A Newsletter for Law Client Protection Funds

The Client Protection Webb

Volume 3 Number 2

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NCPO Leadership Changes

The members of NCPO, at their June 2000 annual meeting in New Orleans, approved amendments to the corporate By-Laws which restructure the administrative leadership of the organization. William D. Ricker, Jr. of Ft. Lauderdale (Fla), a Trustee of the Florida client protection fund was elected President, to serve a two-year term. Janet Green Marbley, administrator of Ohio's client protection fund, fills the new office of President-Elect, also with a two-year term. Georgia Taylor, administrator of the Nevada fund was elected NCPO's Secretary. Isaac Hecht, Trustee of the Maryland fund, was reelected Treasurer. At-large Directors are Betsy Brandborg of the Montana fund; Martin Cole of the Minnesota fund; and Charles Goldberg, a Trustee of the new client protection fund in Colorado. The Directors appointed Frederick Miller of New York to serve as NCPO's Counsel. Kenneth J. Bossong of the New Jersey fund will serve as a Director in the new office of Past President. ■

Looking Ahead....

Look for NCPO at the ABA's midyear meeting in San Diego. Representatives of NCPO will be available for informal consultations, courtesy of the ABA's Center for Professional Responsibility. Date: February 17, 2001. Location to be announced in the meeting program.

Message From The (New) President

Remembering San Francisco

By William D. Ricker, Jr.

Sixteen years ago, the American Bar Association held its inaugural annual national forum for client protection funds in San Francisco. That forum turned out to be the dawning of a new age for law client protection. Coincidentally, the forum shared conference space with a symposium about the fledgling cell phone industry. Both groups have seen significant changes during the intervening years. Cell phones are now ubiquitous, and client protection funds have spread to every jurisdiction in the United States and Canada, although, unlike cell phones, they are sometimes difficult to find.

I had just become chair of the Florida fund at the time of the San Francisco meeting and was not about to miss the chance to visit one of the world's most beautiful cities. My knowledge of client security funds, as they were then named, was limited to the internal operations of the Florida program and I was not even aware of how many other funds existed. Because I met real fund enthusiasts in San Francisco, I remember returning to Florida with a greater sense of the breadth of the fund movement; but more important, with a changed attitude about the purpose of a client protection fund.

Like many funds sixteen years ago— and still too many today—Florida's client security fund committee searched for reasons to deny claims in order to "protect the integrity" of the fund. Sixteen years ago, that struck me as a wrongheaded attitude. It remains a wrongheaded attitude today. The trustees of client protection funds everywhere should search for ways to reimburse wronged clients. If a fund's assets dwindle, it is not because the need is not there, but because funding resources are inadequate. Trustees need to work on ways of securing adequate funds to reimburse eligible claimants, and not be forced to take actions which only underscore the shortcomings of the legal profession. Fortunately, since the turning point of

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San Francisco, resources to help client protection trustees improve their funds have grown almost as exponentially as cell phone technology.

We are justifiably proud of *The Client Protection Webb*, NCPO's website (www.ncpo.org), NCPO's regional workshops, the ABA's annual national forums, and the wide network of volunteers and professionals who have made protection funds an integral part of our profession. There are no more excuses for continuing to engage in wrongheaded attitudes or to accept woefully inadequate funding as a permanent reality. Members of NCPO "have brief cases, will travel" and are available to any jurisdiction to evaluate its program and recommend improvements.

One of the benefits of our federal system is that there is no "right" system for a fund, although there certainly are wrong attitudes which will weaken a fund, as I learned in San Francisco. There are excellent model rules and funds that can be role models for others. It was important to work towards establishing a fund in each jurisdiction, but that was only a first step. We must now raise the bar and meet the challenge of the Conference of Chief Justices' 1999 National Action Plan on Lawyer Conduct and Professionalism which calls for each state to have a fund which "**substantially** reimburse(s) losses resulting from dishonest conduct in the practice of law." (My emphasis.)

NCPO is up to the task. Together we can meet the challenges ahead, and we can insure that the lessons of San Francisco are not forgotten. We will recognize those states with responsible funds and we will encourage those who want to improve their funds. Join us in this exciting effort of public service. ■

William D. Ricker is a Trustee of the Florida client protection fund, and a member of the Ft. Lauderdale law firm of Akerman Senterfitt.

