

# The Client Protection Webb\*<sup>®</sup>

A Publication of the National  
Client Protection Organization

**Celebrating 25 Years**

August, 2023

## Des Moines – Heck Yes!

**NCPO Workshop Tackles the Tough Questions Facing Funds**  
SEPTEMBER 19 & 20, 2023

*The agenda for this year's NCPO Regional Workshop gets to the heart of many of the biggest issues facing client protection funds – and does it right in the "Great American Heartland." (T-shirts featuring this article's title are also available!)*

**Here are some of the panel topics planned for this year's workshop:**



The Pappajohn Center on the University of Iowa campus, site of NCPO's 2023 Regional Workshop

The Deveney File: A catastrophic claims playbook for client security funds from smaller states;

So your Fund has money but no claims? Can (and should) fund reserves be utilized for other worthwhile programs?

P2P platforms: What they are, how they work, and claims implications;

Routine/random audits but better! E-audits: thriving in a pandemic;

Succession Planning – So you've got a rule.. now what??

Finding and keeping your fund staff;

A Case Management System for all Funds.



National Client Protection Organization, Inc.

## The Annual Meeting –

*Add your voice and vote to NCPO's Annual meeting, which will be held in Des Moines on September 19<sup>th</sup>. Questions for our members include: Should NCPO retain a marketing professional for outreach to the general public? Should the NCPO Bylaws be amended to provide for emeritus board members? Can (and should) NCPO facilitate the establishment of funds in Mexico and other jurisdictions?*

# Iowa Judges Welcome NCPO

NCPO's 2023 Regional Workshop will begin with remarks from the Hon. Susan Christensen, Chief Justice of the Iowa Supreme Court.

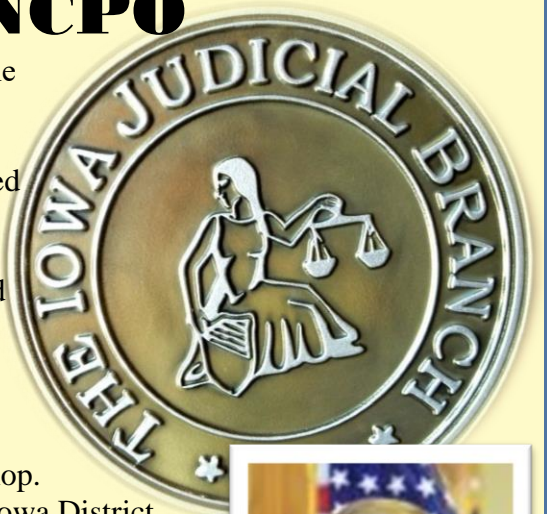
Born and raised in Iowa, Chief Justice Christensen was appointed to the Supreme Court in 2018 and selected as Chief Justice by her colleagues on the Court in February 2020. Prior to her appointment to the high court, she served as a district court judge for eight years, and was in private practice for 16 years.



Hon. Susan Christensen

The Hon. Myron Gookin will welcome attendees back on day two of the workshop. Judge Gookin is the Chief Judge of the Iowa District Court for District 8A. He is also currently serving as the chair of the Client Security Commission of the

Iowa Supreme Court. From this interesting vantage point, Judge Gookin will highlight what he sees as the most important ways in which fund staff enables and empowers trustees to fulfill the mission of the Fund.



Hon. Myron Gookin

## Come Prepared

What's going on in funds around the U.S. and Canada? Join us in Des Moines to find out. Town Hall reports are the first order of business. Please come prepared to share the latest news about claim trends, policy issues and where your fund stands with awards, pending claims and reserves for 2023. Invariably, there are many commonalities amongst funds, which leads to the "Hot Topics" session on Day 2 of the workshop. We'll take a deeper dive into what is

impacting funds in the U.S. and Canada the most. One of the biggest benefits of workshop attendance is the opportunity to learn from the collective wisdom and experience of client protection professionals like you!



Your workshop registration also includes CLE credit in your jurisdiction as well as some great food, such as a group dinner the evening of September 19<sup>th</sup> at Django's Restaurant, breakfast, great snacks and a special "Happy Birthday NCPO" celebration.



# HAPPY BIRTHDAY NCPO

Since May 1998 NCPO has served funds in the U.S. and Canada as the only organization focused solely on client protection funds – and how to create, maintain and sustain strong funds that provide meaningful relief to victimized law clients.

