misappropriated, embezzled and/or fraudulently procured \$75,000 from the Estate of Rosemary Scarpa, and/or otherwise breached the fiduciary duty he had undertaken.

12. To date plaintiff has recovered \$0.00 of the aforesaid amount.

The total amount paid out on claims against Valore is **ONE MILLION FOUR HUNDRED FORTY FIVE THOUSAND FOUR HUNDRED AND FOURTEEN DOLLARS & 35 CENTS (\$1,445,414.35)**

WHEREFORE, Plaintiff demands judgment against defendants Carl J. Valore and John Doe I, II, III, etc., . . . jointly, severally and in the alternative, for damages in the amount of **ONE MILLION FOUR HUNDRED FORTY FIVE THOUSAND FOUR HUNDRED AND FOURTEEN DOLLARS & 35 CENTS (\$1,445,414.35)**, plus interest, attorney's fees and costs of suit.

(COUNTS TWO THROUGH EIGHTEEN: OTHER CLAIMANTS WHO RECEIVED AWARDS AND ASSIGNED THEIR RIGHTS. SIMILAR TO COUNT ONE)

COUNT NINETEEN

1. Plaintiff repeats the allegations contained in Counts One through Eighteen of this Complaint and incorporates same herein.

2. At all times relevant hereto, Valore was an agent, servant and/or employee of Valore Law Firm, P.C. and Valore Chartered Law Offices, who are thereby vicariously liable for the unlawful conduct of Valore.

3. In addition, by agreement dated January 25, 1996 (**Exhibit C**), Valore Chartered Law Offices assumed full responsibility for all pending and future matters originating with the Valore Law Firm, P.C., including those matters involving the unlawful conduct of Valore.

WHEREFORE, Plaintiff demands judgment against defendants Carl J. Valore, Valore Law Firm, P.C., Valore Chartered Law Offices and John Doe I, II, III, etc., . . . jointly, severally and in the alternative, for damages in the amount of **ONE MILLION FOUR HUNDRED FORTY FIVE THOUSAND FOUR HUNDRED AND FOURTEEN DOLLARS & 35 CENTS (\$1,445,414.35)**, plus interest, attorney's fees and costs of suit.

COUNT TWENTY

1. Plaintiff repeats the allegations contained in Counts One through Nineteen of this Complaint and incorporates same herein.

2. At all times relevant hereto, Beverly L. Valore was an owner and/or an agent, servant and/or employee of Valore Chartered Law Offices.

3. In addition, by agreement dated January 25, 1996 (**Exhibit C**), Valore Chartered Law Offices assumed full responsibility for all pending and future matters originating with the Valore Law Firm, P.C., including those matters involving the unlawful conduct of Valore.

4. Beverly L. Valore, individually, and through her association with Valore Chartered Law Offices and/or certain of the companies heretofore identified, did aid and abet the unlawful conduct of Carl J. Valore.

WHEREFORE, Plaintiff demands judgment against defendants Carl J. Valore, Beverly L. Valore, Valore Law Firm, P.C., Valore Chartered Law Offices and John Doe I, II, III, etc., . . . jointly, severally and in the alternative, for damages in the amount of **ONE MILLION FOUR HUNDRED FORTY FIVE THOUSAND FOUR HUNDRED AND FOURTEEN DOLLARS & 35 CENTS (\$1,445,414.35)**, plus interest, attorney's fees and costs of suit.

COUNT TWENTY-ONE

1. Plaintiff repeats the allegations contained in Counts One through Twenty of this Complaint and incorporates same herein.

2. Defendants did engage in a civil conspiracy designed to further the unlawful conduct described hereinabove.

WHEREFORE, Plaintiff demands judgment against defendants Carl J. Valore, Beverly L. Valore, Valore Law Firm, P.C., Valore Chartered Law Offices and John Doe I, II, III, etc., . . . jointly,

severally and in the alternative, for damages in the amount of **ONE MILLION FOUR HUNDRED FORTY FIVE THOUSAND FOUR HUNDRED AND FOURTEEN DOLLARS & 35 CENTS (\$1,445,414.35)**, plus interest, attorney's fees and costs of suit.

COUNT TWENTY-TWO

1. Plaintiff repeats the allegations contained in Counts One through Twenty-One of this Complaint and incorporates same herein.

2. Certain aspects of the aforesaid unlawful conduct do not relate to the practice of law, but rather, arise from other forms of activity, including, but not limited to, the activities of defendants, Carl J. Valore and Beverly L. Valore, as officers, directors, employees and/or agents in one or more of the companies identified above, relating to the business of those companies.

