

# The Client Protection Webb\*

A Publication of the National  
Client Protection Organization

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## NCPO IS READY FOR 2019

### Vancouver & Princeton to host NCPO in the New Year

Start planning now to connect with client protection professionals from across the U.S. and Canada in 2019. First, the ABA's Center for Professional Responsibility and the Standing Committee on Public Protection in the Provision of Legal Services will sponsor the **35<sup>th</sup> National Forum on Client Protection on May 31 - June 1, 2019 in Vancouver, British Columbia.**

The 35<sup>th</sup> National Forum will be held at the brand new JW Marriot Parq Vancouver, a luxury hotel located downtown in the heart of the entertainment district on the scenic False Creek waterfront.

Planning for the Forum is well underway. Topics in development include: a discussion of age



impairment and its relationship to misappropriation of client funds; succession planning as a client protection mechanism; lawyer well-being, client losses, and claims to lawyers' funds for client protection; and innovative

methods to investigate claims. The Committee will also present its Annual Town Hall Meeting and the NCPO will present its Annual Difficult Claims Workshop. Registration will open in January, so look out for the announcement.



Next, on September 24 – 25, 2019, **NCPO will hold its annual fall workshop in Princeton, New Jersey** at the historic Nassau Inn, just across the street from Princeton University. Panels will explore the potential uses of custodial receivers to locate and recover assets, as well as what to look for when conducting attorney audits. "Reasons or Excuses" will get behind a respondent's thinking as a means to better address fund claims.

The Workshop coincides with the New Jersey Fund's 50<sup>th</sup> Anniversary, and will feature a gala dinner at the landmark Nassau Club, which counts U.S. Presidents Woodrow Wilson and Grover Cleveland as past members.

# ***Time Passages...***

*Editor's Note: Two long-time NCPO members - Tim O'Sullivan of New York, and Bunny Christopher of Delaware - celebrated their retirement in 2018. Here's a look at their experiences in client protection, and a big "Thank you" for all they have done to help their respective funds, as well as NCPO.*

## **O'Sullivan Leaves New York Fund Strong & In Good Hands**

These days Tim O'Sullivan is hiking, biking, kayaking and preparing to tour Europe. Until just a few months ago, though, he was "in the trenches" – so to speak – as the long-time Executive Director of the New York Lawyers' Fund for Client Protection. Tim started his legal career at the Fund while still a second year law student at Albany Law School when then-director Fred Miller hired him as a law clerk. It wasn't long before Tim was a full-time counsel to the Fund, taking the place of another attorney who left after his request for a raise was denied.

Tim worked alongside Miller for fourteen years, from 1986 through 2000. Along the way, Fred gave him the task of hiring law school students to give them the same opportunity he had enjoyed as a student.

One of clerks Tim hired was Sheila Donovan, who served her term and moved on to a position with the Federal Highway

Administration. About a year after Sheila left the Fund, however, she and Tim were married. Today the happy couple looks forward to their second child's graduation from college in the spring of 2019.

After Miller's retirement in 2000, the Fund's Trustees named Tim executive director. His greatest challenge at the time was filling the shoes of one of the national leaders in the field of client protection. Tim is proud of the work accomplished by an

excellent staff, which he credits with helping to guide the Fund's Trustees and keeping New York's Fund as one of the foremost in the nation. The Fund has consistently been able to give prompt and meaningful reimbursement to law clients.

Recently, a new – and welcome – revenue stream has also contributed to the Fund's success. For years, court rules have assigned to the New York Fund the responsibility for safeguarding unclaimed escrow monies.



**Tim & his wife Sheila hiking in the Appalachian Mountains this summer.**

The Fund's search efforts have often located the missing clients and returned several million dollars to the escrow beneficiaries. In many instances, however, the escrow funds remain unclaimed. Tim and his Trustees worked with the court system to allow the Fund to utilize the escrow money for which no client owner could be found. This new revenue is a significant boost to the Fund, and is placed in the Fund's special revenue account dedicated to financing the New York Fund's operations and awards of reimbursement.

