

The Client Protection Webb

A Publication of the National
Client Protection Organization

March, 2018

Batters' Up – In Louisville

The ABA Standing Committee on Client Protection will host its 34th National Forum on Client Protection in Louisville on June 1st-2nd and looks forward to seeing you there. Topics to be covered include client protection program accomplishments and issues, claim processing, use of fee arbitration and mediation to resolve fee disputes, and means of recouping awards paid by lawyers' funds. Panels will also discuss issues related to elder lawyers who steal from their clients and a joint program will be held with attendees of the 44th National Conference on

Professional Responsibility. NCPO will also present the 2018 Isaac Hecht Law Client

Protection Award and host the annual Difficult Claims Workshop. The Friday evening reception, Saturday breakfast and breaks throughout the program offer everyone a chance to network with colleagues from across the country, and of course, be sure to take

time to enjoy all that Louisville has to offer! This is a "don't miss!" event for those of us focused on client protection. Learn more and register at <http://www.ambar.org/cprevents>.



Don't Miss the NCPO Annual Meeting

In addition to the Forum events, NCPO will also take the opportunity to hold its Annual Meeting in Louisville. The meeting will be held on Friday, June 1, 2018 at 9:00 a.m. in the Rose Meeting Room of the Louisville Marriott Downtown. All are welcome, as NCPO elects officers for 2018-2019, reviews and approves its 2018-2019 budget, and discusses new initiatives for the client protection community. Please plan on attending to add your thoughts to how NCPO can help you and your Fund to better serve law clients in your jurisdiction.



Michigan Fund's Mark Teicher wins Franck Award

Michigan attorney Mark Teicher is the 2017 recipient of the Michael Franck Award. This award is given to an attorney who has made an outstanding contribution to the improvement of the legal profession. One of Mark's contributions is his active commitment to the Michigan Client Protection Fund.

In 2006, Mark was appointed to the Standing Committee on the Client Protection Fund and has been serving as a member, advisor and currently as Co-Chair

of the Standing Committee and as a member of the Payee Notification Workgroup since then. During Mark's tenure the Client Protection Fund has distributed over \$4.7 million, implemented Trust Account Overdraft Notification, increased the

single claimant maximum from \$50,000 to \$150,000, and increased the aggregate maximum from \$100,000 to \$375,000.

From 1998 to 2016, Mark served as an Attorney

Discipline Board Hearing Panelist. Mark describes his time as a panelist as eye-opening and very disturbing to see the very bad things that some of his fellow lawyers had done.

After graduating from the University of Detroit Law School and practicing law for a few years, Mark looked for ways to get involved and give back to

the legal profession. It was the Representative Assembly that first piqued his interest. Mark was appointed to the Representative Assembly in 1986 and has remained a member for the last 31 years

Congratulations Mark!



California Fund Get \$2M Boost

The Trustees of the California State Bar approved the transfer of \$2 million in reserves to the Client Security Fund last month, boosting the amount available for payouts this year to \$8 million. "The board is committed to ensuring the Client Security Fund has enough money to reimburse

every person who lost money or property due to theft by their attorney," State Bar President David Pasternak said. "By reallocating these funds, the State Bar is trying to avoid or minimize the need to raise further funds from the California attorneys who finance this important restitution program."

Applications to the fund have increased in recent years because of the loan modification crisis. In 2013, the fund paid out a record \$11 million to more than 2,000 applicants. The extra \$2 million could mean as many as 475 additional applicants being paid this year.

Presidential Perspective for the New Year

By Kathryn Peifer Morgan, NCPO President &
Executive Director of the Pennsylvania Lawyers' Fund for
Client Security



Happy New Year to all in this the first edition of *The Webb* for 2018. Your Board and Officers are gearing up for NCPO's annual meeting which

will be held on June 1, 2018 at the Louisville Marriott Downtown, 280 W. Jefferson St., Louisville, Kentucky. Please plan on attending the annual meeting prior to the start of the American Bar Association's National Forum on Client Protection. The membership will be electing officers and directors, and conducting any other business that might be discussed at the meeting. Feel free to contact any Officer or Director with any concerns or business matters that you would like to see discussed at the annual meeting. The annual meeting is a great way to connect with other members of NCPO. Please feel free to bring anyone who might be considering becoming a member of NCPO. We would love to meet them and discuss the benefits of membership.