3. The unlawful conduct described in the preceding paragraph violated the Consumer Fraud Act, N.J.S.A 56:8-1, et seq., as constituting an unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of a material fact with intent that others rely thereon

WHEREFORE, Plaintiff demands judgment against defendants Carl J. Valore, Beverly L. Valore and John Doe I, II, III, etc., . . . jointly, severally and in the alternative, for treble damages plus interest, attorney's fees and costs of suit.

COUNT TWENTY-THREE

1. Plaintiff repeats the allegations contained in Counts One through Twenty-Two of this Complaint and incorporates same herein.

2. Defendants' conduct as aforesaid constitutes legal and/or equitable fraud

WHEREFORE, Plaintiff demands judgment against defendants Carl J. Valore, Beverly L.

Valore, Valore Law Firm, P.C., Valore Chartered Law Offices, John Doe I, II, III, etc., . . . and Richard Roe I, II, III, etc., . . . jointly, severally and in the alternative, for:

- a) Restitution;
- b) Imposition of an equitable lien and/or constructive trust on the money and/or property derived from the unlawful conduct of the defendants and/or traceable to such money and/or property;
- c) Attorney's fees;
- d) Costs of suit.

NEW JERSEY LAWYERS' FUND
FOR CLIENT PROTECTION

By: _____
EDWARD T. EHLER, ESQ.

Dated: July 30, 2007

DESIGNATION OF TRIAL COUNSEL

Edward T. Ehler, Esq. is hereby designated as trial counsel pursuant to R. 4:5-1(c).

CERTIFICATION

I hereby certify pursuant to R. 4:5-1(b)(2) that, to my knowledge, the matter in controversy is not the subject of any action pending in any court nor is there any pending arbitration proceeding, nor is any such action or arbitration contemplated. I further certify that there are no other parties who should be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

EDWARD T. EHLER, ESQ.

Dated: July 30, 2007

EXHIBIT "S"

COMPLAINT – COUNTS RE UNEARNED RETAINER

SECOND COUNT

1. All of the allegations of the First Count are incorporated herein by reference as though recited verbatim and at length.

2. On or about September 8, 2004, Richard Hartheimer met with and retained Defendant, Andrew M. Kimmel, to represent him in a matrimonial matter.

3. Hartheimer paid Defendant an initial retainer in the amount of \$5,020.00 and, at Defendant's request, remitted an additional \$5,000 retainer payment on March 24, 2006. Defendant did not deposit the additional \$5,000 retainer in his trust account and, contrary to R. 1:21-6(a)(2), he also failed to deposit it in his business account.

4. At the time Defendant accepted the retainer payments, he was already under investigation by the Office of Attorney Ethics and, at the time that he accepted was, or should have been, aware of the prospect that he would no longer be able to represent Hartheimer.

5. Defendant submitted bills for services rendered to Hartheimer in the amount of \$6,745.

6. After payment of the \$6,745 for services rendered, Defendant was still holding \$3,275 in funds belonging to Hartheimer.

7. Defendant was suspended from the practice of law on May 23, 2006, but it was not until on or about July 17, 2006 that he advised Hartheimer that he was suspended and could no longer represent him in the matrimonial matter.

8. Hartheimer retained attorney Catherine I. Enright to overtake his representation in the matrimonial matter.

9. Hartheimer and his attorney, Enright, requested that Defendant release the file and return the balance of the retainer he was holding, but Defendant failed to comply with those requests.

10. Defendant, Andrew M. Kimmel, embezzled, misappropriated and/or fraudulently procured \$3,275.00 received by him as a retainer for legal services, which he failed to perform.

11. In June 19, 2007, Richard Hartheimer filed a claim with the New Jersey Lawyers' Fund for Client Protection. **(Exhibit D)**.

12. Plaintiff determined that Defendant acted dishonestly in soliciting, accepting, misappropriating and/or converting the retainer balance of \$3,275.00.

13. Pursuant to R. 1:28-1, et seq. of the New Jersey Court Rules, as a condition of paying Hartheimer, Plaintiff, the New Jersey Lawyers' Fund for Client Protection, received an assignment of Hartheimer's rights, claims and interests against the Defendant. **(Exhibit E)**.

WHEREFORE, Plaintiff demands judgment against the Defendant, Andrew M. Kimmel, for damages on this count in the amount of **THREE THOUSAND TWO HUNDRED SEVENTY FIVE DOLLARS & 00/100 (\$3,275.00)**, plus interest, attorney's fees and the costs of suit.

