



First Annual Meeting

May 31, 1998

Bonaventure Hilton
Montreal, Canada
Salle Mt. Royale - 9AM

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The First Annual Meeting of The National Client Protection Organization, Inc. will require the election of Officers and Directors. Officers are President, five regional Vice Presidents, Treasurer, Secretary and Counsel.

There is a seven-member Board of Directors consisting of the President, Treasurer and Secretary, Counsel and three at-large Directors to be elected at the Annual Meeting.

If you would like to serve as an Officer or Director, contact NCPO's interim Vice President-Secretary, Fred Miller (800-442-3863), who is preparing a slate of candidates for the Nominating Committee. Volunteers are also needed for the Finance, Nominating and Publication Committees.

Agenda

- Election of Officers and Directors
- Report of the Treasurer
- Appointment of Committees
- New Business
 - A. By-Laws
 - 1. Guided Tour of Current-ByLaws
 - 2. Discussion re suggested amendments
 - B. From the Floor: Goals for NCPO, Inc.
 - 1. Future editions of *The Client Protection Webb*
 - 2. Regional seminars
 - 3. Crisis help
 - 4. Regional Roundtables at ABA Meetings
 - 5. National Hotline? Other consultations
 - 6. Internet Home Page
 - C. Substantive Presentation: "Coping With Catastrophe" *Frederick Miller, Executive Director & Counsel, NY Client Protection Fund*
 - D. Substantive Presentation: "Constructive Trusts on Insurance Proceeds" *Arthur Littleton, Counsel, Pa. Lawyers' Fund for Client Security*
 - E. Video Presentations
 - 1. "Due Process"
 - 2. "Attorney Trust Accounts and Record Keeping"
 - F. Other Business
 - G. Adjournment

Let's Hear it for Hearings

By Kenneth J. Bossong

Most client protection funds in the United States hold few, if any, hearings. So finds the most recent ABA Survey on client protection and security funds. For funds with severely limited resources, particularly those in geographically large states, hearings may be logistically prohibitive. For them, the top priority is obtaining adequate resources; and hearings can come later. All other funds should consider holding hearings.

The ABA survey asked jurisdictions whether they held hearings and, if so, how many, on average, per year. Twelve funds answered "Yes"; sixteen answered "Sometimes"; two responded, "Upon Request"; two indicated "At the request of Claimant only"; and 14 answered "No". The five states that did not respond were presumably in the "No" category.

It is theoretically possible, then, to get a hearing in 32 states. Of them, 23 indicated an average of between zero and four hearings per year; two states between five and 10; two between 10 and 15 hearings; one between 20 and 30; and two said they held more than 30 hearings per year. (Two did not indicate frequency.)

Thus, only seven jurisdictions reported that they hold five or more hearings per year. Many who answered "Yes" or "Sometimes" probably average zero or nearly zero hearings per year.

Some benefits of hearings are obvious. They give the fund's staff and Trustees an opportunity to "size-up" claimants and respondents. Even if brief and informal, a spontaneous face-to-face encounter can reveal truth in a special way, or put the "facts" in perspective for those who must decide the claim. Intentions, motivation, and relative sophistication can be grasped. Questions not raised in the papers, but which evolve from a discussion, can develop the most telling information.

The most important job of any client protection fund is to decide its claims justly. Even with all available documents produced, hearings can be very helpful in deciding claims with any of the following characteristics :

— Hotly contested. Where the claimant and respondent differ vigorously on the facts.

— Credibility in issue. Even if a claim is not hotly contested, the determination depends on whom Trustees believe.

— Unique facts/unprecedented policy issues. No one has "seen it all" in the field of dishonest conduct. Testimony helps a Board of Trustees decide the truly unique claim.

— Close calls. Some claims are so difficult they are simply too close to call on the papers.

— Large claims. Trustees may want to meet the principals to make certain there are no wrinkles in claims with overwhelming financial significance.

— Respondent's *modus operandi* in issue. Testimony can provide the critical flavor of how a respondent operated, and can help in deciding claims, pursuing subrogation receipts, and thinking about loss prevention.

Hearings can have another important benefit: a compelling reminder of why funds exist. If processing of claims is becoming routine and the claims themselves are becoming abstractions, an encounter with "flesh and blood" enriches those who work in client protection.

No one who has observed victims describing the violation of their trust believes client protection is just about money. When the Trustees tell those victims that their ordeals are over because the lawyers in that state so regret the dishonesty of a few that they pay for it themselves, there are few finer moments for a client protection fund, or for the legal profession. ■

the same absolutely or in trust; to invest, reinvest, and manage the same; and to apply said property and the income arising therefrom to the purposes of the Corporation.

ARTICLE VII — Board of Directors

Section 1. The business and affairs of the Corporation shall be managed by a Board of Directors. The initial Board of Directors shall consist of three (3) persons, whose terms shall expire at the first Annual Meeting of the Corporation. Thereafter the Board of Directors shall consist of seven (7) persons: the President, Treasurer, Secretary, Counsel and three members to be elected at large. Each term of office shall run concurrently with a Director's term as an officer of the Corporation, and the three (3) at-large Directors shall be elected at the Annual Meeting. The initial at-large Directors shall be elected for one, two and three-year terms, and each succeeding term of the at-large Directors shall be for three years. Directors shall be eligible for re-election to successive terms. Vacancies shall be filled temporarily by the Board of Directors until the next Annual Meeting.