The ability to utilize abandoned escrow monies is just part of the reason the Fund is in a very good financial position. Tim is justifiably proud of the role he played in getting the Fund to where it is today.

Fred Miller also hired Mike Knight – to take

Sheila Donovan's place. Mike worked alongside Tim for 28 years and has now succeeded him as executive director. Tim said he was "blessed" to have Mike with him and lead the New York Fund into the technological age. The Fund now has a website and online claim form, among other advances, which helps to make it more accessible to potential claimants.

Tim said he has no plans for now. "Life is too short. No one ever said 'I wish I spent more time at the office.'" He is determined to enjoy an active lifestyle "while still relatively young and able." As a retirement gift, the Fund's Trustees presented Tim with a kayak which saw a great deal of action this past summer. Next summer he is looking forward to biking the Erie Canal, along with that trip to Europe with his family.

We wish him many happy, healthy years!

## **Delaware Director Answered the Call -- Bunny Christopher to retire after 12 years at the helm of Delaware Fund**

It was a call Bunny Christopher never expected. Since joining the Delaware Judiciary in 1987, Bunny had worked as an assistant to the Hon. William T. Allen, Chancellor, in the Court of Chancery, and



then in the Supreme Court of Delaware as an assistant to the Hon. Myron T. Steele, Chief Justice. Both were long and productive professional relationships. Yet when her phone rang one morning in

2006, she could never have predicted it would lead to twelve years as executive director of the Delaware Lawyers' Fund for Client Protection. Without explanation, the court administrator told her to report to Justice Berger's Chambers at 1 o'clock that afternoon for a meeting with the entire court. "I was in a state of panic," Bunny said. "My first thought was 'What have I done wrong?'"

It turns out Chief Justice Steele and his colleagues knew what they were doing. They told Bunny that the State's Lawyers' Fund for Client Protection needed help, and that she was the person to take on the job. It was intimidating, but a challenge. She commented, reminding them that she wasn't a lawyer. They remembered, and were convinced she was a good fit for the position.

Over the course of the next year Bunny Christopher learned just how much help Delaware's Fund needed. "They wanted someone to pick up the pieces and put them back together again," she said. She worked twelve hour days and persevered. In addition to client protection fund claims, Bunny is also responsible for *pro hac* vice admissions and the certificates of compliance which each of the 4,000 plus members of the Delaware Bar are required to submit each year. No one overseeing the Lawyers' Fund had ever reviewed the completed forms before, but Bunny does. In the beginning, she said, you could look in her office during February – when the forms were due – and not see her because of the mountains of

paper she was checking to make sure each attorney was in compliance with Court Rules. She has no staff, and does it all.

Bunny said she looks for "little red flags"



## **Lawyers' Fund** for Client Protection

that might signal bigger problems down the road. From her perspective, every attorney should be able to follow the rules set by the State Supreme Court. If a lawyer is unable to file a timely certificate of compliance – a simple task – what else does that say about that attorney's practice? During her review process it's not uncommon for Bunny to call the State's CLE director or disciplinary counsel to ask if they are aware of any issues with a particular attorney. Just this year, four attorneys failed to file their certificates of compliance. This was extraordinary in Bunny's experience, and she started digging. She discovered later that a few of those attorneys were in rehabilitation facilities, attempting to overcome an addiction.



**Bunny's son, Stephen**

The significance of the discovery was not lost on Bunny. Her own son, Stephen, was winning his battle against heroin when he was tragically killed in a motorcycle accident in February, 2017. He was just 31 years old.

As a survivor of melanoma, Bunny had organized Delaware's "Moving for Melanoma" 5K race for years. She recently stepped down from that position, though, because she wants to focus her time and energy on battling the epidemic of opioid addiction afflicting not only Delaware, but the entire country.