THIRD COUNT

1. All of the allegations of the First and Second Counts are incorporated herein

by reference as though recited verbatim and at length.

2. Defendant breached his agreement with Richard Hartheimer by failing to perform the services required by the agreement and refusing to return the \$3,275.00 balance of the retainer.

WHEREFORE, Plaintiff demands judgment against the Defendant, Andrew M. Kimmel, for damages on this count in the amount of **THREE THOUSAND TWO HUNDRED SEVENTY FIVE DOLLARS & 00/100 (\$3,275.00)**, plus interest, attorney's fees and the costs of suit.

EXHIBIT "T"

CAUSES OF ACTION BEYOND MISAPPROPRIATION AND BREACH OF CONTRACT

CONVERSION

Conversion is defined as an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner's rights. The elements of good faith, intent or negligence do not play a part in an action for damages in conversion.

BREACH OF FIDUCIARY DUTY

The essence of a fiduciary relationship is that one party places trust and confidence in another who is in a dominant or superior position. A fiduciary relationship arises between two persons when one person is under a duty to act for or give advice for the benefit of another on matters within the scope of their relationship. The fiduciary's obligations to the dependent party include a duty of loyalty and a duty to exercise reasonable skill and care. Accordingly, the fiduciary is liable for harm resulting from a breach of the duties imposed by the existence of such a relationship.

LEGAL/EQUITABLE FRAUD

To establish legal fraud, a plaintiff must prove: (1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages.

To maintain a claim for equitable fraud, a plaintiff must demonstrate: (1) a material misrepresentation of a presently existing or past fact and (2) actual detrimental reliance on the misrepresentation. The elements of scienter, i.e., knowledge of the misrepresentation and an intention to obtain an unfair advantage therefrom are not essential.

Either form of fraud will support imposition of a constructive trust. A constructive trust is a remedial device through which the "conscience of equity" is expressed. Where the holder of legal title has acquired property under circumstances where retention of the property or the beneficial interest would constitute an unconscionable advantage, equity converts the title holder into a trustee for the benefit of the wronged party, even though the title holder's acquisition of the property was not wrongful. Similarly, an equitable lien may be imposed, treating the wronged party as a lien holder.

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

A party to a contract is bound by a duty of good faith and fair dealing in both the performance and enforcement of the contract. The Uniform Commercial Code, as codified in New Jersey, defines "good faith" as honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade. Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party. The covenant of good faith and fair dealing calls for parties to a contract to refrain from doing anything that will have the effect of destroying or injuring the right of the other party to receive the benefits of the contract. A defendant may be liable for a breach of the covenant of good faith and fair dealing even if it does not violate an express term of a contract. A plaintiff may be entitled to relief under the covenant if its reasonable expectations are destroyed when a defendant acts with ill motives and without any legitimate purpose, or where it relies to its detriment on a defendant's intentional misleading assertions.

UNJUST ENRICHMENT

A cause of action for unjust enrichment requires proof that defendant received a benefit and that retention of that benefit would be unjust. The most common circumstance for application of unjust enrichment is when a plaintiff has not been paid despite having had a reasonable expectation of payment for services performed or a benefit conferred. It has also been used to deny the wrongdoer any profit from a transaction and to thereby deter such conduct. Disgorgement of the unjust benefit is designed to deprive the wrongdoer of all gains flowing from the wrong rather than to compensate the victim.

In general, unjust enrichment will support imposition of a constructive trust/equitable lien.

AIDING AND ABETTING

Claims for aiding and abetting liability arise where one party knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself. A third party who knowingly aids and abets the agent of another in breach of the agent's fiduciary duty is liable to the principal.

CIVIL CONSPIRACY

A civil conspiracy is a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another, and an overt act that results in damage. It is enough [for liability] if you understand the general objectives of the scheme, accept them, and agree, either explicitly or implicitly, to do your part to further them. However, the ultimate basis of the claim is not the unlawful agreement, but the underlying wrong which, absent the conspiracy, would give a right of action.

EXHIBIT "U"

1:20A-3.Arbitation

* * *

- (e)Enforcement. Whenever a Fee Committee determines, or the parties by signed stipulation of settlement agree, that a refund of all or part of the fee paid by a client should be made and the attorney fails to appeal or to comply with such determination or stipulation within thirty (30) days of receipt thereof, the matter shall be referred to the Director for such action as may be appropriate, in accordance with R. 1:20-15(k). In the event of an appeal, no enforcement of the Fee Committee's determination will occur while that appeal is pending before the Board.

