

# The Client Protection Webb\*

A Publication of the National  
Client Protection Organization

January, 2016

## President's Corner:

### ***New Year Means New Initiatives for NCPO***

*By Michael J. Knight, NCPO President, Deputy Counsel, NY Lawyers' Fund for Client Protection*

Happy New Year!

2016 promises to be an exciting year as we prepare for the next Regional Workshop in Detroit, Michigan on September 26-27. I want to remind all members to take advantage of our Workshop Assistance Program which was established by NCPO to assist members of NCPO in attending and participating in NCPO sponsored workshops and the annual ABA Client Protection Forum. The workshop assistance award is assessed upon financial need. The maximum award to be granted is \$1,000 for each event. The award recipient will also receive a waiver of the registration fee to the NCPO workshop. Of course, details are on our website!

Past President, Mike Miyahira has updated the NCPO Speakers' Bureau brochure - this is also posted on our website. Members of the National Client Protection Organization possess a



huge body of knowledge and experience when it comes to client protection matters. We are more than happy to share what we know....with anyone! We would be happy to speak before your Fund's trustees, your Bar Association, your Court, and even your law schools. Just get in touch directly with the speaker of your choice. Their contact information is listed in the brochure. And remember, **there are no speaker's fees.** NCPO underwrites all travel expenses for its speakers.

Finally, NCPO is seeking nominations for its 13th annual presentation of the Isaac Hecht Law Client Protection Award at the ABA's 32nd

Client Protection Forum to be held in Philadelphia, Pennsylvania on June 3-4, 2016.

Nominations for the award should identify the nominee; describe the accomplishments, contributions or initiatives of the nominee, and include relevant and helpful supporting documentation. Please submit nominations electronically to either of the Co-Chairs of NCPO's Nominating Committee: Janet Moss, [tonimoss@aol.com](mailto:tonimoss@aol.com) or Janet Green Marbley, [janet.greenmarbley@sc.ohio.gov](mailto:janet.greenmarbley@sc.ohio.gov). **The deadline for submitting nominations is April 1, 2016.** Additional information may be obtained on NCPO's website at [www.ncpo.org](http://www.ncpo.org).

**Thank you for being a part of NCPO!**



# NCPO “On the Road Again”

Mark Your Calendars for Brotherly Love and The Motor City



NCPO members are invited to attend both of 2016's networking and educational opportunities, hosted by two of America's greatest cities.

On June 3 and 4, 2016, the Loews Hotel in Philadelphia, Pennsylvania will be the site of the 32<sup>nd</sup> National Forum on Client Protection. In addition to the traditional “Town Hall” and “Difficult Claims” workshops, session topics include “Client Protection

Implications of Limited Scope Representation” and “Globalization of Legal Practice and Client Protection,” among others. To register, go to the ABA page at [http://www.americanbar.org/groups/professional\\_responsibility/events\\_cle/32ndnational\\_forum/forumhomepage.html](http://www.americanbar.org/groups/professional_responsibility/events_cle/32ndnational_forum/forumhomepage.html).

On September 26, and 27, 2016, Detroit Marriot Renaissance Center will host

this year's NCPO Regional Workshop. The workshop is an opportunity to compare notes on the latest in client protection. Sessions are designed to “compare and contrast” practices, trends, and challenges in different jurisdictions so that those in the field can best serve the profession and public. To register, visit the NCPO website at [www.ncpo.org](http://www.ncpo.org).

**Did you know.....***that the clients' security movement did not begin in the United States? Like so much in our legal tradition, clients' security committees, boards and funds originated in the British Commonwealth countries. During the last few years of the 19<sup>th</sup> century, continuing through the early 1920's, law societies in England, Australia and New Zealand held extensive discussions about different varieties of clients' protection programs. Those discussions took place against a backdrop of heavy client losses due to law firm bankruptcies, a stock market crash and the then-common practice of comingling client and firm accounts. In 1929, New Zealand created the Solicitors' Fidelity Guarantee Fund. Australia followed suit in 1930, as did Alberta (Canada) in 1939 and England in 1941. Scotland joined the ranks in 1949 and Ireland in 1954. In January, 1959, Vermont created the first clients' protection fund in the United States. (Reprinted from the Fiscal 2015 Annual Report of the Massachusetts Clients' Security Board).*