NCPO will also be hosting a dinner in conjunction with the Forum on Client Protection. This year we will be at Eddie Merlot's. More information about the dinner and registration options are provided in *The*

Webb. The dinner is always a fun time and a great networking opportunity.

Please don't forget that NCPO has a Workshop Assistance Program which was established to assist members in attending an NCPO workshop or the ABA National Forum on Client Protection. Information about the program and the application for assistance are available on NCPO's website on the "Members Only" page.

Nominations for the Isaac Hecht Award are still being accepted. Information on submitting a nomination may be found on NCPO's website, or by contacting President-Elect, Michael Harmon, who is the Committee's Chairperson. The deadline for submitting a nomination is April 1, 2018.

This will be my last message as President of the National Client Protection Organization. I can honestly say it has been a very fast two years. Traveling to places such as Philadelphia and St. Louis for the ABA's National Forum on Client Protection, and to Detroit and Austin for NCPO's Fall Workshops have helped the time to fly by very quickly. I would like to thank the membership, and the NCPO Officers and Directors for their support. It has truly been an honor and privilege to have served.



Milestones

Maryland Fund's Long-Time Administrator Retires

Editor's Note: The following reflection was written by Janet C. Moss, as she prepared to retire from the Maryland Fund.

Six Weeks – And Three Paychecks Left

As I write about myself, I feel like I am writing my obituary. And yet I am also quite excited to begin this new part of my life. As the title explains, I am retiring in six weeks. And trust me, the upcoming six weeks will come fast and furious, and yes I am scared to death.

It's been 26 years at the same place of employment, the Client Protection Fund of the Bar of Maryland. When I first started as an investigator for them, the organization was called the Client Security Trust Fund. About 15 years ago the title was changed and is now aptly called the Client Protection Fund.

I first got involved with the ABA and NCPO through my boss, Isaac Hecht. Mr. Hecht as you are all aware was one of the founders of the NCPO. Mr. Hecht was smart enough to get me involved with the functions of the NCPO before it was called that. I was lucky in that my Fund always felt it was very important that I too

become involved and attend meetings and seminars, and they were willing to fund this. Twenty years ago I became the Administrator of the



Maryland Fund and soon after that, became the Executive Director. I also became very involved with NCPO. I attended almost every seminar and meeting that was offered, with the blessings of my Board of Trustees. I was given the opportunity to talk with and learn from every other fund. I became the secretary of the NCPO, which assisted me in meeting others and interacting with other funds.

Meetings allowed me to establish contacts with other funds and their leaders. Being able to contact other funds and obtain advice and or share claims proved to me to be one of the most productive aspects of the NCPO.

And last but definitely not the least has been the opportunity to establish friendships that have lasted all of these 26 years. There are so many kind, smart and caring individuals involved with NCPO. All have played a huge role in my progressing as far as I did with my organization. All of these people have helped and guided me in establishing a wonderful relationship with both my Court of Appeals and my Board of Trustees. Without the guidance and advice of these friends this Fund would not have become such a well run and stable Fund.

I have discovered that the beginning is what counts the most. Establish great basics and everything will be able to grow from those basics. NCPO has great basics from the Fred Millers, the Ken Bossongs and the Janet Green Marbleys, just to name a few. I have been honored to have worked and learned from them.

Editor's postscript: Thank you, Janet, for all of your service to client protection – You too, are truly one of the "Millers, Bossongs & Marbleys" of client protection!

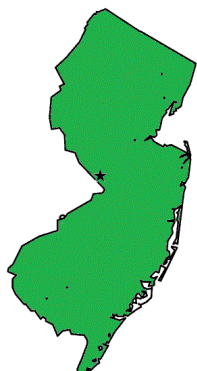
“Big Hitter” Swindlers Putting Strain on Client Victim Funds

By Andrew Strickler
Reprinted from Law360,

In a sea of claims filed every year with client restitution funds, a small band of truly bad actors are causing oversized troubles for managers trying to juggle the numbers and keep the attorney-supported operations solvent.

While the tide of requests for reimbursements in each state rises and abates with at least some predictability, the "outlier" swindler — often an attorney who kept large-scale thefts of many clients hidden for years — are a growing concern.