If an action for collection of the fee is pending when the client's written request for arbitration is filed under Rule 1:20A-3(a) and is stayed thereby pending a determination by the Fee Committee, the amount of the fee or refund as so determined may be entered as a judgment in the action unless the full balance due is paid within 30 days of receipt of the arbitration determination. If no such action is pending, the attorney or client may, by summary action brought pursuant to Rule 4:67, obtain judgment in the amount of the fee or refund as determined by the Fee Committee. In any application for the entry of a judgment in accordance with this rule, no court shall have jurisdiction to review a fee arbitration committee determination. Said review is reserved exclusively to the Disciplinary Review Board under R. 1:20-15(l).

On payment and collection of any balance due from a client or third party under an arbitration determination or stipulation of settlement, the attorney shall promptly prepare, execute and provide the client or third party with a warrant for satisfaction of any judgment entered, if requested or, if a civil action for the fee is pending, shall cause it to be dismissed. The client or third party shall bear the cost of filing any warrant for satisfaction.

EXHIBIT "V"

INSTRUCTIONS

When answering the following interrogatories, provide any and all information either in your possession, under control, within your dominion, or available to you, regardless of whether this information is in your personal possession, or is possessed by your agents, servants, employees, attorneys, accountants, independent contractors, representatives, or others with whom you have a relationship and from whom you are capable of deriving information, documents or material.

If any interrogatory is not answered in full, you shall state the precise reason for failing to complete the answer. If a legal objection is made with respect to any interrogatory, you should set forth the specific reason for such objection. If only a portion of any interrogatory cannot or will not be answered, provide the fullest answer to the interrogatory and thereafter specifically set forth the fact that the answer is incomplete and the reason or grounds of any omissions and/or refusals to complete.

Please be advised that these interrogatories are deemed continuing so as to require supplemental answers should plaintiff or counsel obtain further or supplemental information between the time the answers are served and the time of trial. In addition, the following definitions pertain to terms used herein.

A. The term "document" or "documents" shall mean any written, recorded or graphic matter, no matter how produced, recorded, stored or reproduced, and shall include, without

limitation, any letter, memorandum, worksheet, record, study, report, handwritten note, working paper, chart, tape, manual, procedure, envelope, telegram, cable, telex message, facsimile message, journal, diary, agreement, list comparison, questionnaire, survey, pamphlet, circular, bulletin, instruction manual, minutes, or transcription or noted notation of meetings, telephone conversations or any communication of any type; photographs, microfilm, tape or other recording, punch card, magnetic tape, disc, data, cell, drum, print-out, computerized data including computer-stored, computer-accessed, computer-created, computer-compiled and/or computer-interpreted information, or other data compilation, including a hard copy, legible printout of each of the foregoing, or other format appropriate to the type of information, from which information can be obtained; any other "document."

Non-identical copies, including those differing by reason of underscoring or marginal notes, are to be considered separate documents.

B. A request for identification shall mean, when used in reference to:

1. A natural person:
 - a. his or her full name;
 - b. his or her present or last known home and business address (including street name and number, city or town, and state);

- c. the title of his or her present or last known position, business affiliation and job description;
 - d. If an employee of your corporation, his or her exact job title and a description of his or her precise duties.
2. A corporation, partnership, corporate division, unit of federal, state or local government or other concern:
 - a. its correct and full name and type of organization or entity;
 - b. its address or principal place of business;
 - c. if a corporation, partnership or other business entity, the jurisdiction and date of incorporation or organization, if known.
3. A document or written communication:
 - a. its description (e.g., letter, memorandum, reports, etc.);
 - b. its title and date, and the number of pages thereof;
 - d. its subject matter and a detailed summary and description of its contents;
 - d. the identity of its author or signer;
 - e. the identity of its addressee or recipient;
 - f. the identity of each person to whom copies were sent and each person by whom copies were received;
 - g. its present location and the identity of its custodian. (If such document was, but is no longer, in the possession of or subject to the control of defendant, state what and when disposition was made of it.)
4. An oral communication:
 - a. the date and place where it occurred;
 - b. the complete substance of the communication;

c. the identity of each person to whom such communication was made, each person by whom such communication was made, and each person who was present when such communication was made.