Leadership Changes at the New York Lawyers Fund

Frederick Miller, Executive Director and Counsel to the New York Lawyers Fund for Client Protection since the fund's creation in 1982, resigned his post, effective July 1, 2000. The fund's Board of Trustees tapped Timothy J. O'Sullivan, Miller's deputy, to serve as the fund's chief administrative officer. The staff reorganization was completed with the promotion of Michael J. Knight to serve as the fund's deputy counsel.

Miller was instrumental in the creation of a "Clients' Security Fund" by the New York Legislature in 1981. The fund began business with a $25 biennial assessment on active practitioners, and a $25,000 maximum limit on its awards. The current assessment is now $100, and the fund provides each eligible victim with $300,000 in coverage. It budgets $8 million annually for reimbursement; and 99 percent of all eligible claimants receive 100 percent reimbursement. Reimbursement awards since 1982 are fast approaching the $100 million mark.

The New York Lawyers Fund has been a leading voice in using the state's lawyer regulation system, and innovative consumer education programs, to reduce client losses. A marked and steady decrease in reimbursement claims since 1998 suggests that these programs are bearing fruit in the Empire State.

Miller confessed that dropping dead at his desk was never a burning career goal, and that he hopes to pursue a host of personal and professional interests in this new chapter of life. High on that list is a statewide treatment and education effort, now on the drawing board, to help lawyers, judges and law students who have alcohol and drug problems.

"The New York Lawyers Fund is in the best shape it's ever been in, so it's the ideal time to plan ahead and pass the baton to Tim and Mike, who have been colleagues since their student days at the Albany Law School. They are family." Miller will keep his hand in the law, part-time, as special counsel at the Albany firm of Chamberlain, Kaufman & Jones. As one of the founders of NCPO, Miller will continue as NCPOs pro bono Counsel, and Editor of *The Client Protection Webb*. ■

American Bar Association Contacts

For information in the client protection field, and access to information maintained by the American Bar Association, contact John A. Holtaway. Tel: (312) 988-5298; or jholtaway@staff.abanet.org Also at the ABA is the always helpful Debra (Debi) D. Taylor. (312) 988-5325; or debrataylor@staff.abanet.org

National Law Journal Looks at Client Protection Funds

By Martin Cole

NCPO would doubtless list "public information" as an important goal of the client protection fund community. Well, as the Rolling Stones once warbled, "You can't always get what you want, but you just might get what you need."

In a special report dated August 28, 2000, the *National Law Journal* (*NLJ*) provided client protection funds nationwide with more publicity than anyone could have hoped for. But it was not all pretty. The *NLJ* headlined its survey: **AN EMPTY PROMISE . . . How client protection funds betray those they were designed to protect**.

There followed nine pages of the weekly publication, written by *NLJ* staff reporter Elizabeth Amon, which chronicled a series of victims of lawyer dishonesty from several states, whose claims to their local client protection funds were met with indifference or payments of only pennies on the dollar. Although the efforts of a few funds were applauded, the overall tone of the articles was negative. The special report's summed up its findings: "[Client protection funds] are poorly endowed, stingy about payouts and virtually a secret, even to many lawyers whose bar dues help finance them." Dramatic photographs of six victims accompa-

nied the text, only one of whom reported a positive experience with a protection fund.

Two states were singled out for sidebar articles: Illinois and Nebraska. Illinois was featured for problems stemming from inadequate funding by the Illinois Supreme Court; while Nebraska state bar association officials were cited for their "hostile attitudes" towards law client protection. The full text of the special report is available in the archives of the *National Law Journal* at its Internet website:www.nlj.com.

NCPO's response was quick, and painfully honest. No one, succumbed to the temptation to bury the profession's head in the sand and deny that serious problems exist. While feeling an obligation to provide more balance by pointing out positive facts about client protection funds that were overlooked in the *NLJ* special report, NCPO officers faced the issues head on. Many fund administrators and trustees recognized that even a scathing portrayal of client protection funds could serve as a "wake-up call" and serve as an opportunity to improve our programs.