It's a crisis that has hit every profession. Lawyers in the midst of addiction obviously are not thinking clearly. "I think we will see more and more thefts because of addiction – it scares me," Bunny said. Given the fact that recent arrests of some Delaware attorneys charged with drug offenses may be a precursor to Fund claims. Her priority after



retiring in December will be "Teen Challenge," an international drug rehabilitation program established in 1959 with 250 treatment centers in 80 countries. Bunny's focus will be on counseling the parents of addicted Delaware teenagers. Many parents assume that if their child completes a rehabilitation program their problems have been solved, but unfortunately this isn't the case. Bunny said she hopes to "open some eyes" and help parents cope with the challenges of addicted children.

She leaves a Fund which is in a much better place than where she found it after her

surprise meeting with the Delaware Supreme Court in 2006. With a \$5 million reserve, the Fund is able to address the ten to fifteen claims it receives each year. Thanks to Bunny, technology has brought the Fund's operations into a paperless 21<sup>st</sup> century – you can see Bunny's desk in February now since she worked with programmers to digitalize the annual certificate of compliance filings. Delaware is one of the states which stand as testimonials to the fact that client protection funds can work. "Delaware has all of the model ABA Rules in place," Bunny said, a fact which she credits in large part to NCPO. These days, she leaves NCPO meetings with greater appreciation for what Delaware has – a system that works – and shares her experiences with other jurisdictions where client protection funds are still struggling.

Bunny has been a fixture at NCPO meetings (she hasn't missed one in 11 years) since her appointment. She remembers another call she got in 2006, this one from John Holtaway, then a moving force in the client protection field. She hadn't registered for the upcoming NCPO Forum and John wanted to know why. She told him it was because she wasn't going. "You need to be there," John said. "Well," Bunny replied, "I'm getting married that day. I promise to go to the next one." That was good enough for John, and Bunny kept her promise.

Bunny Christopher retires on December 31, 2018. Thank you Bunny – and best wishes for a long and happy retirement!

# *From the President's Desk - -*

By Michael E. Harmon, NCPO President, Deputy Director of the Arkansas Supreme Court Office of Professional Conduct.



## *Greetings!*

As many of you know, my job with the Arkansas Supreme Court involves investigation and prosecution in disciplinary matters as well as matters of client protection. The other day, I received an email from a complainant in a disciplinary matter thanking me for the receipt of returned unearned funds from an attorney. From that email, I could feel the joy and gratitude of thanks from the recipient concerning the receipt of those funds. We do great work, whether it be in disciplinary matters or in matters of client protection. It is the joy and gratitude of thanks demonstrated in that email that motivates me to do good.

NCPO recently concluded its Fall Workshop in Phoenix, Arizona. Many of the presentations at the workshop demonstrated the good that NCPO members and organizations do in every member jurisdiction across the country. NCPO's 2019 Fall Workshop will be held in Princeton, New Jersey, on September 24 and 25, 2019. The Fall Workshop will be held in conjunction with the 50<sup>th</sup> anniversary of the New Jersey Lawyers' Fund for Client Protection. Registration for the Fall Workshop will open in the first half of 2019. I hope to see you there!

If you have any suggestions of what NCPO can do better or do differently in what it is currently providing you or your jurisdiction, please contact me. My email address is [Michael.Harmon@arcourts.gov](mailto:Michael.Harmon@arcourts.gov). I look forward to receiving your comments and suggestions.

As we enter the holiday season, may the joy and gratitude of the season continue with each of you into the new year. As members of NCPO, we each do great work and good things. Collectively, our good makes a difference. May we and NCPO continue to do good things in 2019. Happy Holidays!

A handwritten signature in blue ink that reads "Michael E. Harmon".