# Thanks for Your Service

## A Retrospective On the Client Protection Family

By Lindsey Draper

*Editor's Note: Lindsey Draper served as a Circuit Court Commissioner for Milwaukee County, Wisconsin, for over thirteen years. Since his retirement in July, 2006, he has worked for the Wisconsin Office of Justice Assistance where he currently serves as the Wisconsin Disproportionate Minority Contact Coordinator and part-time Compliance Monitor. Those of you who have attended NCPO Workshops and ABA Forums have probably been inspired by Lindsay's remarks that remind us of the impact our work in the client protection field has on so many. The following essay brings some of these reflections to print to start off the New Year.*



s end-of-the-year summaries of significant highlights (or lowlights) of **the previous year are noted, we are**

often reminded of the clients with whom those in the Client Protection world have dealt as a result of the “falls from grace” or other circumstances that have brought the attorneys with whom they are connected to our attention. These summaries and the conversations that result provide an opportunity to again acknowledge and say “thank you” to the many members of the Client Protection family who have dedicated themselves to upholding the name and honor of the legal profession and to, as much as permissible under the rules of their respective Funds, provide remedies and recompense to those who have been injured by attorneys’ actions.

From the time, as a member of the Wisconsin Lawyer’s Fund for Client Protection, I had the opportunity to attend the forums of the Standing Committee, and then, later after being introduced to the work of the National Client Protection Organization, I had the chance to meet additional members of the Client Protection family, I have made one observation that I believe deserves regular acknowledgement : a very committed and dedicated group of volunteers and employees make remarkable

efforts to assist those who are in need of legal services.



My first contact with the Client Protection world involved the Wisconsin Fund and seeing the volunteers who, on a regular basis, take time from their work and personal lives to not only prepare for meetings through the review of Fund rules and materials, but travel to and participate in meetings at which the various claims that have been submitted are reviewed. What immediately became apparent was that, prior to the committee members receiving the materials, the case materials had been organized and reviewed by Bar or other staff members, and in a number of instances, multiple communications and investigations occurred that made the work of

*Continued on the next page --*

## *“Thank you” - continued*

the committee streamlined and more efficient.

Over time, attendance at the various forums allowed me to learn of the work of the Funds of other states. The balance of the roles of trustees as caretakers of the Funds and enforcers of the guidelines established by the creating bodies of the respective Funds with the vision of restoring injured clients to “wholeness” introduced me to discussions that helped me understand the importance of sharing the work of our respective communities with each other. Noting the work of various Funds and organizations in the effort to create rules and protocols that assisted in protecting clients was one of the more important benefits of participating in the forum and conference “development opportunities.”

When I left the bench in 2006 and retired from Milwaukee County service, I made a personal commitment to never miss an opportunity to acknowledge the often unsung efforts of those who worked to make the lives of others better. In the years I worked in the courts, I often saw public servants who regularly heard discussions of their “failings,” but rarely received acknowledgment of their hard work and successes. I promised that I would try to note those whose work goes without recognition.

It is largely because the members of the Client Protection family do this work without any desire for recognition but because of a wish to make the lives of clients better that so little understanding of and recognition for their efforts occurs. I have been fortunate, as Chair of the Standing Committee on Client Protection, to have had the chance to share my thoughts with some members of the “family.”

I appreciate this additional opportunity to, on behalf of the clients who have been assisted by the efforts of your respective Funds, express appreciation for your help. Whether it was a client who never came to your attention because payee notification was in place or a client whose stolen trust funds were partially restored due to an approved award, victims of lawyer misconduct or other behaviors are better off through your efforts.

In addition to the individual clients whose lives have been improved, the legal profession itself has benefited from your work and the sacrifices of individual trustees, Fund employees and the lawyers who contributed to the Funds. Whether it is one of the Funds that did not pay out due to no claims being filed; one which had to apportion the awards it was able to make; or one which managed to make every client with an approved claim whole, there are numerous reasons to express appreciation.