While there is no national data on client restitution payments, a handful of fund managers called that small minority Enemy No. 1 to funds' financial health and a primary driver for states seeking waivers for payout caps and better ways to spot the most ambitious thieves.



"We're talking about aberrant behavior, outside even the norm of these kinds of things, and you can't put an actuarial

table on truly aberrant behavior," said Daniel Hendi of the **New Jersey Lawyers' Fund for Client Protection**. He credited his organization's "aggressive" approach to recouping money from perpetrators and subrogation for maintaining its reserves, even as his office processes the last of \$4.4 million in payments to former clients of one Glen Rock lawyer.

Those payments triggered by now-disbarred lawyer Jay Lazerowitz also required a special waiver last year from the state Supreme Court for the fund to blow past a \$1.5 million cap on aggregate restitution payouts stemming from a single attorney.

Lazerowitz was arrested in 2016 following complaints to ethics authorities, and admitted to "taking ever-increasing sums" of clients' settlement and trust cash since the 1990s "to support a lifestyle my legitimate earnings could not support," according to a December court filing in a federal suit.

"The trust money is still there for victims, and I guess we're lucky we didn't have more big hitters last year," Hendi said.

Last fiscal year, the **Pennsylvania Lawyers Fund**

for Client Security also secured from the state high



court a one-year bump in fee revenue, from \$45 to

\$75 from each lawyer's annual \$225 bar registration fee, in order to help cover payments for clients of attorney Jeffrey Mottern. The office of the Hummelstown attorney was raided in 2014 as part of an investigation into missing client money; Mottern killed himself days later.

Kathryn Peifer Morgan, the executive director of the Pennsylvania fund, said most of Mottern's victims were senior citizens he convinced to put their assets into trusts or certificates of deposit, promising a high rate of return. A later investigation revealed more than \$11 million in money he took over several years.

"Unbeknownst to his clients, he was actually day trading, and not doing very well," Morgan said.

Last May, the state Supreme Court allowed the fund to bypass its \$1 million per-lawyer payout cap for the

(continued on next page)

Mottern victims, up to \$4.4 million. To soften the financial hit, the fund distributed half of that total among 46 clients in December and will pay out the other half at the end of this year.

Even with the record-breaking payouts, the Pennsylvania fund ended last fiscal year with \$10.8 million, up \$2.2 million from the previous year, largely due to the additional fee money.

"It was such a large amount, and we needed to make sure we had cash for other, more normal claims, so there was a cash flow situation," she said. Morgan, who also heads a national organization of client protection funds, said client claim trends were "all over the place" last year. But Mottern-scale rip-offs are encouraging more managers to play good financial defense, largely by arguing for steady registration fee money even in years when claims dip.

The outlier cases are also encouraging more states to consider mandatory overdraft notifications for lawyers' client trust accounts, a rule already in place in Pennsylvania, New York, Illinois and a number of other states. While most bank overdraft notifications are the result of simple accounting mistakes, "they have alerted to bigger problems," she said. "There are discussions underway about what other preventative measures can be put in place to protect clients

without overburdening the bar, but it's a very challenging problem," she said. In terms of financial forecasting, "we never know what is out there."

Big-number claims are also having ramifications in **Michigan**. In fiscal year 2015-2016, a year after the bar raised its per-lawyer payout cap to \$375,000, the client fund paid out to 15 claimants a prorated portion of that max because of the misappropriation of \$1.14 million from a single lawyer.

Last year, six claimants split the maximum restitution



payout after losses of more than \$914,000 from a single bad actor. The bar does not identify lawyers who

trigger restitution claims. The fund's year-end balance was \$2.23 million, down from \$2.5 million in 2015.

"This is the second year in a row that the fund had experienced a dip in its reserve," said state bar spokeswoman Samantha Meinke.

In **New York**, Timothy O'Sullivan of the Lawyers' Fund for Client Protection estimated that the fund paid out \$10 million in 2017, below the group's record of \$12.3 million in payments in 2015

but ahead of the 2016 total of \$9.2 million.



"The number of claims has gone down

some, but we're still seeing frequent sizable dollar amounts," he said. O'Sullivan noted an increase in recent years of claims stemming from lawyers stealing insurance settlement money, even with New York's long-standing rule requiring insurance companies to send clients notices when their lawyers get settlement checks.