NCPO President Bill Ricker (FL) wrote *NLJ's* Editor that, "NCPO will not accept the status quo. Because no lawyer should make excuses for the examples in the investigative report and because greater knowledge of client protection programs is critical to improving them, we welcome the concern the *National Law Journal* has raised about client protection programs."

NCPO Past-President Kenneth J. Bossong (NJ) proposed, in an *NLJ* op-ed piece, the development of a national action plan based upon the fundamental features of successful client protection funds nationwide: an independent organizational structure, secure and adequate funding, accessibility, and responsiveness to the actual needs of victims.

Frederick Miller of New York added to the discussion with an *NLJ* op-ed piece which called for a national minimum standard for all client protection funds: 100 percent reimbursement to 90 percent of all eligible victims. Miller said that the standard should be enforced (and monitored) by the supreme court in each state as a function of preserving public trust in the state's institutions of justice, including the regulated legal profession. ■

Martin Cole is Assistant Director of the Minnesota Client Security Fund and a Director of NCPO, Inc.

NCPO Speakers Bureau

The Board of Trustees of the rejuvenated Colorado Attorneys' Client Protection Fund held its first meeting to evaluate claims for reimbursement on June 15, 2000. Charles Goldberg, a partner in the Denver law firm of Rothgerber Johnson & Lyons LLP, chairs the seven-member Board of Trustees. Fred Miller, NCPO's Counsel, was keynote speaker for the event.

Miller's 30-minute presentation, by telephone conference call, surveyed the philosophical and practical limitations which influence an effective program of law client protection. His remarks ("Dollars and Sense on Opening Day") concluded with lively questions and answers regarding losses that were likely to be encountered by the fund's Trustees.

Miller also addressed the annual meeting of the National Organization of Bar Counsel, Inc. (NOBC) at its annual meeting in New York City on July 8, 2000, in a presentation called "Our Brothers' [and Sisters'] Keeper". His remarks focused on the impact that the New York Lawyers' Fund has had on the larger institutions of lawyer regulation and discipline in the Empire State. He also discussed the highlights of NCPO's relatively brief existence as a sibling-type organization to NOBC.

NCPO's Speakers Bureau consists of several NCPO members who have volunteered to help funds and colleagues anywhere in the United States and Canada. The roster currently includes, in addition to Miller, NCPO President Bill Ricker of Florida, Isaac Hecht of Maryland, Karen O'Toole of Massachusetts, Arthur Littleton of Pennsylvania, Martin Cole of Minnesota, Robert Welden of Washington State, and Kenneth J. Bossong of New Jersey.

Whether addressing a need for the most informal give and take, a formal speech, or an across-the-board consultation, the Speakers Bureau can be one of the great benefits of NCPO membership. Possible topics include funding issues, organizational structure, evaluating difficult claims, the exercise of discretion, the pursuit of restitution, publicity and public relations, and the application of policies like "last resort" and "exhaustion of remedies".

Funds everywhere are invited to contact NCPO President Bill Ricker, or any officer or director, to arrange a presentation in their jurisdictions. There is no fee, of course, for the speaker or for NCPO in providing this contribution of public service to a client protection fund or bar association. And a fund can be secure in knowing that all speakers are experienced and diplomatically sensitive to local concerns and conditions. The aim is solely to help. ■

Express Your Commitment to Professional Responsibility. Join NCPO!

Membership contributions are tax deductible: organizations ($200); individuals ($25). New memberships and renewals should be sent to NCPO's Treasurer: Isaac Hecht, c/o Hecht & Chapper, Esqs., 315 North Charles St., Baltimore, MD 21201-4325.

ALPS
Attorneys Liability Protection Society
A Mutual Risk Retention Group

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Getting the Question Right

By Kenneth J. Bossong

In confronting an issue or problem, it's frequently tempting to grasp impatiently and immediately at potential answers. To do so without first ensuring that the right or correct question is being addressed is, however, a mistake.

When lawyers err in citing cases that do not support their positions, it's usually because they have seized upon some helpful-sounding dicta in a judicial decision, without considering the actual issue before the court. Similarly, lawyers are often confronted with arguments that are both elegant and eloquent, but off the point. Sometimes this is deliberate, as when adversaries realize that the real issue cannot be won. Clever arguments on the wrong question can even be effective, particularly if no one is paying attention.