Section 2. At each Annual Meeting, the Board of Directors shall appoint an Executive Committee which shall be authorized to act for the whole Board of Directors between meetings thereof. The Executive Committee shall consist of at least three (3) and not more than five (5) Directors.

Section 3. The Board of Directors shall meet at the call of the President. Two members of the initial Board of Directors shall constitute a quorum, and four members of each successive Board of Directors shall constitute a quorum. Meetings may be conducted by telephone conference. The President shall provide reasonable notice of all meetings.

ARTICLE VIII — Officers of the Corporation

Section 1. The officers of the Corporation shall consist of a President, five (5) Vice Presidents, a Treasurer, a Secretary and a Counsel.

Section 2. All officers shall be elected at the Annual Meeting of the Corporation. At each Annual Meeting, the Nominating Committee shall submit the names of candidates for the offices of President, Vice President, Secretary, Treasurer and Counsel. Candidates may be added to the Nominating Committee's ballot at the Annual Meeting by the nomination by any member of the Corporation. All officers shall be elected for a term of one year and shall be eligible for re-election.

Section 3. The President shall be the chief executive officer of the Corporation and shall preside at all meetings of the Corporation and the Board of Directors. The President shall be responsible for implementing the policies of the Board of Directors, and fulfill such other responsibilities as may be assigned or delegated by the Board of Directors.

Section 4. The Vice Presidents shall assist the President and the Board of Directors in the formulation and implementation of policy. One Vice President shall be selected from each of the following geographic regions of the United States: New England, Middle Atlantic, South, Midwest and West. In the absence or disability of the President, the Board of Directors shall select a Vice President to discharge the duties of President.

Section 5. The Treasurer shall be the chief financial officer of the Corporation and be responsible for the receipt, custody, safekeeping and disbursement of the Corporation's assets. Unless the Board of Directors provide otherwise, no fidelity bond shall be required of the Treasurer.

Section 6. The Secretary shall be responsible for the recording of all minutes of meetings of the Corporation and the Board of Directors, the custody of corporate records, and the communication of all notices required by the Articles of Incorporation or these Bylaws.

Section 7. Counsel shall assist the President and the Board of Directors in reviewing the affairs of the Corporation, and such other responsibilities as may be assigned by the President or the Board of Directors.

Section 8. None of the officers of the Corporation shall be compensated for their services, but the Board of Directors may authorize that they be reimbursed reasonable expenses which are necessarily incurred by them in the performance of their offices.

ARTICLE IX – Mail Vote

Whenever, in the judgment of the Board of Directors, any question shall arise which should be put to a vote of the membership and when the directors deem it inexpedient to call a Special Meeting for such purpose, the directors may, unless otherwise required by statute, the Articles of Incorporation or these Bylaws, submit such matter in writing by mail for vote and decision, and the question thus presented shall be determined according to a simple majority (or a higher percentage if required by statute, the Articles of incorporation or these Bylaws) of the votes received by mail within three (3) weeks after such submission for vote, provided that, in each case, votes of at least one-half of the total number of votes entitled to be cast shall be received.

ARTICLE X – Committees

The Board of Directors may create one or more committees and appoint members of the Corporation and the Board of Directors to serve on them. Each committee may have one or more members, who shall serve at the pleasure of the Board of Directors. At the first Annual Meeting of the Corporation, the Directors shall create and organize a Nominating Committee, a Finance Committee and a Publications Committee

ARTICLE XI – Publications

Section 1. The Board of Directors shall authorize publications which in the judgment of the Board of Directors are consistent with the purposes of the Corporation.

Section 2. The Corporation shall own the copyright for the original and any renewal term thereof in any writing of an author whose work is specifically commissioned by the Corporation. The Corporation may publish, with permission of the author, any writing which is consistent with the purposes and objectives of the Corporation.

Section 3. Publications of the Corporation shall be made available to all members in good standing. Subscription rates for the Corporation's periodical and non-periodical publications shall be fixed by the Board of Directors.

ARTICLE XII – Representations and Endorsements

Section 1. No member of the Corporation shall express as policy of the Corporation any matter which has not been determined by action or resolution of the Board of Directors or the membership.

Section 2. Any member who, when making a public utterance, permits himself or herself to be identified as an officer or director, or member of the Corporation shall clearly identify, as personal or otherwise, any views at variance with policy of the Corporation known to that member.

Section 3. The name of the Corporation shall not be used in any way which tends to indicate official endorsement of commercial products, services or publications, which implies an endorsement of any business or which suggests that membership in the Corporation is available to any organization, except as otherwise provided in Article IV.

ARTICLE XIII – Insignia

The Corporation shall have an insignia or corporate seal which shall have the inscription, National Client Protection Organization, Inc.