For all those reasons, I’d like to start this year off with one additional reminder that, on behalf of those whose lives you have benefited through your deliberations and work; on behalf of the other members of the Client Protection family who have learned from you and your willingness to share ideas and lessons gleaned from your years of experience; and on behalf of many whose contacts with your Funds you can’t remember – but who will never forget you – I again end with *“thank you, so very much!”*





# Funds in Motion – News from the Front Lines

*Fifteen jurisdictions reported on their respective states of affairs at Town Hall held in Little Rock, Arkansas, on September 28, 2015. Here's a round-up of what's happening in some of NCPO's member funds across the country. Please let us know what's going on in your state. Submissions can be made to newsletter editor Mike McCormick at [Michael.McCormick@judiciary.state.nj.us](mailto:Michael.McCormick@judiciary.state.nj.us), or better yet, come to Philadelphia on June 3, 2016, and tell us yourself!*

**Arkansas** was happy to report that, with only fifteen claims filed so far in 2015, they were experiencing an “all time low” in claims, and had been able to cancel a few of their Board meetings. A welcome dividend of the slowdown was the Fund’s ability to amass a \$1 million reserve for the first time in its history.

**Delaware** still has no pending claims and a \$5 million reserve – if only we were all so lucky!

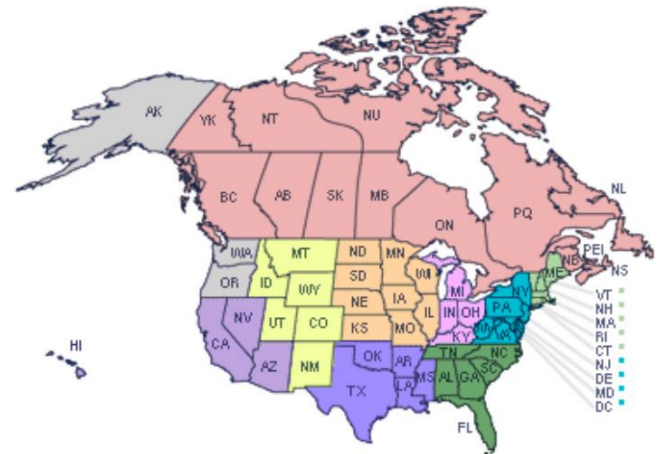
**Hawaii** welcomed a new administrator, Charlene Norris, and asked its Supreme Court for guidance on whether they can decide claims by email.

**Illinois** has been hit with five major respondents, each with claims alleging losses in excess of \$1 million. Over 300 claims have been filed against a single bankruptcy attorney. In an effort to help victims, the Fund has reached out to about 1,300 potential claimants to tell them about the Fund and the claim process. With a reserve of \$4 million, and annual revenue of \$1.6 million, Illinois is facing the prospect of \$6 million in claims over two years, and may need to prorate its awards.

**Iowa** is also busy, facing between \$22 million and \$28 million in losses caused by a single respondent who stole the money over an 18 month period, then committed suicide. So far, 88 victims have been identified, although not all of them may have compensable claims with the Fund. The respondent apparently promised to invest his victims’ money, but then simply spent the funds to support a lavish lifestyle.

**Maine** has had nine claims filed with the Fund this year. The Fund is concerned that a respondent’s ability to claim a “disability suspension” instead of being disbarred contributes to a bad public perception of attorneys.

**Massachusetts** reported that it is in the midst of its first ever audit by the State Auditor’s Office. Previously, the Fund reported its financial condition only to the Court, which has not been audited by the State since sometime in the 1700’s. Karen O’Toole, Fund Administrator for the past 26 years, said 2015 was also the first year in which the Fund was permitted to have its own bank account, separate from any other government agency. The resulting autonomy has allowed the Fund to retain an \$8 million balance.



**Michigan** has retained a collection firm to recover money from respondents, and has doubled its subrogation receipts as a result. It is also working on web page improvements, and clarifications to its appeals process.

**New Jersey** is preparing for mandatory online attorney registration, set to begin in 2016. It is also completing payments to victims of respondent Michael Kwasnik, thanks to a Supreme Court approved one-time increase in the respondent maximum to \$12 million, and an agreement with the Pennsylvania Fund which contributed \$3.8 million. After payments to the

*Continued on the next page -*

## Funds in Motion (continued) -

Kwasnik claimants are completed, the Fund will retain a reserve of approximately \$17 million.