Public opinion polls have demonstrated the point for years. An increasingly skeptical public is told that a new poll was conducted with scientific rigor and is left to ponder what appear to be diametrically opposite results from some other pollster. That so many groups hire their own pollsters acknowledges the importance of determining which questions are asked and how they are asked.

Those who frame the issue take a major step toward winning the argument.

It's no different in law client protection. One of the greatest benefits that come from conversation, whether at an NCPO workshop, the ABA's national forum, over the phone or through *The Client Protection Webb*, is that we help one another get the questions right. A good example is when the discussion of a difficult claim yields the realization that the claim in question is rejected not because it lacks merit, but because a client protection fund lacks the money to pay it. "We don't pay those kinds of claims" seldom means that, "We believe that it's inappropriate, as a matter of policy, to reimburse those kinds of losses".

If a client protection fund finds itself automatically rejecting most unearned retainer claims as so-called "fee disputes", or most thefts involving business transactions as "investments", it's appropriate to analyze whether the right questions are being asked. There are more opportunities to waste time and energy on the wrong questions. Here are a few:

It's not:
Can we pay these claims?
Do we have staff to investigate these claims?
Can we borrow an investigator or secretary?
Has the claimant exhausted her remedies?
Will the bar fund us again this year?
Should we meet more than once a year?
Should we raise our claim limits?
Won't lawyers object to a fee increase?

But rather:
Do these claims deserve to be paid?
We need the facts. How do we get them?
Isn't the fund entitled to adequate staffing?
Have our subrogation rights been impaired?
Doesn't the fund deserve adequate revenues?
Who benefits from delaying reimbursement?
Are we reasonably meeting victims' needs?
How do we get the support of lawyers?

None of this is to suggest that answers to the right questions are always easy. Many problems in law client protection are financial problems in disguise, and financing problems are seldom easy. Effective advocacy for client protection funds requires vigilance and insistence in getting the question right, however. NCPO can help, not only in bringing clarity to the discussion, but also in proving a form for sharing what works in the real world.

Here's a final question: it's not, "Can our profession afford to pay valid claims to deserving victims?" No, the right question is, "Can our profession afford not to?" ■

Kenneth J. Bossong is the Executive Director of the New Jersey Lawyers Fund for Client Protection and a Director of NCPO, Inc.

First or Last Resort: Does It Really Matter?

By Victoria Rees

(Editor's note: This article was adapted from a paper presented at the International Bar Association Conference 2000 in Amsterdam, the Netherlands.)

Legal professions in most developed countries have recognized that if they are to retain public confidence, trust and the independence of the bar, all lawyers have a duty, to one extent or another, to "pay for the misdeeds of a few". This is a duty conscientiously adhered to in North America, where all of the United States and every Province has a functioning client protection fund. All recognize that these funds also serve to protect the good name of the legal profession in terms of our honesty and integrity, and provide a means to obtain "good will" from the public. Significantly, these funds also stand as a means of protection which is preferable to universal bonding in the practice of law.

Since their inception, however, numerous funds have struggled with insolvency and instability. This is attributable to various factors: high claims at a point when a fund had not yet built adequate reserves; the inadequacy of revenues from assessments or bar association appropriations; or in circumstances where a fund lacked the capacity to effectively process large numbers of claims. Some observers suggest that many funds did not begin by making a conscious decision to be a fund of last resort, but rather reached that point in order to protect the protection fund's assets.

What follows is an overview of the philosophy and rationale behind funds of "first" and "last" resort. That analysis concludes that the distinction between "first" and "last" resort client protection funds has become blurred to the point of non-existence. It is clear that most funds are moving toward the middle-ground – applying the concept of "reasonableness", as opposed to "ex-

haustion", in determining what collateral sources for recovery must be pursued by claimants, while concurrently remaining vigilant about maintaining adequate financial reserves.

I began with an examination of 24 North American and selected Commonwealth jurisdictions through a survey carried out in May 2000. The survey solicited information from jurisdictions in regards to: whether they defined themselves by way of statute, policy or procedure as a fund of 'first' or 'last' resort; whether there had been any change in this position since inception; an explanation of the rationale or basis upon which each jurisdiction had decided to take the position as one of first or last resort; and if one of last resort, what type of collateral sources of recovery claimants are required to pursue prior to making a claim.