Last year, the fund also proposed to state court leaders a stronger bank notification rule that would require banks to send notices to the fund when any overdraft occurs on a lawyer's client account, not just when checks bounce.

"We've seen situations where there were overdrafts ... when lawyers were stealing money for years but no one noticed because the bank honored the checks, so there was no red flag," O'Sullivan said. "So we think that is a possible way to detect people stealing money earlier, even if it can't prevent every theft."

--Editing by Brian Baresch and Katherine Rautenberg. All Content © 2003-2018, Portfolio Media, Inc,



New York's Top Court Suspends Town Justice



New York's highest court, the Court of Appeals, recently suspended Richard J. Sherwood from the office of justice of Guiderland Town Court. On the same day, Sherwood was arrested for felony larceny and fraud charges — charges he's denying

Sherwood, 57, was arrested following an investigation by the New York State Attorney General's Office. He is charged with working with financial advisor Thomas Lagan, 59, to steal more than \$4 million from family trusts that the two managed jointly.

The felony complaint says that Sherwood and Lagan were handling trusts for philanthropist Warren Bruggeman, his wife, and her two sisters. None of the four people, now all deceased, whose assets were managed in the family trusts had any children, according to the complaint. Eventually, monies left over in the funds were to be distributed to six charities.

Town Attorney James Melita said on Monday that the charges came as a shock; he had known Sherwood for years and taken over his position as town attorney. "He's always seemed to be an upstanding guy," said Melita. Sherwood also served for years as the chair of the ethics board in Albany County.

According to the felony complaint filed in Albany City Court on Feb. 23, Sherwood admitted on Jan. 21 during an interview at his law firm with Investigator Mark Spencer of the Attorney General's Investigations Bureau, "in sum and substance," to conspiring to deceive an Ohio attorney into wiring more than \$2 million to a trust that he and Lagan solely controlled; that the trust was a means to steal estate funds, and that he and Lagan divided proceeds from it equally; and that the idea for the scheme was Lagan's but that he, Sherwood, drew up the documents to effectuate it.

The complaint says that, since 2006, the lawyers provided financial services to Warren Bruggeman, who "was the head of Global Nuclear Energy for General Electric and a generous philanthropist to Capital District"; to his wife, Pauline; and to his wife's sisters, Anne Urban and Julia Rentz. Warren Bruggeman died in 2009, and his wife in 2011; both sisters died in 2013, the complaint says.

The complaint said that Warren and Pauline Bruggeman created a revocable trust containing sub-trusts designed to provide for Pauline Bruggeman's two sisters, Urban and Rentz, throughout their lives. Other funds were to be provided outright to the sisters upon the couple's deaths.

In 2011, the Anne S. Urban Irrevocable Trust, or AUIT, was created, using some of the funds from the Bruggeman trusts; Sherwood was named trustee, and Lagan, successor trustee.

In one instance, a sub-trust of about \$2 million was to be returned to the Pauline Bruggeman Revocable Trust, to be distributed to six named charities, upon Anne Urban's death; rather than returning those funds after Urban's death in 2013, the complaint says, the funds were disposed of, "primarily for the benefit of Sherwood and Lagan."

In another part of the scheme, Sherwood and Lagan allegedly conspired to deceive an attorney in Ohio, where Rentz lived, to send more than \$2 million of Rentz's money to the AUIT, under the premise that it would be distributed to charity; instead, Sherwood and Lagan shared that money.

Sherwood and Lagan formed the Empire Capital Trust to benefit themselves, the complaint says, and Sherwood sent funds to it from the AUIT.

In addition, in 2015, Sherwood authorized a wire transfer of more than \$3.5 million from the AUIT to a Trustco Bank account in his name. Sherwood also authorized a wire transfer of almost \$2.7 million from the AUIT to a Trustco Bank account in Lagan's name.

Lagan, the complaint says, was employed as an investment advisor with a national financial-planning company at the time of the scam. Sherwood had worked as a partner with Mazzotta, Sherwood & Vagianelis but is no longer named on the firm's website.

Underfunded South Carolina Fund Struggles to Pay Claims

(Summarized from "TheState.com")

Former Lexington County lawyer Richard Breibart (pictured below) stole millions from his clients before going to prison.