C. "Describe" means to state, to date, and to identify the persons involved in the transaction, communication, event or occurrence in question, and to state the nature and subject matter of the transaction, communication, event or occurrence in question.

D. The term "person" shall include an individual, a partnership and a corporation.

E. The conjunctions "and" and "or" shall be interpreted conjunctively and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any interrogatory.

F. "You" and "yours" refers to you and includes agents or other persons acting on your behalf.

G. "Communication" means any spoken, written or otherwise communicated words, sounds, marks or signs including, but not limited to, those carried over a telephone or other electronic device.

H. "Claimant" shall be deemed to refer to either or both of the claimants: ; .

1. Identify each and every person having knowledge of facts relevant to this lawsuit.

2. (a) Identify and state the area of expertise of each person proposed as an expert witness in this matter. As to each such expert witness, state in detail: (b) the subject matter on which the expert is expected to testify; (c) the substance of the facts and opinions to which the expert is expected to testify and provide a summary of the factual grounds for each opinion; (d) If you or your expert intend to rely on or use in any way at trial any treatise, identify the treatise by title, author and edition and indicate the pertinent portions to be relied on or used at trial.

3. If the report of any expert listed in answer to interrogatory 2 above is embodied in a document or documents, annex hereto a true and complete copy of each such document.

4. If the report of any expert listed in answer to interrogatory 2 above is oral, indicate for each expert: (a) the date each expert was retained; (b) the date or dates each report was rendered; (c) the person or persons to whom and in whose presence each such report was rendered; and (d) the substance of each such report.

5. Identify each and every document which does or may contain data, facts, terms of agreement, or any other information relevant to this lawsuit.

6. For each and every document listed in answer to interrogatory 5 above, indicate: a) the name and present address of each person having custody of the original of each such document; and (b) attach a copy of each such document hereto.

7. State whether any admissions or statements were made by any party to this action, or the agent, servant or subcontractor of any party to this action.

8. If the answer to interrogatory 7 is in the affirmative, for each such admission or statement identify: (a) whether written or oral; (b) the date, time and place made; (c) by whom made, to whom made, and in whose presence made; (d) the words used and the medium of such admission or statement; (e) if incorporated into a document, annex a copy hereto; (f) all documents which relate to, refer to, embody or describe the admission or statement.

9. (a) Identify and annex hereto every retainer agreement or other document that reflects any agreement between you and claimant relating to legal services.

(b) Identify and annex hereto every trust account record that relates to claimant, including but not limited to checks (front and back), check stubs, client ledgers, trust account ledger books, deposit slips, account statements and bank notices.

(c) Identify and annex hereto every business account record that relates to claimant, including but not limited to checks (front and back), check stubs, business account ledger books, deposit slips, account statements and bank notices.

(c) Identify and annex hereto every document that relates to legal services provided to claimant.

(d) Identify and annex hereto every bill and billing record relating to legal services rendered to claimant.

10. If you maintained professional liability insurance at any time after your first contact with claimant regarding legal services, as to each such policy, state: (a) name and address of the carrier; (b) policy period; (c) coverage limits and deductible; (d) whether you contacted the carrier regarding the claimant; (e) annex hereto a true copy of the policy declarations.

11. State the name and address of the person signing these interrogatories.

12. As to each affirmative defense asserted by defendant, state in detail: a) each and every fact that supports that defense; (b) identify each and every person possessing knowledge of any such fact and specify, in substance, the knowledge possessed by each such person; c) identify and annex hereto each and every document, instrument or other memorandum that contains, reflects or refers to any such fact.

13. As to each communication between defendant and claimant relating to legal services, state in detail: (a) the date; (b) whether written or oral; (c) identify all parties thereto; (d) the method of communication; (e) the substance of the communication, specifying what was said by whom and to whom; (f) describe what, if anything, you did in response thereto; (g) identify and annex hereto each and every document, instrument and other memorandum that contains, reflects or refers to any such communication.

14. If you received funds from, or on behalf of, claimant for any purpose, state: (a) date received; (b) amount; (c) method of payment; (d) purpose of the payment; (e) exactly what you did with the funds, including, but not limited to: (f) deposit date, institution and account; (g) date, amount, payee and purpose of each disbursement on those funds; (h) identify and annex hereto each and every document, instrument or other memorandum that contains, reflects or refers to any such payment and/or disposition of funds.

15. Describe in detail each and every matter as to which you provided legal services to claimant, the services provided, the inclusive dates of representation, the fee charged and manner of calculating the fee.