Twenty-four jurisdictions responded from the 65 jurisdictions, for a response rate of 37%. A majority of survey respondents (67%, or 16 of 24) self-identified themselves as funds of "last resort". While perhaps surprising at first glance, when these jurisdictions were asked to elaborate on the avenues for recovery required to be pursued by claimants, many, in fact, could be more properly categorized as a hybrid. Half (50%) of the sixteen "last resort" funds reported that they apply a discretionary test of "reasonableness" in assessing what collateral sources of recovery must be pursued. That policy effectively takes a step back from the requirement that all such resources be "exhausted".

In most jurisdictions (69%), this "reasonableness" test is implemented by way of statute or in the jurisdictions' formal rules of procedure. However, five of the 16 jurisdictions reported that this test is applied in accordance with policy only, which means that the fund exercises discretion to deal with each on an ad hoc basis.

Eight (33%) of the 24 jurisdictions described themselves as funds of "first" resort. Interestingly, only three of these jurisdictions have embodied this position in their rules, with five jurisdictions giving effect to this position by way of policy or on an ad hoc basis only. Yet based on a closer examination of their survey responses, some of these so-called "first" resort funds could themselves be more appropriately classified as a hybrid of "first" and "last" resort as well.

Therefore, when one examines the practical realities, the lines in the sand erode. Both "first" and "last" resort funds, for the most part, retain discretion to either waive the requirement that claimants exhaust their remedies against collateral sources of recovery, or to require some reasonable effort to pursue obvious sources of recovery.

From the perspective of processing claims, there is no doubt that funds of "first" resort are able to process claims more expeditiously, thereby reducing the hardship caused to defrauded clients.

There is a downside, however, and that is the broader exposure to liability that "first" resort funds have through not requiring that claimants first mitigate their losses. These funds have established themselves as the primary avenue for recovery, and thus they absorb the cost of higher claims as a result. After paying claims, these funds must then embark on subrogation and recovery actions to protect against depleting the fund. Many observers point out, however, that a law society, bar association or client protection fund may be in a better position to pursue these remedies than is a law client who has sustained a significant economic loss because of a lawyer's dishonest conduct.

With respect to "last" resort funds, Kenneth J. Bossong pointed out in his influential article "Exhaustion" (see *The Client Protection Webb*, Fall 1999) that: "Requiring proof of an unsuccessful litigated collection effort can be a tremendous burden on a claimant. There can also be a sense of discomfort that a claimant is being forced to 'throw good money after bad', especially where the loss is small, or where the dishonest lawyer is clearly judgment proof." ■

To be continued in the Winter issue of *The Webb.*

Victoria Rees is the administrator of the Nova Scotia's client protection program, and a Vice President of NCPO.

NCPO Membership Grows

The Membership Committee reports that NCPO's membership continues. There are currently more than 75 individual members, and 22 state organizations represented. NCPO's full membership roll, with addresses, can be found on its web site: www.ncpo.org

According to current records, the following client protection funds and affiliated associations are members for 2000-2001. If any protection fund has been omitted inadvertently from this listing, please notify NCPO's Treasurer: Isaac Hecht at (410) 752-1169.

Law Society of British Columbia
Client Security Fund of California
Colorado Attorneys' Fund for Client Protection
Connecticut State Bar Association
Clients' Security Fund of District of Columbia Bar
Florida Bar Clients' Security Fund
Lawyers' Fund for Client Protection of Hawaii Bar
Client Protection Program of Illinois
Kansas Lawyers' Fund for Client Protection
Clients' Security Trust Fund of Maryland Bar
Client Protection Fund of Michigan
Minnesota Client Security Board
State Bar of Montana
New Jersey Lawyers' Fund for Client Protection
New York Lawyers' Fund for Client Protection
Client Security Fund of Ohio
Oregon State Bar
Pennsylvania Lawyers Fund for Client Security
Rhode Island Client Reimbursement Fund
Washington State Lawyers Fund for Client Protection
Wisconsin State Bar Association
Wyoming State Bar

Wanted

News and articles
for
The Client Protection Webb.
Future deadlines are February 1, 2001 and April 15, 2001. Snail or e-mail them to the Editor.