**New York** is being sued by a respondent for the first time in its history, who is arguing that the Fund should be subject to the provisions of the Freedom of Information Act. It is experiencing an increase in claims arising from “virtual practice” lawyers who don’t have a physical office.

**North Carolina** is attempting to deal with a potential crisis caused by the rejection of its request to increase the annual attorney assessment from \$25 to \$35 last year. The Fund now has just \$200,000 on hand, but \$475,000 in claims, and is preparing to return to the Court to ask for a special assessment.

**Ohio** has seen an influx of unearned retainer claims. Its Supreme Court has held that an attorney’s failure to return that which has not

been earned is dishonest conduct. Claims against deceased and retired attorneys.

**Oklahoma** is struggling to increase its annual appropriation from the State legislature from \$100,000 to \$175,000. The Fund has been forced to prorate its awards during each of the past three years: Last year it was able to pay just 50 cents on the dollar, and that was up from 25 cents because of a special appropriation granted by the Court.

**Pennsylvania** has over 500 pending claims – a Fund record - and is being sued by a bank alleging that the Fund is not processing claims quickly enough. The average claim is disposed of in about four months’ time.

**Wisconsin** has fewer new respondents, but the alleged losses are growing larger. Its Supreme Court has told the Fund not to ask for more money, so the Fund is “living assessment to assessment.”

## NCPO Sets Goals for 2016

As part of its strategic planning process, NCPO has been exploring ways it can expand its services and activities. To date, members have identified several areas where NCPO resources could be focused:

- Help NCPO members prepare for future changes to the legal profession.
- Maintain a resource group or committee that can assist any client protection fund with guidance, and assistance with difficult issues that a fund might face.
- NCPO members should be encouraged to share their experiences with difficult issues and challenges, so we can learn from their experiences. Also, it will also provide an opportunity for other NCPO members who have faced these challenges before, to share their experiences as well.
- NCPO should facilitate the sharing of valuable contacts and connections made that are beneficial to client protection funds.
- NCPO should assist client protection funds to take advantage of social media technologies to aid the effort to inform and educate the public as well as other client protection funds.

Please let us know how you would like to see NCPO in action. Contact Mike Miyahira, chair of the Hawaii Lawyers’ Fund for Client Protection at [mike@bus-strategies.com](mailto:mike@bus-strategies.com).



# Signs Your Lawyer is Taking You Down the Wrong Path

By H. Dennis Beaver, Esq.

Lawyers are required to act competently and honestly, but how is a client to know when something's wrong? Right now you're probably thinking, "What are the signs that I've got a problem with my lawyer, and what should I do about it?"

## First red flag

To Los Angeles-based, attorney malpractice specialist Ron Makarem, a failure to call the client back is incredibly significant. "Anytime there is an inability by a client to communicate with the lawyer, this is the first red flag. A client should become concerned when:

- The attorney does not return phone calls in a reasonable amount of time, and;
- In a meeting with the client, if the lawyer is being very short, taking phone calls, trying to re-schedule, not giving enough time to the client, does not listen, ignores what is asked or is not answering questions.

"Not being diligent in communications with clients is when mistakes happen. While there can be reasons for a delay — such as being in trial or out of town — it is reasonable to expect a return call within 24 hours or a quick e-mail which communicates, 'I got your message. I'll call back as soon as I can and you will have all my attention.'

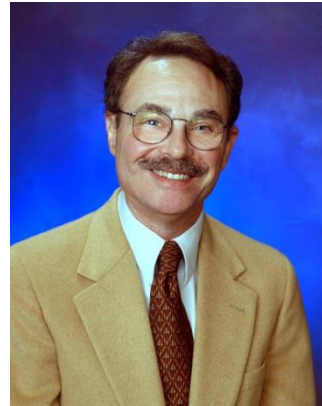
"This is reassuring to clients," he underscores.

## Excuses, avoiding clients

Failing to promptly return a client's call is the leading complaint made to every state bar in the United States. "Frequently an indication of substance abuse, problems with the lawyer's personal life or mental health issues, avoiding clients and making excuses is often an attempt to hide dishonesty, or legal malpractice, such as statute of limitations or filing deadlines issues," Meloch points out.

To Makarem, "When your lawyer fails to call you back, you've got to be concerned; you need to act.

Send an e-mail or letter to the lawyer, documenting that you have not received a return call despite having left several messages, and ask for a response by a certain day.