16. Providing an answer that addresses separately each numbered paragraph of the Complaint, as to each allegation that defendant denies:

(a) Set forth each and every fact that supports defendant's denial of that allegation;

(b) Identify each and every person possessing knowledge of any such fact and specify, in substance, the knowledge possessed by each such person;

(c) Identify and annex hereto each and every document, instrument or other memorandum that contains, reflects or refers to any such fact.

Certification

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts, either written or oral, are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

EXHIBIT "W"

4:23-5. Failure to Make Discovery

(a) Dismissal.

(1) Without Prejudice. If a demand for discovery pursuant to R. 4:17, R. 4:18-1, or R. 4:19 is not complied with and no timely motion for an extension or a protective order has been made, the party entitled to discovery may, except as otherwise provided by paragraph (c) of this rule, move, on notice, for an order dismissing or suppressing the pleading of the delinquent party. The motion shall be supported by an affidavit reciting the facts of the delinquent party's default and stating that the moving party is not in default in any discovery obligations owed to the delinquent party. Unless good cause for other relief is shown, the court shall enter an order of dismissal or suppression without prejudice. Upon being served with the order of dismissal or suppression without prejudice, counsel for the delinquent party shall forthwith serve a copy of the order on the client by regular and certified mail, return receipt requested, accompanied by a notice in the form prescribed by Appendix II-F of these rules, specifically explaining the consequences of failure to comply with the discovery obligation and to file and serve a timely motion to restore. If the delinquent party is appearing pro se, service of the order and notice hereby required shall be made by counsel for the moving party. The delinquent party may move on notice for vacation of the dismissal or suppression order at any time before the entry of an order of dismissal or suppression with prejudice. The motion shall be supported by affidavit reciting that the discovery asserted to have been withheld has been fully and responsively provided and shall be accompanied by payment of a \$100 restoration fee to the Clerk of the Superior Court, made payable to the "Treasurer, State of New Jersey," if the motion to vacate is made within 30 days after entry of the order of dismissal or suppression, or a \$300 restoration fee if the motion is made thereafter. If, however, the motion is not made within 90 days after entry of the order of dismissal or suppression, the court may also order the delinquent party to pay sanctions or counsel fees and costs, or both, as a condition of restoration.

(2) With Prejudice. If an order of dismissal or suppression without prejudice has been entered pursuant to paragraph (a)(1) of this rule and not thereafter vacated, the party entitled to the discovery may, after the expiration of 90 days from the date of the order, move on notice for an order of dismissal or suppression with prejudice. The attorney for the delinquent party shall, not later than 7 days prior to the return date of the motion, file and serve an affidavit reciting that the client was previously served as required by subparagraph (a)(1) and has been served with an additional notification, in the form prescribed by Appendix II-G, of the pendency of the motion to dismiss or suppress with prejudice. In lieu thereof, the attorney for the delinquent party may certify that despite diligent inquiry, which shall be detailed in the affidavit, the client's whereabouts have not been able to be determined and such service on the client was therefore not made. If the delinquent party is appearing pro se, the moving party shall attach to the motion a similar affidavit of service of the order and notices or, in lieu thereof, a certification as to why service was not made. Appearance on the return date of the motion shall be mandatory for the attorney for the delinquent party or the delinquent pro se party. The moving party need not appear but may be required to do so by the court. The motion to dismiss or suppress with prejudice shall be granted unless a motion to vacate the previously entered order of dismissal or suppression without prejudice has been filed by the delinquent party and either the demanded and fully responsive discovery has been provided or exceptional circumstances are demonstrated.

(3) General Requirements. All motions made pursuant to this rule shall be accompanied by an appropriate form of order. All affidavits in support of relief under paragraph (a)(1) shall include a representation of prior consultation with or notice to opposing counsel or pro se party as required by R. 1:6-2(c). If the attorney for the delinquent party fails to timely serve the client with the original order of dismissal or suppression without prejudice, fails to file and serve the affidavit and the notifications required by this rule, or fails to appear on the return date of the motion to dismiss or suppress with prejudice, the court shall, unless exceptional circumstances are demonstrated, proceed by order to show cause or take such other appropriate action as may be necessary to obtain compliance with the requirements of this rule. If the court is required to take action to ensure compliance or the motion for dismissal or suppression with prejudice is denied because of extraordinary circumstances, the court may order sanctions or counsel fees and costs, or both. An order of dismissal or suppression shall be entered only in favor of the moving party.

