

The Client Protection Webb*

A Publication of the National
Client Protection Organization

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NJ Chief Justice to Speak to NCPO Members

The Hon. Stuart J. Rabner, Chief Justice of the New Jersey Supreme Court, has accepted an invitation to be the keynote speaker during the dinner celebrating the 50th anniversary of the establishment of the New Jersey Lawyers' Fund for Client Protection. The event is part of NCPO's fall workshop in Princeton, New Jersey on September 24-25, 2019 (and is included in participants' registration fee). NCPO members will be joined by leaders of the State Bar and Judiciary for the dinner at the historic Nassau Club in Princeton on the evening of September 24, 2019.



Hon. Stuart J. Rabner

Chief Justice Rabner joined the New Jersey Supreme Court as Chief in June, 2007. He had previously served as New Jersey Attorney General from 2006 – 2007, and was an Assistant U.S. Attorney for the District of New Jersey, where he was chief of the terrorism unit and criminal division. He also served as chief counsel to New Jersey Governor Jon Corzine.

A graduate of the Woodrow Wilson School of Public and International Affairs at Princeton University, the Chief Justice began his legal career after graduating from Harvard Law School as a law clerk for the Hon. Dickinson R. Debevoise, U.S.D.J. Judge Debevoise was also the first chairman of the New Jersey Fund after its founding in 1969.

Since joining the Court, Chief Justice Rabner has authored over fifty majority opinions, including landmark rulings on criminal procedure, the right to privacy, and separation of church and state issues.

The dinner will be held at the landmark Nassau Club, just down the street from the Chief Justice's alma mater. The Club, now private, was established as part of Princeton University in 1889 and counts U.S. Presidents Woodrow Wilson and Grover Cleveland as past members.

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 at Michael.Harmon@arcourts.gov for further information. We look forward to seeing you there!

From the President's Desk -

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



The National Client Protection Organization will present its 2019 Isaac Hecht Award for excellence in client protection at the NCPO Workshop in Princeton, New Jersey, in September. The award, honoring the legacy of Maryland Attorney Isaac Hecht, recognizes individuals and professional organizations that have demonstrated excellence in the field of client protection.

Starting May 1, nominations of individuals and organizations will be accepted. Nominations are not limited to administrators or trustees of client protection funds. You may nominate individuals outside the client protection fund administration area who have provided help and support to a client protection fund or program. Nominations are also open to professional organizations who have assisted a client protection fund or program. Previous recipients of the award have included the Connecticut Bar Association and the Alabama State Bar Client Security Fund Committee. The period for nominating individuals and organizations for the award will close on July 15, 2019. A nomination form, criteria, and more information about the nomination process will be posted on the NCPO website on or before May 1.

In years past, the award was presented at the ABA Forum on Client Protection, but the NCPO board voted to make the presentation part of its annual workshop. NCPO, its officers and members, will continue to provide speakers at the ABA Forum, including the difficult claims presentation in Vancouver. Information about the ABA Forum on Client Protection to be held in Vancouver, British Columbia, can be found on the ABA's website, [35th ABA Forum on Client Protection](#).

Be sure to make plans to attend the award presentation by registering for the NCPO Workshop to be held at the Nassau Inn in beautiful Princeton, New Jersey, on September 24 and 25, 2019. The Workshop will coincide with the 50th anniversary of the New Jersey Lawyers' Fund for Client Protection. Our colleagues at the New Jersey Fund have worked hard at putting together a great program with excellent speakers and topics. More information about the workshop can be found in this newsletter.



I hope to see you in Vancouver, Princeton, or both!



Kentucky Fund Faces Catastrophic Losses

KY Supreme Court considers increasing claimant/respondent caps

The Trustees of the Kentucky Clients' Security Fund, with legal and administrative support from the Office of Bar Counsel, has administered their fund for 45 years.

The Fund recently reached its lowest balance in approximately twenty-five years, the result of several catastrophic payouts over the past decade, including two recent respondents.

Danny Butler of Greenburg, Kentucky, a compulsive gambler, pleaded guilty in December, 2018 to stealing \$1.3 million from 11 clients and was subsequently disbarred. One of Mr. Butler's victims claimed a loss of \$401,500. J. Grant King presented similar exposure to the fund, stealing over \$1 million from 37 clients through insurance fraud before being convicted and sentenced to ten years in prison. King was also permanently disbarred.

A reporter covering the Butler criminal matter spoke with victims and learned about Fund payouts to some of those victims. The result was an article in the Louisville *Courier Journal* criticizing the Kentucky Bar Association for not making all victims whole. By Supreme Court order, awards are capped to include a respondent



The need for the caps is rooted in Kentucky's lowest-in-the-nation annual assessment. Just \$7 of bar dues paid by Kentucky's over 17,000 lawyers each year is allocated to the fund. Fund staff has been raising the issue of the Fund's financial health for at least the past five years.