## That's something to celebrate!

Perhaps the best way to mark NCPO's silver jubilee is to take an introspective look at where our own fund is on the road to realizing the Standards for Evaluating Lawyers' Funds for Client Protection.

[https://www.ncpo.org/\\_files/ugd/289ac3\\_604dd3b7c4c4401b9004a19822b43419.pdf](https://www.ncpo.org/_files/ugd/289ac3_604dd3b7c4c4401b9004a19822b43419.pdf) How can NCPO help bring your fund closer to the aspirations in the Standards?

## President's Corner

### Why we do what we do....

By Michael T. McCormick, Esq.  
Director & Counsel  
NJ Lawyers' Fund for Client Protection



There's one session that's not on the list of workshop topics on page one of this newsletter. It's called "Why we do what we do" and it features the story of a remarkable young lady named Nicole Perskie. The workshop as a whole, of course, is a very clear testimonial to the reasons we have client protection funds and the good and great things funds make possible. So is NCPO's 25<sup>th</sup> anniversary, which we will celebrate in Des Moines with both a "Thank you" to those whose vision created our organization and by renewing our commitment to the Standards which are the roadmap to effective and strong client protection funds.

In the end, we measure our accomplishments one person at a time. Ms. Perskie is one such person, but perhaps not in the way you would expect. She became known to the New Jersey Fund not as a claimant, but as a respondent. You'll need to join us in Des Moines to hear about her journey. For now, suffice to say she is "Exhibit A" when it comes to recovery – professional and personal – and service to her colleagues in need. We are honored and grateful that Nicole has offered to share her story with us in Des Moines.

Each of our funds faces different challenges, some financial, others perhaps political. We do what we do, however, because we are indeed "The Conscience of the Bar."

## 19<sup>th</sup> Annual Isaac Hecht Award to be Presented in Des Moines

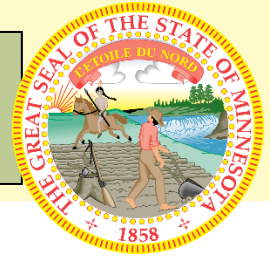


Every year since 2004 we have honored one member whose dedication and excellence has impacted client protection and significantly promoted public confidence in the integrity of the legal profession. The award is the premiere recognition in our field, named in honor of one of

NCPO's founders. The 2023 honoree has been chosen and will be present at the Des Moines workshop. **Please join us!**

# NCPO Board Writes in Support of Minnesota Fund

Editor's Note: Reprinted below is a letter approved by the NCPO Board in support of the Minnesota Fund's efforts to ensure that Fund Claimants are not charged a fee when being represented by an attorney before the Fund.



## National Client Protection Organization

[www.ncpo.org](http://www.ncpo.org)

July 5, 2023

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The Honorable Chief Justice and Associate Justices  
of the Supreme Court of Minnesota  
c/o Minnesota Clerk of Appellate Courts  
25 Rev. Dr. Martin Luther King Jr. Boulevard #305  
St. Paul, MN 55155

Dear Chief Justice Skjerven Gildea and Associate Justices:

The National Client Protection Organization (NCPO) is a not-for-profit membership corporation which was organized in May 1998. It is foremost an educational resource for the exchange of information among law client protection funds throughout the United States and Canada. NCPO's purposes include providing help and support to client protection funds and programs to protect legal consumers from dishonest conduct in the practice of law.

NCPO has learned of a petition filed with the Minnesota Supreme Court by the Client Security Board (CSB) in favor of proposed Rule 3.19, as follows: "No lawyer shall accept any payment for assisting a claimant with prosecuting a claim to the Board, unless such payment has been approved by the Board." It is our understanding that comment is appropriate; upon the unanimous vote of NCPO's Board of Directors, I respectfully submit this letter in support of the proposed amendment.

The language of proposed Rule 3.19 is materially identical to Rule 19 of the American Bar Association's Model Rules on Lawyers' Funds for Client Protection. The policy has been embodied in the model rules for decades.