(b) Failure to Furnish Expert's Report. The court at trial may exclude the testimony of a treating physician or of any other expert whose report is not furnished pursuant to R. 4:17-4(a) to the party demanding the same.

(c) Motion to Compel. Prior to moving to dismiss pursuant to subparagraph (a)(1) of this rule, a party may move for an order compelling discovery demanded pursuant to R. 4:18-1 or R. 4:19. An order granting a motion to compel shall specify the date by which compliance is required. If the delinquent party fails to comply by said date, the aggrieved party may apply for dismissal or suppression pursuant to subparagraph (a)(1) of this rule by promptly filing a motion to which the order to compel shall be annexed, supported by a certification asserting the delinquent party's failure to comply therewith.

EXHIBIT "X"

LEGAL ARGUMENT

POINT I

THERE IS NO GENUINE ISSUE OF MATERIAL
FACT REQUIRING A TRIAL AND HENCE,
SUMMARY JUDGMENT SHOULD BE GRANTED
PURSUANT TO R.4:46-2

R.4:46-2(c) provides that upon the filing of a motion for summary judgment, the judgment or order shall be granted:

...forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.

The aforesaid rule:

...is designated to provide a prompt, businesslike and inexpensive method of disposing of any cause which a discriminating search of the merits in the pleadings, depositions, and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at a trial.

Judson v. People's Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1955):

While the movant has the burden of excluding any reasonable doubts, and all inferences which emanate from such doubts are to be resolved in favor of the opponent of the motion, "...the standards are to be applied with discriminating care so as not to defeat a Summary Judgment motion if the movant is justly entitled to one." 17 N.J. at 74.

The right to summary judgment:

...is a substantial one where circumstances warrant, and is more than a token procedural remedy under our rules, for it not only affords protection against groundless claims and frivolous defenses, saving the antagonists the time and expense of protracted litigation, but it also reserves judicial manpower and facilities to cases which meritoriously command attention.

State v. South Amboy Trust Co., 46 N.J. Super. 497, 501 (Law Div. 1957).

In deciding a motion for summary judgment, the court should only consider those facts which are properly presented by competent evidential material, and the determination that a genuine issue of material fact exists cannot be based on the mere argument of counsel, or the bare assertion of a conclusion in opposition to the factual position of the adversary. Amabile v. Lerner, 74 N.J. Super. 434 (App. Div. 1962); New Jersey Mortgage Corp. v. Masefield Corps., 63 N.J. Super. 369 (App. Div. 1960).

Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995), clarified the "genuine issue of material fact" standard, focusing that determination on whether the full motion record demonstrates a prima facie case. R. 4:46-2 was amended to reflect this clarification:

An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact. R. 4:46-2(c).

Hence, even if there is a denial of essential fact, a motion for summary judgment should be granted if the rest of the record viewed most favorably to the party opposing the motion, demonstrates the absence of a genuine, material factual dispute. Rankin v. Slowinski, 119 N.J. Super. 393, 399-400 (App. Div. 1972) so held, "entirely consistently with the later-articulated Brill standard." Pressler, Current N.J. Court Rules, Comment R. 4:46-2. In applying this standard, courts have recognized that a disputed issue of fact of an insubstantial nature should not preclude grant of the motion, or, as stated in Brill, supra., 142 N.J. at 536, the court should determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law."

As will appear from the argument in Point II, the case at bar presents a compelling basis for summary judgment.

EXHIBIT "Y"

R. 1:4-8. Frivolous Litigation

- (a) **Effect of Signing, Filing or Advocating a Paper.** The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, written motion or other paper. By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
 - (1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
 - (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
 - (3) the factual allegations have evidentiary support or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support; and
 - (4) the denials of factual allegations are warranted on the evidence or, as to specifically identified denials, they are reasonably based on a lack of information or belief or they will be withdrawn or corrected if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support.

If the pleading, written motion or other paper is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the document had not been served. Any adverse party may also seek sanctions in accordance with the provisions of paragraph (b) of this rule.