Before the article was published, and as a result of the ongoing conversations about the Fund's health, Fund Chair Justice Mary C. Noble (ret.) had requested a meeting with the Court to discuss the Fund. That meeting took place on Monday, March 5, 2019 with the entire Supreme Court in the Court's conference room. Also in attendance were KBA President Doug Ballantine; Trustee Charles English, Sr., KBA Executive Director John D. Meyers; and Chief Bar Counsel Jane H. Herrick.

The Court is aware of the issues the Fund is facing, and several solutions to funding issues were discussed. The Trustees expect to follow up with the Court after their next meeting on May 1, 2019. All ideas are still under discussion, including raising caps; transferring money from other areas to the Fund; and rewriting the rules.

Washington Fund Pays --- But \$121,283 in client losses remain

Wala Wala State Penitentiary in Washington State has a new inmate, Christopher Lee Neal, convicted of stealing \$330,000 from four of his law clients. The Washington State Bar Association's Client Protection Fund made two awards on Neal's behalf, \$150,000 to a Kennewick, Washington couple, and \$65,708 to a rural Kennewick man. Even after these awards, however, the former clients still had an unreimbursed compensable loss of \$121,283. Part of the losses stemmed from Neal's failure to use money he received in trust from his clients to settle federal tax liabilities. As a result, the clients suffered additional consequential damages as the IRS continued to assess interest and fees on the clients' outstanding tax liabilities. After Neal's thefts were discovered, another tax expert was brought in to help resolve the clients' tax problems. The sentencing judge in the criminal matter added this expert's fees to the amount of Neal's restitution, which he will hopefully pay after serving 2 and ½ years in Wala Wala.

It's a Bird, It's a Plane.....

Sadly, It's Only "Excuseman."



For years, mild-mannered Jordan Margolis gave every indication of being a successful Chicago personal injury lawyer. A graduate of Northwestern Law School and hailing from a family of well-known and accomplished attorneys, Mr. Margolis lived in a luxurious home and worked out of posh office. In December, 2018, however, Mr. Margolis, 64, pled guilty to stealing over \$1.1 million of his clients' settlements.



Mild-mannered Margolis

One news report cited fellow practitioners as being "baffled" by what they learned about their fellow lawyer: Mr. Margolis had blown at least some of the stolen money developing an online character known as "Excuseman." His identity hidden by a shiny blue bodysuit with the letters "XQ" emblazoned on his chest, an orange skullcap and cape and a purple bandit mask, Mr. Margolis

paid for professionally produced youtube videos in which he told corny jokes and railed against people who "mess up and don't fee up."

Victimized clients reported having to delay retirement and sell their homes as they struggled to survive after learning of Margolis' thefts. Investigators discovered Margolis had self-published three books and purchased two "Excuseman" costumes, in addition to paying graphic designers for his superhero videos and a website -- excuseman.com.

Mr. Margolis was suspended from practice in 2013 and disbarred in 2015. By the time he entered his guilty plea in December, 2018 (with no excuses made) Mr. Margolis was reportedly living in Los Angeles seeking work as a screenwriter. He faces up to 3 years in state prison.



EXCUSEMAN

"Have Fun in Prison" – What not to say....

The New Jersey Supreme Court censured attorney Logan Terry for telling his client to "have fun in prison." The client was accused of sexually assaulting four minors under the age of 13 and faced more than 200 years in prison. Nonetheless, after 14 months of diligent representation, the client declined to pay Mr. Terry's fee. (He also refused a favorable plea offer, and was

clearly a "difficult" client.) Mr. Terry responded by advising that he would not be able to adequately prepare for trial unless his fees were paid, and ended his text in bold, capitalized letters "HAVE FUN IN PRISON." The Court took a dim view of this tactic, concluding that Mr. Terry's conduct was prejudicial to the administration of justice and wasted the trial court's time,

since the incident occurred on the eve of trial, and the judge was compelled to release an already impaneled jury. An aggravating factor was that the trial had already been postponed once. Even though Mr. Terry had no disciplinary history, he had been ineligible to practice at the time because he had not paid his annual fee to the New Jersey Lawyers' Fund for Client Protection!

Maine Fund Breaks State Record

20 Claims Filed Against James Whittemore

James Whittemore, 69, was recently sentenced to two and a half years in state prison for stealing over \$260,000 from his law clients. A Harvard graduate, Whittemore had been a solo practitioner in Brunswick, Maine, and licensed in the state since 1993 before he started dipping into trust funds he was holding for clients. The thefts led to 20 claims being filed with Maine's Lawyers' Fund for Client Protection in 2018, more than had been received against any single attorney in recent history. By comparison, the Fund received just one claim in 2017, and five in 2016.