"Do this once or twice, and if those phone calls and follow-up e-mails are not responded to, it is time to part ways with that lawyer. The common mistake clients make is feeling that it is too difficult to switch attorneys. But it is not, and should occur more often than it does."

"These red flags occur all the time and clients do not understand how easy it is to change attorneys. It's a sign of things to come when your lawyer doesn't call you back and you don't know the reasons why. In trial or on vacation might be valid explanations, but when you don't get that communication, it is time to get a new lawyer," he maintains.

## In trouble with the bar?

Makarem believes in the importance of interviewing more than one attorney before reaching a hiring decision. "It is not a good idea to hire the first lawyer who you interview," he cautions, adding, "Because you will benefit from hearing different legal opinions."

We agree with that recommendation, especially if you hear, "Your case is a slam-dunk! We can't lose!" Of course there is no such thing. Even what seems to be a winner of a case can be lost. Lawyers cannot legally guarantee a result.

"Ideally, you want to meet in person with a minimum of two lawyers, or spend some time on the phone discussing your case with attorneys who

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## “Signs” - continued

routinely handle your type of a matter. Some lawyers do not charge for a consultation, while others do, and they often agree to waive that fee if they are not hired,” Makrem concluded.

In most states, if a lawyer has been disciplined by the state bar, this information is a public record and available online. In California, visit

[www.calbar.org](http://www.calbar.org), in the Attorney Search box just type in the lawyer’s name and you’ll find out the status of their license to practice law, as well as any disciplinary action taken against them.

Finally, “Be a Smart Client,” by paralegal Ellen Hughes is a terrific resource for anyone hiring a lawyer. Her website is: [www.beasmartclient.com](http://www.beasmartclient.com). Time there is time well spent in addition to [www.makaremlaw.com](http://www.makaremlaw.com).

*Dennis Beaver practices law in Bakersfield, California. His article - one in a series on client protection topics – was originally published in the Eureka Times Standard on 12/29/15, and is reprinted here with permission. He welcomes comments and questions from readers, which may be faxed to 661-323-7993, or e-mailed to [Lagombeaver1@gmail.com](mailto:Lagombeaver1@gmail.com).*

## Practice Trends: “Limited License Legal Technicians”

One of the topics at the NCPO’s workshop in Little Rock presented Washington State’s experiences with a new wrinkle in the legal profession: “limited license legal technicians” (LLLT’s). Presenters were Steve Crossland and Paula Littlewood, president and executive director, respectively, of the Washington State Bar Association.

While it may be hard for some to imagine, there are states where there is a shortage of lawyers. Washington State discovered that 80 percent of litigants go without legal representation in civil matters because they cannot find a lawyer to take their case. Of these, 50% are middle income

Americans. This is despite the fact that Washington State currently has 37,000 lawyers to service its population of just over seven million.

The challenge is likely to grow in the foreseeable future, since law school admissions are down 50% in the state, and 25% nationally, since 2010.

Washington believes LLLT’s are a better way to fill the void than “Legal Zoom,” “Rocket Lawyer,” and other internet self-help sites that have sprung up in recent years. So far, LLLT’s are only licensed to assist clients in family law cases. They can’t appear in court, negotiate or convey a client’s position to another party. They can, however, help to prepare documents, explain

the court process to clients and give legal advice.

The regulatory scheme established by Washington State for LLLT’s has been the product of consultation between the Court and Bar. At a minimum, candidates must be 18 years of age, have an associate’s degree, and provide proof that they are financially responsible. They are required to pass three separate exams and complete 3,000 hours of experience under the direction of a licensed attorney. Once licensed themselves, they must maintain malpractice insurance and complete ongoing CLE requirements. They are subject to discipline, and a client protection fund specifically for LLLT’s is “in the works.”



# Lawyer sentenced to prison for theft from dead woman's estate

By Michael P. Mayko

Thursday, January 14, 2016

NEW HAVEN — For years, Peter M. Clark used Miriam Strong's \$4 million estate as his personal checking account. When he needed money to repay other client accounts, he just reached into Strong's while serving as its co-executor.

"All you needed to do was look at the checks," said Clifford D. Hoyle, the retired probate judge appointed to untangle the estate of Strong. Hoyle said some of the checks Clark drew on the Strong estate "practically matched those" paid into his other client accounts.