The policy is widely followed. Our best information is that 33 states explicitly do not permit lawyers assisting Fund claimants to accept a fee. Sixteen of them follow the ABA model, and the proposal of the CSB here, to permit the Fund to consider a specific request for an exception. This turns out to be the moderate approach, since the other 17 do not, but rather have a flat prohibition. Five states explicitly permit a fee, three of which suggest *pro bono* representation. Finally, a dozen states' rules are silent on the issue.

We believe the rule to constitute sound policy and the preferred approach.

Meritorious Fund claims reflect instances where the system of justice broke down because of the abuse of a law client's trust. The resulting client losses are debts of honor for a profession that relies especially on the public's trust. Fund Trustees serve without compensation, presumably to right a wrong. The proposed rule, in effect, has lawyers who assist claimants do the same, for similar reasons. Meanwhile, any hint of an unseemly attempt to "generate



# National Client Protection Organization

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The Honorable Chief Justice and Associate Justices  
of the Supreme Court of Minnesota  
July 5, 2023  
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business” from the misdeeds of disbarred lawyers is avoided.

The claims process is designed to be user-friendly. NCPO is not in a position to opine on the percentage of claimants who need, or feel the need, to be represented in prosecuting a Fund claim. Any given claimant either does or does not. Those who do should be not only permitted but encouraged to seek assistance. Data is lacking on the point, but we do not recall reports of claimants harmed by inability to obtain representation in states precluding fees. Undoubtedly, there are instances of lawyers declining such representation, as is their right. We would be surprised and disappointed, however, to learn of widespread refusal to assist on the part of any area’s practicing Bar.

Rather, lawyers tend to be so offended by reprehensible conduct of the dishonest few that they are moved to act. When they do, they often find that (a) more appropriate or gratifying *pro bono* work can scarcely be imagined for a practicing lawyer; and (b) few clients are more loyal than grateful claimants helped in recovering their losses from the Fund – and the families and friends who know their stories.

Any Fund striving for excellence seeks to place deserving clients in the position they would have enjoyed if the respondent had been honest:

*NCPO Standard 4.1. The ultimate goal of the Fund is to fully reimburse all claimants victimized by the dishonest conduct of their lawyers in as timely a fashion as possible.*

That goal will be thwarted, even when the Trustees award the entire amount misappropriated, if a fee is extracted from the award. Please note that nothing in the proposed rule precludes an attorney from charging a reasonable fee for any other services rendered the claimant, including successfully concluding the matter for which respondent was retained.

The message to the public from a sound, responsive Client Protection Fund should be “You were not wrong to trust a lawyer; that lawyer was wrong. So concerned are the honest 99% of lawyers that they pay to make such matters right. Relief is available.” Adding to that message “But, it’s going to cost you!” does unnecessary harm to the client, the Bar, and the system of Justice.

Thank you for your consideration; we would be pleased to participate further if we may be of assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael McCormick". The signature is fluid and cursive, written over the typed name.

Michael McCormick  
President, National Client Protection Organization

**Please let us know when NCPO can support your fund in policy matters and initiatives that will make your fund more responsive, accessible and secure. We are ready to help!**

## Alleged Theft at Father Son Firm Leads to Tragedy

Brandon and Paul Labiner practiced law together in Boca Raton, Florida until Paul sued his son alleging that he had stolen \$450,000 from their family's trust fund. A little over eight months later, Paul's bullet ridden body was found outside his law office, and his son Brandon has been charged with his murder. Surveillance video showed a male alleged to be Brandon pull up to Paul Labiner's law office on a bicycle with a gun.

Brandon had left his father's law office and opened up his own solo personal injury firm nearby after his father filed suit against him. Brandon was then suspended from practice because of the theft from the family trust, of which his mother was the sole beneficiary. Charges are pending; No word yet on whether a claim will be filed with the Florida Fund.



Brandon Labiner with his father, Paul, and the family hound in happier days.

### ABA Triennial Survey

By now your fund should have received an email asking for participation in the the ABA's Triennial Survey. Please take the time to complete this important means of assessing the state of client protection. The Survey requests data from 2020-2022 and is of particular interest to the ABA for its potential to show how Lawyers Funds were impacted by the pandemic. If you didn't receive a survey email, or have questions, please contact Stephanie Custard at the ABA at [Stephanie.Custard@americanbar.org](mailto:Stephanie.Custard@americanbar.org)

## "Staggering" Theft from "Angel of Jazz" Trust Alleged



Gretchen Carhartt Valade  
arraignment characterized the thefts as "staggering."