Profile: Law Client Protection in Minnesota

By Martin Cole

(Editor's note: this is the first in a series of profiles of the hemisphere's law client protection funds. One or more funds will be featured in future issues of The Webb. Submissions by Trustees and administrators are welcome. Manuscripts can be e-mailed to the Editor.)

As a member of the NCPO's publications committee, I've agreed to write this first office profile article for *The Client Protection Webb*. The *Webb* is a forum to exchange information and ideas. Through this series we hope to educate one another about client protection systems elsewhere, highlighting unique and unusual features which impact upon a particular jurisdiction's approach to client protection.

Although the American Bar Association's Center on Professional Responsibility publishes publishes a triennial survey of American and Canadian client protection funds, that statistical compilation tells only part of the story of what funds do. We hope this series will fill in some gaps with a more narrative approach to the same information. This initial profile will divide into a few topics: the history of Minnesota's fund, its structure and procedures, unusual features of the fund, and a few "war stories" that have made life here in Minnesota interesting, and not just cold.

History

The Minnesota Client Security Fund and Board came into existence in 1986-87. The fund is an agency of the Minnesota Supreme Court and is subject to the Court's ultimate oversight. Prior to 1986, there existed a voluntary fund operated by the Minnesota State Bar Association. Minnesota in not an integrated bar state, and the state association had limited resources which prevented reimbursement in excess of $5000 on any claim.

In 1985-86, two high-profile misappropriation cases occurred back-to-back in Minnesota, each involving an attorney who fled the state with approximately half a million dollars of client money missing. Both lawyers were disbarred and eventually did time in prison. In each matter, there were more than 20 victims. The state bar's fund had approximately $150,000 on hand and obviously could not reimburse more than a small percentage of client losses.

Instead, the bar association turned to the Supreme Court and asked it to create a new fund pursuant to the Court's inherent authority to regulate the bar, and to require a mandatory funding assessment. The bar also turned over the balance in its voluntary fund to help finance the new program. The current fund came into existence, primarily funded by a "one time" $100-per lawyer assessment, which generated $1.4 million. The Board adopted rules and held its first meeting. The major defalcation crises were resolved promptly, but there was no ongoing funding mechanism in place.

About four years later, with the fund's balance dwindling rapidly, the fund petitioned the Court to create a regular annual assessment. The Court responded with a $20 annual assessment, which has since been reduced to $17. *See* "Tightening the Purse Strings in Minnesota," *The Client Protection Webb*, January 1999.

Structure and Administration

The Client Security Board consists of seven members, five lawyers and two non-lawyers. The bar association nominates three of the five lawyer members. Board members are appointed for three-year terms, and are limited to two terms. The Board elects a chair from among its members, traditionally the senior lawyer member. The Board meets approximately every other month at the Minnesota Judicial Center in St. Paul, which is part of the State Capital complex, and home to the Supreme Court.

The Board has no office of its own or full-time employees. Instead, staff services are provided by the Office of Lawyers Professional Responsibility. By contract between the Board and the Director's Office, the staff bills the Board for their services.

The Supreme Court appoints one justice to act as a liaison with each of its court boards. Justice Edward Stringer is the court's liaison to the Client Security Board, and he frequently attends portions of the Board's meetings as an observer (an advantage to holding them in the Judicial Center!).

The Board does not handle the fund's assets, or make investment decisions. By statute, the fund's assets are managed as an account in the state's general treasury. Investment decisions are subject to state regulations, which means a safe but low return. It also means that claimants whose claims get approved have to wait several weeks for payment by the state.

The Board maintains an Internet website, as part of the Supreme Court's comprehensive site. Claim forms and the Board's rules are available, there is an FAQ section (which basically is the same as the Board's printed brochure), a complete list of attorneys against whom claims have been paid (showing number of claims paid, amount, the attorney's former city of practice and disciplinary disposition) and copies of the Board's annual report and several articles written about the Board. The Board issues a press release after every meeting which details awards that have been approved, without naming claimants. The release is also posted on the Board's website.

The Board has a computerized record-keeping system and database. Most of the statistical information formerly maintained by hand is now computerized and statistics can be generated fairly easily for purposes of the Board's Annual Report, or upon request for education seminars and the like. The Board budgets an amount for enhancements each year to keep the system current and up-to-date. ■

To be continued in the Winter issue of *The Webb.*

Martin Cole is the Assistant Director of the Minnesota Client Security Fund and a Director of NCPO, Inc.