Angela Morse

Special Counsel Angela Morse, who investigates claims submitted to Maine's Fund, told the sentencing judge that, due in part to Whittemore's thefts, the Fund's Trustees would ask Maine's Supreme Court to consider doubling the Fund's per attorney reimbursement

maximum from \$100,000 to \$200,000. Even if the increase is approved, however, Ms. Morse noted that it would likely not be enough to make all of Whittemore's victims whole.

Press reports covered Whittemore's contrition as his plea was entered. "As I was doing it, I realized it was wrong," Whittemore said. He paused for a long moment, leaning on the table in front of him, as he told the judge he has been in a deep depression. "I have taken leave of the person that I considered myself to be, and this has been over a

long period of time," he said. "I can't explain it to myself, I can't

explain it to my therapist, and I can't even explain it to my family." "Well, you'll have time in prison to think about that," the judge said. "I understand that," Whittemore replied.



Whittemore's clients confronted him, with one saying "I trusted you, and you took my trust. I don't look at people like that anymore." Another client said Whittemore stole the \$100,000 an insurance company had paid to her and her children after her husband died in a motorcycle accident. "I thought the day my husband died was the worst day of my life," she said. "That day has dragged on for more than five years because I put my trust in Mr. Whittemore." By the time of sentencing, Whittemore had lost his house in a recent divorce and sold his life insurance policy to begin making restitution. Complete repayment, however, appears to be unlikely, leaving the Fund as the victims' only hope. Both the prosecutor and defense attorney urged troubled lawyers to avail themselves of the Maine Assistance Program as well as the State's Ethics Helpline. "It's often not too late to right the ship if they get help early enough," Whittemore's attorney said.



Vancouver is your destination for the 35th ABA National Forum on Client Protection!

Early Bird Registration April 19, 2019, so register now at <https://www.americanbar.org/events-cle/mtg/inperson/351009768/>.

This year, in addition to the always ever popular Difficult Claims Workshops and Town Hall, there will be timely programs on:

- ✚ Succession Planning: Succession planning for lawyers is a hot topic, and this session will not only educate attendees about jurisdictions that have requirements for some form of succession planning by lawyers in private practice, but will engage attendees in a discussion about how succession planning can benefit lawyers' funds for client protection. One question being whether funds be more active in promoting the adoption of mandatory succession planning?
- ✚ Revisiting Mandatory Malpractice Insurance: In addition to Oregon and Idaho mandating that lawyers secure professional liability coverage, other states are now studying the issue. These jurisdictions include California, Georgia, Nevada, and Washington State. This joint session with the ABA National Conference will explore whether and how mandatory coverage protects clients, in addition to the impact on client protection of mandatory disclosure rules.
- ✚ The Graying of the Profession and Its Impact on Client Loss: As the lawyer population continues to age, the conversation surrounding lawyers suffering from age related impairments and transitioning them to dignified retirement continue. There is a meaningful relationship between client losses, whether intentional through direct misappropriation or unintentional through unearned fees when the lawyer is simply unable to complete the scope of work. Attendees will discuss with the experts on this panel the impact of the graying bar on claimants and lawyers' funds.



✚ Well-Being to Prevent Client Loss: There's an old saying that "hurt people hurt people." The same is often true for lawyers – hurt lawyers harm clients. This session will engage attendees in a discussion about the importance of lawyer well-being programs as a loss prevention mechanism and how intervention can mitigate client losses and claims to lawyers' funds.

✚ **And don't forget NCPO's annual meeting and dinner – the perfect opportunity to network and compare notes on the state of client protection in the U.S. and Canada!**

The Virginia State Bar's Client's Protection Fund recently approved over \$51,000 in payments to clients of six Virginia lawyers on claims alleging unearned retainers. One respondent attempted to pass off fraudulent itemized bills, but the ruse was discovered by the fund's investigators.

The Arkansas Client Security Fund is facing claims against a Little Rock attorney who pled guilty to stealing over \$440,000 from two clients. The bulk of the money was an inheritance amassed "over a lifetime of hard work and frugal living." Restitution was also ordered to the claimants because the Fund has a \$40,000 per claimant limit.

News from the North:

Supreme Court of Canada Holds Lawyers Responsible for Bad Advice -



Says clients lost money in Ponzi scheme because of lawyers

By Victor Ferreira

Reprinted from the National Post

A lawyer who repeatedly recommended that a client invest with a Montreal-based firm that was later revealed to be running a Ponzi scheme is responsible for his client's losses, the Supreme Court of Canada ruled last week.

In a Feb. 28 decision, Canada's top court found that lawyer Kenneth Salomon and his law firm, Sternthal Katznelson Montigny LLP, breached their "duty to advise" by suggesting a client invest in two funds run by TriGlobal Capital Management. The client, who eventually invested a total of \$7.5 million, was seeking a safe investment for a trust fund.