Michigan's Attorney General alleges that Sutherland used his position as the personal attorney and trustee to embezzle millions of dollars from Valade's irrevocable trust by issuing himself a series of loans without her permission. That complaint alleged Sutherland lent himself more than \$7.7 million and he lent a business of which he was 50% owner more than \$7.6 million. It is unclear whether a claim will be filed with the Michigan Fund.

Gretchen Carhartt Valade was a beloved philanthropist for decades before her death at 97 on December 30, 2022. Her support of the arts – and particularly the Detroit Jazz Festival – earned her a moniker as the "Angel of Jazz." Less than two weeks after her death, her long-time lawyer, David Sutherland, was charged with stealing millions from the trust that made her generosity possible. The judge handling Sutherland's



David Sutherland

# Maryland Fund Reimburses Sporting Goods Family

## But Respondent dies before restitution paid



James Kevin Reed

James K. Reed pled guilty to embezzling \$103,000 from the Hendershot family, owners of a local sporting goods store, but died the day after Christmas from a massive heart attack at the age of 59. His estate is unable to make restitution. Reed had been disbarred in both Maryland and Pennsylvania, but died before facing a sentence of up to 18 months in State prison. The Maryland Client Protection Fund paid the Hendershots' claim in full and filed suit against Reed, who had been released on bond so that he could secure restitution to the Fund. The Fund's recovery, however, was stymied by Reed's inability to find a job.

## Help Reach NCPO's "25 in '23" Goals --



**100% representation** – at least one member from every fund in the U.S. & Canada. So far this year, 34 individuals and 32 organizations have renewed their membership in NCPO. Have you? If not, go to <https://www.ncpo.org/membership>

**Renewed commitment to the Standards for Lawyers' Funds for Client Protection** - How does your fund measure up? Email [Michael.mccormick@njcourts.gov](mailto:Michael.mccormick@njcourts.gov) for hard copies.

**Speakers' Bureau Challenge** – This writer recently spoke at a racetrack and (inadvertently) to the annual meeting of the Daughters of the American Revolution! **Let us know who you've been speaking to.**

**Workshop Challenge** – Bring at least one new person to the 2023 Workshop in Iowa – Use the NCPO workshop assistance program to help. **Register at** <https://www.ncpo.org/2023-ncpo-workshop>

**Technology Challenge** – Are you easy to find? Can claims be filed easily?

**Identify jurisdictions lacking loss prevention mechanisms** - Overdraft notification, random audits, insurance payee notification, education of the bar & public. **Can we help you bring these safeguards to your fund?**

**Education** – Have you issued a press release and registered your trustees for this newsletter? **Send additions to the NCPO email list to** [Michael.mccormick@njcourts.gov](mailto:Michael.mccormick@njcourts.gov)

**Expand NCPO's internet presence** – We're adding to NCPO's website – check out what's new at [www.ncpo.org](http://www.ncpo.org) & <https://www.facebook.com/NationalClientProtectionOrganization/>

**Expand NCPO's Impact** – Reach out to other jurisdictions to establish relationships and, where appropriate, new funds. **How can NCPO help support your fund?**



**Register TODAY**

for the

**2023 NCPO Regional Workshop in**



10. Des Moines is a great city with lots to see & do.
9. September is the perfect time of year to visit Iowa.
8. Earn CLE Credits.
7. Learn about trends in claims, funding & policy.
6. Help your trustees be the best they can be.
5. Find new ways to make your Fund known & accessible to the public.
4. Compare & contrast funds across the U.S. & Canada.
3. Learn how small funds can cope with catastrophic losses.
2. Network with client protection professionals.

*The Number 1 Reason to go to Des Moines for the 2023 NCPO Workshop:*

**We need YOU to be part of the future of client protection.**

**Register at**

**<https://www.ncpo.org/2023-ncpo-workshop>**

Need help with travel expenses? Apply for an NCPO Workshop Assistance Grant at [https://www.ncpo.org/files/ugd/289ac3\\_d4d27149550f43fbae05a62613dbffa0.pdf](https://www.ncpo.org/files/ugd/289ac3_d4d27149550f43fbae05a62613dbffa0.pdf)

*\*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)*