Michael E. Harmon  
NCPO President

## **Did You Know?**

*If you would like to attend the ABA Forum in Vancouver and/or the Fall Workshop in Princeton, NCPO has a Workshop Assistance Program to help under-funded Funds with the cost of attending these events. Any individual or organizational member of NCPO can apply for assistance. Please contact Michael Harmon for further information.*

# Thanks for the Memories....

*Editor's Note: Selina S. Thomas has served as Senior Counsel for Client Protection with the ABA's Center for Professional Responsibility since 2008. She has now accepted a position with the ABA's Center for Diversity and Inclusion, and is looking forward to the opportunity to work on issues that she said are "deeply passionate" for her. "It is not often that passion and profession meet." Good Luck Selena – Thank you for your continuing service to the ABA and the legal profession!*



A little over ten years ago, I came to the ABA and this Committee knowing little about the ABA and almost nothing about client protection. My first encounter with most members of this community was at the 24<sup>th</sup> National Forum in Boston. I remember entering that space with an enormous sense of anxiety,

wondering if this new group of people would welcome me. My fears were quickly laid to rest as members welcomed me with grace and kindness. I immediately felt at home. You were patient with me; you gave me space to learn.

There have been many changes for me over the last 10 years – some have been amazing and others, heartbreaking. But one thing that has remained consistent is the warmth that I feel whenever I am with all of you. I am sincerely appreciative of the kindness shown to me over the years. I have learned so much from you, and I will miss you. Please don't become strangers.

*Selina*



## Nominations Sought for Hecht Award

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The Isaac Hecht award honors the memory of one of NCPO's co-founders, who practiced law in Maryland for 64 years before his death in 2003 at the age of 89. Mr. Hecht served as Treasurer of Maryland's Fund since its creation in 1967. He was committed to the belief that the trust of law clients is the essential linchpin in every lawyer-client relationship, and that the reimbursement of innocent victims of lawyer dishonesty represents the legal profession at its best. Mr. Hecht was especially focused on the financial foundations of client protection funds, the initiatives of fund leaders, and their receptivity to techniques to deter and detect dishonest conduct in the practice of law. To nominate a future Hecht award recipient, contact Mike Harmon at [michael.harmon@arcourts.gov](mailto:michael.harmon@arcourts.gov).

# Funds in Motion – News from the Front Lines



*Twenty jurisdictions reported on their respective states of affairs at the Town Hall held in Scottsdale, Arizona, on September 17, 2018. 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@njcourts.gov](mailto:Michael.McCormick@njcourts.gov).*

**Arkansas** has a reserve in excess of \$1.6 million reserve, no claims have been approved for payment. The Committee has approved few claims for payment in the last several years.

**Maine** has three pending claims that exceed their per claimant cap, and threaten the Fund's solubility. This is a new experience for the Fund, which may have to prorate claim awards as a result.

**Ohio** has about 90 pending claims, a decrease from last year. The Fund currently has a \$6 million reserve.

**Albert, Canada** leads Canadian funds in the number of claims filed, but has transitioned from a traditional "fund" to more of an insurance product which each of the province's 6,600 lawyers is required to have. The per claimant maximum is \$5 million, while the aggregate maximum is \$25 million. A "policy" costs \$454 per lawyer.

**Louisiana** has about 60 pending claims and a \$4.5 million reserve. The Fund recently filed two civil suits attempting to recover from respondents for claims paid on their behalf. One of the respondents became a baker after his disbarment.

**Kentucky** is in "panic mode." An annual assessment of just \$7 has resulted in the lowest reserve (\$242,000) since 1993. At the same time, the Fund is facing claims from 34 victims of a single respondent. It has only been able to pay 25% of the claims filed.

**Delaware** has seen seven claims this year, paying \$10,122, with \$585,000 in alleged losses pending.

**Michigan** is hoping its third attempt to secure passage of a bill requiring payee notification will be successful. The proposal is currently before a legislative committee. Claims are up and are bigger -- especially against deceased attorneys.

**Washington, D.C.** has seen a decline in the number of claims being filed, possibly as a result of a belief that it is "not safe" for some to file a claim. The Fund is taking steps to insure potential claimant's that the process is confidential. The Fund is also implementing a new case management system.