ARTICLE XIV – Amendments to the Bylaws

These Bylaws may be amended by a two-thirds affirmative vote of the Board of Directors at any Annual or Special Meeting of the Board of Directors. Any amendment of these Bylaws shall be reported to the Members at the next Annual Meeting or Special Meeting of the Corporation.

ARTICLE XV - Indemnification of Directors and Officers

Section 1. As used in this Article, any word or words that are defined in section 2-418 of the Corporations and Associations article of the Annotated Code of Maryland (the "Indemnification Section"), as amended from time to time, shall have the same meaning as provided in such Indemnification Section.

Section 2. The Corporation shall indemnify a present or former director or officer of the Corporation in connection with a proceeding to the fullest extent permitted by and in accordance with the Indemnification Section of the aforementioned Annotated Code of Maryland.

Section 3. With respect to any corporate representative other than a present or former director or officer, the Corporation may indemnify such corporate representative in connection with the Indemnification Section; provided, however, that to the extent a corporate representative other than a present or former director or officer successfully defends on the merits or otherwise any proceeding referred to in subsections (b) or (c) of the Indemnification Section or any claim, issue or matter raised in such proceedings, the Corporation shall not indemnify such corporate representative other than a present or former director or officer under the Indemnification Section unless and until it shall have been determined and authorized in the specific case by (i) an affirmative vote at a duly constituted meeting of a majority of the Board of Directors who were not parties to the proceeding; or (ii) an affirmative vote, at a duly constituted meeting of a majority of all the votes cast by Members who were not parties to the proceeding, that indemnification of such corporate representative other than a present or former director or officer is proper in the circumstances.

Funds on the Internet

Information about client protection funds on the World Wide Web can be found at the following addresses: <http://www>.

Connecticut

ctbar.org/cbacm4.htm

District of Columbia

dcbar.org/index.html

Florida

ww3.pwr.com/legal/flabar/consumer/clients.sec/csregul.html

Hawaii

hsba.org/about/related/supr.htm

Indiana

ai.org/isba/standing/cfaf.html

Kentucky

kybar.org/csfund.htm

Michigan

michbar.org/sbm/sbm2/rules.html

Minnesota

courts.state.mn.us/courts/csb/csb.html

Missouri

mobar.org/brochure/security.htm

New York

nylawfund.org

South Dakota

sdbar.org/pamflets/fund.htm

Tennessee

tsc.state.tn.us/geninfo/boards.htm#ClientProtection

Utah

utahbar.org:80/public_services.html#client

Virginia

vsb.org/cpf.html

Washington

wsba.org/services.html#3

West Virginia

wvbar.org/barinfo/comms/4l.htm

Canadian Sites:

Law Society of Upper Canada (Ontario)

lsuc.om.ca/LPIC_Report.html

Nova Scotia Barrister's Society

<http://home.istar.ca/>

NCPO News

The National Client Protection Organization has been incorporated in the State of Maryland. Its interim Directors have adopted Bylaws to facilitate its organization and prepare for the first Annual Meeting of members, which will be held on May 31, 1998 at the Bonaventure Hilton Hotel in Montreal. The Articles of Incorporation and Bylaws will be discussed at that meeting. They are reproduced in this edition of the "Webb."

The NCPO is seeking tax-exempt status as an IRC 501(c)(3) Corporation. The annual contribution for organizations is \$200. The annual contribution for individual memberships is \$25. Become a charter member by sending your contributions to NCPO's interim Treasurer: Isaac Hecht, Esq., 210 North Charles Street, Suite 1317, Baltimore, MD, 21210.

Regional Roundtables —week-end conferences for the client protection community —are high on the list of projects for NCPO. We need your input: meeting sites as well as topics and speakers. If you can't be at the Annual Meeting and have suggestions, please share your ideas and suggestions with Ken Bossong, or any of NCPO's officers.

The annual meeting will feature two "nuts and bolts" presentations for client protection fund administrators and Trustees. Fred Miller, administrator of New York's

fund since 1982, will offer suggestions on handling claims that threaten to overwhelm a client protection fund, whether in volume, alleged losses or complexity. Art Littleton, longtime Trustee and Counsel to the Pennsylvania fund, will share his experiences in pursuing restitution against life insurance proceeds.

The NCPO will have a standing committee on publications which will oversee the production of The Client Protection Webb. Volunteers are needed as editors and reporters. The *Webb* also needs news, court decisions, and articles of interest to our colleagues.

Visit the NCPO's Website. It holds NCPO's Articles of Incorporation and Bylaws, a membership roster, the text of past issues of *The Client Protection Webb*, recent court decisions of interest, a bibliography of reported decisions and articles, and links to other Internet sites of interest to client protection funds. NCPO's Website address is: www.nylawfund.org/ncpo. We also need help in maintaining and updating this important resource for client protection funds. Please volunteer. ■



The Client Protection Webb

The Client Protection Webb is a public-interest publication of The National Client Protection Organization, Inc.

Interim Editor

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The Interim Editor invites articles, news and other materials of interest to the client protection fund community in the United States and Canada.