- (b) **Motions for Sanctions.**
 - (1) **Contents of Motion, Certification.** An application for sanctions under this rule shall be by motion made separately from other applications and shall describe the specific conduct alleged to have violated this rule. No such motion shall be filed unless it includes a certification that the applicant served written notice and demand pursuant to R. 1:5-2 to the attorney or pro se party who signed or filed the paper objected to. The certification shall have annexed a copy of that notice and demand, which shall (i) state that the paper is believed to violate the provisions of this rule, (ii) set forth the basis for that belief with specificity, (iii) include a demand that the paper be withdrawn, and (iv) give notice, except as otherwise provided herein, that an application for sanctions will be made within a reasonable time thereafter if the offending paper is not withdrawn within 28 days of service of the written demand. If, however, the subject of the application for sanctions is a motion whose return date precedes the expiration of the 28-day period, the demand shall give the movant the option of either consenting to an adjournment of the return date or waiving the balance of the 28-day period then remaining. A movant who does not request an adjournment of the return date as provided herein shall be deemed to have elected the waiver. The certification shall also certify that the paper objected to has not been withdrawn or corrected within the appropriate time period provided herein following service of the written notice and demand.

No motion shall be filed if the paper objected to has been withdrawn or corrected within 28 days of service of the notice and demand or within such other time period as provided herein.

- (2) **Time for Filing; Attorney's Fees.** A motion for sanctions shall be filed with the court no later than 20 days following the entry of final judgment. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorneys' fees incurred in presenting or opposing the motion. For purposes of this rule, the term "final judgment" shall include any order deciding a post-judgment motion whether or not that order is directly appealable.
- (3) **Scope of Responsibility.** Except in extraordinary circumstances, a law firm shall be jointly responsible for violations committed by its partners, shareholders, associates and employees.
- (c) **Sanction on Court's Initiative.** On its own initiative, the court may enter an order describing the specific conduct that appears to violate this rule and directing the attorney or pro se party to show cause why he or she has not violated the rule. The order to show cause shall issue before a voluntary dismissal or settlement of the claims made by or against the pro se party or the attorney who is the subject of the order to show cause.
- (d) **Order for Sanctions.** A sanction imposed for violation of paragraph (a) of this rule shall be limited to a sum sufficient to deter repetition of such conduct. The sanction may consist of (1) an order to pay a penalty into court, or (2) an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation, or both. Among the factors to be considered by the court in imposing a sanction under (2) is the timeliness of the movant's filing of the motion therefor.

In the order imposing sanctions, the court shall describe the conduct determined to be a violation of this rule and explain the basis for the sanction imposed.

- **(e) Exceptions.** This rule does not apply to disclosures and discovery requests, responses, objections, and discovery motions that are subject to the provisions of R. 4:23.
- **(f) Applicability to Parties.** To the extent practicable, the procedures prescribed by this rule shall apply to the assertion of costs and fees against a party other than a pro se party pursuant to N.J.S.A. 2A:15-59.1.

EXHIBIT "Z"

RULE 4:58. OFFER OF JUDGMENT

4:58-1. Time and Manner of Making and Accepting Offer

(a) Except in a matrimonial action, any party may, at any time more than 20 days before the actual trial date, serve on any adverse party, without prejudice, and file with the court, an offer to take a monetary judgment in the offeror's favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein (including costs). The offer shall not be effective unless, at the time the offer is extended, the relief sought by the parties in the case is exclusively monetary in nature.

(b) If at any time on or prior to the 10th day before the actual trial date the offer is accepted, the offeree shall serve on the offeror and file a notice of acceptance with the court. The making of a further offer shall constitute a withdrawal of all previous offers made by that party. An offer shall not, however, be deemed withdrawn upon the making of a counter-offer by an adverse party but shall remain open until accepted or withdrawn as is herein provided. If the offer is not accepted on or prior to the 10th day before the actual trial date or within 90 days of its service, whichever period first expires, it shall be deemed withdrawn and evidence thereof shall not be admissible except in a proceeding after the trial to fix costs, interest, and attorney's fee. The fact that an offer is not accepted does not preclude a further offer within the time herein prescribed in the same or another amount or as specified therein.

4:58-2. Consequences of Non-Acceptance of Claimant's Offer

(a) If the offer of a claimant is not accepted and the claimant obtains a money judgment, in an amount that is 120% of the offer or more, excluding allowable prejudgment interest and counsel fees, the claimant shall be allowed, in addition to costs of suit: (1) all reasonable litigation expenses incurred following non-acceptance; (2) prejudgment interest of eight percent on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later, but only to the extent that such prejudgment interest exceeds the interest prescribed by R. 4:42-11(b), which also shall be allowable; and (3) a reasonable attorney's fee, which shall belong to the client, for such subsequent services as are compelled by the non-acceptance.

(b) No allowances shall be granted pursuant to paragraph (a) if they would impose undue hardship. If undue hardship can be eliminated by reducing the allowance to a lower sum, the court shall reduce the amount of the allowance accordingly.