The late John Schurlknight a Florence attorney, stole millions from his clients, then avoided prison by committing suicide. His partner, ex-lawyer William Rivers III, did a stint in prison for defrauding clients by, among other things, failing to tell clients when their lawsuits were settled and money came in.

Schurlknight, Rivers and more than 130 other lawyers and ex-lawyers are named in a report, by the S.C. Bar Association's Lawyers Fund for Client Protection, sent out to the state's 10,642 active lawyers. The report covers a seven-year span of legal wrong-doing — from 2011 to mid-last year — in South Carolina.

Since 2011, that fund has paid out more than \$2.9 million. The report does not say how much, in total, clients claimed was stolen. In some cases, however, the reimbursements did not come close to repaying the money lost. The

fund pays out a maximum of \$200,000 per crooked lawyer, regardless of how much a lawyer has stolen.

For instance, Breibart, who pleaded guilty in 2014 to federal mail fraud, admitted to U.S. District Court Judge Margaret Seymour that he stole \$2.5 million from clients who gave him savings meant for retirement, money to hold for safekeeping or paid him for legal work that wasn't done.

In one case, Breibart lied to a client, telling her that her husband was involved in a tax scheme and he needed \$130,000 to set up a trust account for their children. Breibart got the \$130,000; the woman lost her money.

The Bar's Fund for Client Protection repaid less than 10 percent of the claims against the Lexington lawyer, dividing up \$200,000 among 90 different claims, according to the list.

That's wrong, says Greg Adams, a University of South Carolina School of Law associate professor and lawyers' ethics expert. Adams says the client protection fund — funded by a \$30-a-year fee levied against Bar members — is "drastically underfunded" and its \$200,000 cap on payouts unrealistic.

"If the Bar is going to be the protective device for clients, then it should do that properly," Adams said. "There should be enough money available to make clients whole — let them get all of their money that was stolen back, not just some of it."

Edward Pritchard, a former chair of the Fund for Client Protection, said lawyers on the list represent only a very small percentage of the

state's 10,000-plus lawyers. "Like any other profession, there are always going to be a handful that don't follow the rules," Pritchard said.

Also, some payouts do not involve crimes. Sometimes, lawyers die and money is found missing "and nobody can figure out why," he said.

Besides Breibart, other lawyers on the client protection fund's payout list include:

- Horace Anderson Jones. A York County lawyer, Jones committed suicide in 2015 after criminal charges were filed, alleging he stole \$600,000 from clients. The fund paid out \$167,132 to his clients.
- J. Todd Kincannon of Lexington County. A former executive director of the S.C. Republican Party known for provocative statements, Kincannon had his law license suspended in 2015. On the legal rolls, he now is listed as "incapacity inactive." The Client Protection Fund paid three of his former clients \$102,364 in compensation for claims.
- William Warren III. A Greenville attorney, Warren was disbarred by the S.C. Supreme Court in 2016 after admitting that he misappropriated \$171,392 in clients' money. The fund paid out \$153,639 to various victims.

Under the Bar Association rules that established it, all of the reimbursements that the fund makes for losses are made as "a matter of grace ... and not of right." A committee makes the decision on who gets how much money.

NCPO ANNUAL DINNER AT THE ABA ANNUAL FORUM

Eddie Merlot's

455 S. 4th St., Louisville, KY

June 1, 2018 7:00 p.m. – 9:30 p.m.

www.eddiemerlotts.com/locations/louisville

Please join the National Client Protection Organization for our Annual Dinner held during the ABA's Forum on Client Protection. This year's venue will be Eddie Merlot's, a fine steak and seafood restaurant. Eddie Merlot's is a five-minute walk from the Louisville Marriott Downtown, the location of the ABA Annual Forum.

The price includes a house bar with beer and wine from 7-9 p.m., dinner which will include two appetizers, a salad, your choice of filet mignon, salmon or pan roasted chicken, two side dishes, and dessert. NCPO has reserved the lovely Merlot Room for our private event.

REGISTRATION DEADLINE IS MAY 22, 2018

Name_____ Jurisdiction_____

Name_____ Jurisdiction_____

Name_____ Jurisdiction_____

Number in party_____ x \$65 = \$_____

Please make your checks payable to "NCPO" and return payment with this form to:

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or

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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