News In Brief

Judicial Review in New Jersey

New Jersey's intermediate appellate court ruled on July 10, 2000 that the state's trial courts lack subject matter jurisdiction in disputes involving claims to the New Jersey Lawyers Fund for Client Protection. In dismissing an action brought by a mortgage company seeking reimbursement for a an admitted theft of $694,000 in a residential real estate sale, the Appellate Division observed that the fund's rules do not authorize judicial review, and that review in the state's trial courts would be inconsistent with the Supreme Court's constitutional authority to regulate the New Jersey bar. *GE Capital Mortgage Services, Inc. v. New Jersey Title Insurance Co., et al.*

Alcohol and Substance Abuse

In October 1999, Judith S. Kaye, Chief Judge of New York State, appointed a 21-member commission to produce a statewide action plan which addresses pressing public and professional concerns about alcohol and substance abuse within the legal profession, the judiciary, and among law students. The Trustees of New York's client protection fund urged the Chief Judge to authorize the project, which is near completion. The commission's action plan is expected to be released in January 2000, and recommend new and revised court rules in three areas: the establishment of a permanent statewide court agency to provide oversight and funding to local lawyer assistance programs; wide-ranging educational efforts; and modifications to the state's lawyer regulation and discipline process to help lawyers, judges and law students, as well as to protect the public from the consequences of alcohol and drug abuse.

Massachusetts Fund Gets New Chairman

Thomas G. Sitzmann of the Boston law firm of Goulston & Storrs, P.C. is the new Chair of the client protection fund in Massachusetts. Mr. Sitzmann succeeds Mark I. Berson, a member of the Greenfield (MA) law firm of Levy Winer, P.C.

Maryland Fund Gets New Chairman

Attorney Richard Reid of Towson has been elected Chair of Maryland's Client Security Trust Fund. Mr. Reed succeeds the retiring Victor Laws, long-time Chair of the Maryland fund and a familiar face at the ABA's annual national forums.

Another Twist in Restitution

A Washington State attorney was convicted of grand larceny of client funds. One victim had lost $143,000, which she had recovered in a civil action. But the client had to pay legal fees of $50,000 to secure that recovery. At sentencing, the criminal court ordered the dishonest lawyer to pay $50,000 in restitution to the victim. The dishonest lawyer appealed to the Washington State Court of Appeals, arguing that the so-called "American Rule" requires clients to foot their own legal fees. Held: the restitution order is correct. The American Rule does not apply to criminal sentencing proceedings. *State v. Christensen* (4/24/00).

Tough Love

The Colorado Supreme Court has reaffirmed its policy that disbarment is the presumptive penalty when a lawyer knowingly misappropriates law client money. The Court overturned a disciplinary panel's determination suspending a lawyer for three years upon proof of numerous financial misdeeds. *Matter of Cleland*, 5/22/00.

More Tough Love

The Kentucky Supreme Court has reprimanded a lawyer who billed her former lover $73,000 for unspecified legal services which she claimed were provided during the last three years of a 15-year relationship. The lawyer was unable to explain the basis for her bills. The Court also ordered her to pay all costs related to the disciplinary proceeding, which it calculated to be $9.04. *Matter of Yeager* (6/15/200).

Money Matters

Membership dues for the California Bar Association next year has been fixed at $395. California's Governor and Legislature reached agreement on the measure in July. California's client protection fund will receive $40 from the annual assessment.

Know Your Escrow Agent

An attorney in Georgia arranged for a client to entrust $200,000 from a real property transaction with an escrow agent for the purpose of avoiding a capital gains tax. The agent fled the country with the client's escrow, among others. The Georgia Court of Appeals holds that the client can sue her attorney for his failure to verify the escrow agent's identity, credentials and trustworthiness. *Williamson v. Abellera* (7/7/00).

Mental Illness and Client Protection

A divided Illinois Supreme Court holds that a lawyer's mental illness alone does not justify a disciplinary agency's recommendation that the lawyer be required to undergo medical treatment and monitoring. By the time of the disciplinary hearing, the lawyer was no longer incapacitated and was being treated for his disability. The Court noted also that the lawyer had practiced for more than 30 years without complaint. *Matter of Eckberg* (7/6/00).