**New York** has the lowest number of pending claims in 13 years (214) and is using the respite to catch up on their backlog. Even so, the challenge remains since pending claims allege \$34 million in losses, but the Fund's reserve is only \$7.6 million. The Fund paid out \$10.6 million in 2017.

**Wisconsin** paid \$375,000 in claims in 2017, and is looking at similar exposure this year. The Fund has seen an increase in the number of claims filed against judges, commissioners and legislators.

**Nebraska** has about 7,000 lawyers, but its Fund has not paid a claim in two years. That said several claims are likely to be paid this year, using the Fund's \$500,000 reserve. Most of the 15 – 20 claims received each year involve some aspect of a fee dispute.

**Hawaii** has welcomed a new administrator, investigator and case management system. The State has 439 attorneys who are over the age of 70, while 59% of lawyers are over 50, so an aging bar is an issue. The Fund can now pay claims made against attorneys who are adjudged to be incapacitate.

**Illinois** has so many claims that its reserves are gone, and awards are being prorated. Many of the claims are coming from stolen personal injury settlements. Recovery is difficult because in Illinois depository banks are not liable for negotiating checks bearing forged endorsements.

**North Carolina** has received 78 claims against one respondent who alleges that it was his assistant who actually stole the money. The Trustees gave the Fund administrator the authority to approve claims based upon standards set when they considered ten "representative" claims against the respondent. So far, 55 claims have been paid.

**Colorado** now has a professional development counsel who tries to help attorneys successfully navigate the practice of law. The number of claims filed with the Fund is down from last year. The

Fund has discovered that there are even attorneys who do not know about the Fund, so marketing efforts have been increased.

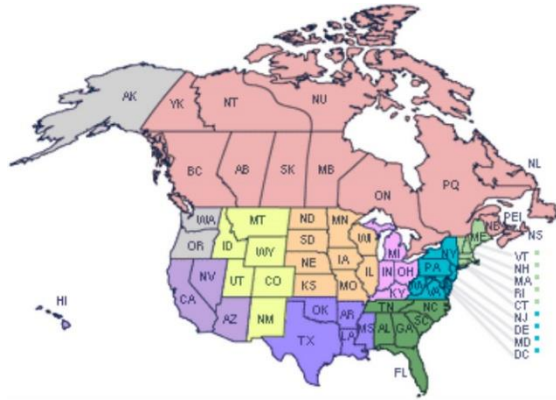
**Missouri** recently survived an attempt to eliminate its Fund when the State Supreme Court intervened on its behalf. Rule changes are being considered

which would speed up the payment of claims. The Fund has a reserve of about \$700,000, and is looking to hire a paralegal. It is also digitalizing its claims while searching for a new case management system.

**Arizona** has a \$2.6 million reserve and working to get through a backlog of about 50 pending claims. It has also seen an increase in the number of claims filed against deceased attorneys.

**New Jersey** has a \$21.7 million reserve with about \$500,000 in pending claims. Five staff retirements in recent months are changing the face of the Fund while it implements its new case management system and looks forward to hosting the NCPO fall workshop in September, 2019. The workshop will coincide with the Fund's 50<sup>th</sup> anniversary.

**Iowa** is experiencing an all-time low in the number of claims. A new rule allowing trustees appointed to wind down the practices of older lawyers to seek payment from the Fund for services rendered is proving both costly and problematic. The Fund is hoping to encourage aging attorney to take case of their own practices so that trustees are not needed.



# Getting the Question Right

By Kenneth J. Bossong

*Ken Bossong was Director of the New Jersey Fund for 30 years. He is now an Administrative Law Judge for the US Social Security Administration. Ken's article first appeared in the Fall, 2000 issue of the Webb.*

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?" ■



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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@njcourts.gov](mailto:Michael.McCormick@njcourts.gov)*