Since Clark's guilty plea to mail fraud in October, Hoyle was able to convince the state bar's

**Connecticut Client Security Fund** to refund the victims more than \$1.8 million. He said that money is expected in about eight weeks. With it, Hoyle said, he hopes to make each of the 22 victims "85 to 90 percent whole."

Clark will have to repay the fund, plus the \$60,000 he took from Strong in legal fees, as well as Hoyle's expenses.

*Reprinted from the CT Post.*



## Difficult Claims (hopefully) made easy

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Sally and Joe were engaged to be married in 2010 and reserved a hall in which to hold their wedding reception. But then Sally lost her job, the couple concluded they could no longer afford the hall, and cancelled their reservation, forfeiting their \$2,000 deposit. The hall owners, filed suit against Sally and Joe because they claimed they had been unable to rent the hall to another party. A contract provision provided that, in the event another event could not be found for the date originally reserved by the claimants, the claimants would be liable for the full amount of their contract - \$15,000.

Joe had known the Respondent for a number of years because they lived in the same neighborhood, and Joe occasionally drove the elderly Respondent to and from his law office. The claimants consulted the Respondent and paid him \$1,000 to defend them against the catering hall's lawsuit. Unfortunately, the Respondent died nine days later, at the age of 86. He had not taken any action on the claimant's behalf.

Sally called the Respondent's secretary and was told that nothing had been done on their case. The Respondent, who was unmarried and had no children, had not left any estate. Sally said they never received a refund of their \$1,000. They retained another lawyer, paid him another \$1,000, and the case settled for \$3,000.

Mail to the Respondent's last known address was returned as undeliverable. There are no other claims against the Respondent, who was recognized in 2001 as "Lawyer of the Year." There is nothing to suggest that the Respondent had any intent to misappropriate the claimants' retainer at the time he accepted it. Nor is there any pattern of dishonest conduct by the respondent. Nonetheless, he was not able to complete the work for which he had been paid because he died, and left no funds to make a refund to the claimants when he did so. Respondent's bank records reflect just \$3.00 left in the Respondent's attorney business account at the time of his death, indicating that the fee paid by the Claimants had been removed and, most likely, spent.

How would your Fund handle this claim? Assume that the jurisdiction does NOT require that unearned retainers be placed in an attorney's trust account until earned.

# HAPPY BIRTHDAY MICHIGAN!

## CLIENT PROTECTION FUND CELEBRATES GOLDEN ANNIVERSARY

The Client Protection Fund of the State Bar of Michigan will celebrate fifty years of law client service during February, 2016. The Fund was established by the State Bar of Michigan's Board of Commissioners on February 25, 1966. Since then, it has received over 2,200 claims and paid over \$4 million in awards. Until 2003 the Fund was financed by an appropriation from the State Bar of Michigan which was a line item in the general State Bar budget. Following an initial appropriation of \$10,000 in 1966, annual appropriations of \$40,000 were made to the Fund until 1975, after which funding was allocated on the basis of five percent of the State Bar membership dues. From 1981 to 2004, the State



Bar made a varying annual appropriation to the Fund. Beginning with the 2003-2004 fiscal year, financing of the Fund changed to a direct annual assessment of \$15.00 from each attorney on active status and \$7.50 from each attorney on inactive status. As one grateful claimant said: "Just wanted to thank you all personally for all that you do and have done for me. I never lost my faith in you, even when people told me I'd never get my money back. I do know that this procedure is very time consuming and with patience it all works out. So to each and every last person that plays a role at the State Bar of Michigan, Thank You All....Even when I was annoying with my calls you were still very nice and professional."

### **Congratulations Michigan!**

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*\*The Client Protection Webb is published in memory of Gilbert A. Webb, Esq., who served as Assistant Client Protection Counsel for the American Bar Association's Center for Professional Responsibility. Mr. Webb was dedicated to protecting the welfare of clients victimized by their attorneys and served as an editor of the ABA's first client protection newsletter. Submissions to the Webb are always welcome. Please send them to the editor, Mike McCormick at [Michael.McCormick@judiciary.state.nj.us](mailto:Michael.McCormick@judiciary.state.nj.us).*