Post-Disbarment Blues

A dishonest lawyer in Hawaii "settled", without his clients' consent, a personal injury action for $25,000. Without returning the necessary settlement documents, he absconded with the $25,000. He was disbarred by the Hawaii Supreme Court and a trustee was appointed to inventory his files. Mean-

(cont'd. on page 8)

NCPO Meets in New Orleans

By Georgia Taylor

NCPO's Third Annual Meeting was held June 4, 2000 in New Orleans with 27 members attending. The two-hour meeting resulted in amendments to the By-Laws, the election of officers, and various Committee assignments. NCPO now has the following Committees: Nominating, Finance, Membership and Publications. We also have a Speaker's Bureau.

Several research projects were discussed, including an empirical study on the nation's funds, the development of minimum standards for client protection funds, and the drafting of a model rule for the appointment of custodial receivers.

Several outreach possibilities were also discussed, including a request to the National Conference of Chief Justices to make a presentation at one of their meetings, publishing articles about law client protection in the Georgetown Journal of Legal Ethics, and approaching the National Judicial College for a position in their curriculum.

The members also discussed NCPO's regional round tables, increasing NCPO's membership, and a liaison relationship with the National Organization of Bar Counsel. ■

Georgia Taylor is administrator of the law client protection fund in Nevada, and the Secretary of NCPO.

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

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News *(cont'd. from page 7)*

while, the attorney for the defendant sought to enforce the settlement in the trial court. The clients objected, and the trial court ordered the trustee to arrange for the discontinuance of the action and the defendant's release. The trustee appealed to the Hawaii Supreme Court, which vacated the trial court's order. The Court explained that court-appointed trustees and custodians do not have authority to represent law clients in their litigation. *Matter of Cusmano* (8/1/00).

Massachusetts Fund Rewards Public Service

William J. LeDoux, deceased, served on the Board of the Bay State's fund for 10 years, seven years as Chair. To honor the excellence of Mr. LeDoux's contributions to professionalism and the protection of clients, the Chief Justice of the Massachusetts Supreme Judicial Court annually presents an award in his name to a lawyer who has provided outstanding legal representation to a claimant. According to fund officials, the public award ceremony provides an opportunity to promote public confidence in the integrity of the legal profession. ■

NCPO Lands in Nova Scotia

Add Canada to the growing list of NCPO workshop venues. Victoria Rees, administrator of Nova Scotia's client protection program, and NCPO's Vice-president for the Canadian Provinces, hosted the gathering on a golden October day in Halifax. Represented were protection fund trustees and administrators from Ontario, Newfoundland, Prince Edward Island, New Brunswick, Nova Scotia, Colorado, Florida, Massachusetts, New York, New Jersey, Maryland, the District of Columbia, and Minnesota.

The day-long event began with panel discussions on the mission and progress of NCPO, led by President Bill Ricker and Isaac Hecht; and a report by provincial law society administrators Heather Werry (Ontario), Peter Ringrose (Newfoundland), Michele Carrier (New Brunswick) and James Wyatt (Prince Edward Island) concerning developments in lawyer regulation in the Canadian Provinces, particularly the rigorous auditing of lawyer trust accounts as a safeguard against lawyer theft.

Also, a survey by Ken Bossong of American and Canadian judicial decisions related to law client protection funds; a discussion led by Fred Miller focusing on policies and procedures ("hurdles") which impede the responsiveness of protection funds to victim needs; a provocative presentation by Darrel Pink of Nova Scotia's Barristers Society speculating on the impact of Internet technology on lawyer fiduciary practices; and a discussion featuring Victoria Rees and Eric Seiff of New York and dealing with the predictability and prevention of lawyer theft through the development of risk profiles. ■

www.ncpo.org

Visit NCPO's website. Resources include NCPO's By-laws, rosters of officers, directors and members, all issues of *The Client Protection Webb*, a national directory of client protection funds; the text of NCPO's **Bibliography** of client protection cases and writings, summaries of important judicial decisions, current and recent news about NCPO events, and the ABA's Model Rules for Client Protection Funds.

In Memorium
Gilbert A. Webb, Esquire