Salomon also failed his "duty of loyalty" to his client, the court found, because he placed himself in a conflict of interest by encouraging his client, on multiple occasions, to invest in the fund, which was being run by his friend and personal financial advisor — Themis Papadopoulos. The relationship, according to the ruling, led Salomon to "team up" with Papadopoulos to ensure clients stayed invested in TriGlobal after they expressed concerns with the firm.

Papadopoulos vanished in 2007 with \$100 million that 100 clients had invested in TriGlobal. As a result, Salomon's client sued him and Papadopoulos.

Initially, a Quebec court found that Salomon was not liable for his client's losses, but that decision was overturned by the Court of Appeal. The Supreme Court upheld the appeal court's ruling, saying that Salomon "failed to perform adequate due diligence, misrepresented investment information, committed breaches of confidentiality and acted despite being in a conflict of interest."

A client accepting a lawyer's negligent advice doesn't shield the lawyer from being liable, the court said.

"Any advice lawyers give that exceeds their mandate may, if wrongful, engage their liability," the ruling said. "Where the risk of a decline in market prices or fraud by a third party materialize, and where lawyers have failed to abide by the standards of a professional conduct that are meant to protect their clients against these very risks, they may be liable for their clients' investments losses."

Salomon was the lawyer for a chain of restaurants in Quebec owned by Malcolm Thompson and Judith Matte-Thompson since 1989. When Thompson died in 2003 and left his fortune in trusts for his children and grandchildren, Matte-Thompson went to Salomon for advice. As the beneficiary until her death, she wanted to live off the interest alone while ensuring the larger pool went untouched.

Salomon, in turn, recommended two off-shore hedge funds based in the Cayman Islands and the Bahamas, Focus Management Ltd. and iVest Fund Ltd., calling one of them "an excellent vehicle wherever security of capital is important," according to the ruling. He also told her they were less risky than bank funds. Matte-Thompson began by investing \$1.2 million in a third product being offered by TriGlobal — a Manulife fund — and only \$100,000 in one of the hedge funds. Within months, she would transfer \$400,000 out of the Manulife fund and into iVest.

After Thompson's death, the family held on to one more of his restaurants which Salomon sold in 2006. He took \$5.8 million received in the sale and invested it in Focus.

Almost immediately after the investment was made, Matte-Thompson expressed concerns with TriGlobal to Salomon. They weren't receptive to her questions, she complained, and she felt that she didn't have enough information about where exactly her money was going. Each time she complained, Salomon encouraged her to continue investing, according to the ruling.

He then forwarded the emails with her complaints to Papadopoulos who would do the same.

Between 2006 and 2007, Salomon received \$38,000 in "gifts" from Papadopoulos through false invoices for financial consulting. He never told Matte-Thompson.

"Mr. Salomon turned a blind eye to a conflict of interest which resulted in him serving two masters and sacrificing the respondents' interests," Justice Clement Gascon wrote.

While courts also attributed liability to Papadopoulos, he has yet to be found.

The court was clear in its ruling that the decision does not expand the scope of professional negligence, according to Margaret Waddell, vice-president of the Toronto Lawyers' Association —

and so it should not give lawyers a cause to worry they'll be responsible should their clients' investments fail after providing a recommendation.

Lawyers recommend financial advisors on a daily basis, Waddell said, but according to their professional code of conduct, lawyers are not supposed to make suggestions on specific investments or in any other area outside their expertise.

To avoid pushing clients to certain investments, Shira Kalfa of Kalfa Law said corporate lawyers often make shortlists of experts for their clients who are then encouraged to speak to each of them and make their own decision. After making the recommendation, Kalfa removes herself from the process and any conversations regarding investment suggestions, successes or failures, take place between the client and the financial advisor, she said.

As a result, she's not concerned with a client potentially blaming her for an investment failure.

"If you practice properly, I don't think there's anything to be concerned about with liability coming to bite you in the rear," she said.

New York Fund Reimburses \$236,250 Loss in Full –

If 79 year-old Carl B. Kustell stays out of trouble for three years, performs 100 hours of community service and pays just \$3,600 in restitution, he will avoid going to prison after stealing \$236,250 from his 91 year-old client. Kustell pled guilty to second-degree grand larceny in December 2018, admitting he stole the money from a client to finance his own personal injury cases. He was disbarred shortly after that and could have been sentenced to 15 years in state prison.

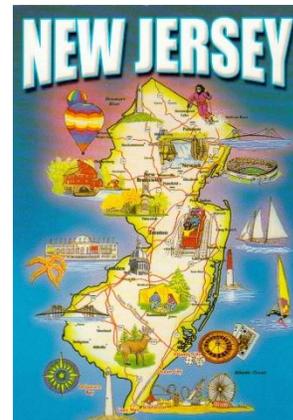
"He was initially doing her life planning, her Medicaid/Medicare planning, and in the course of that he had his client's sister sign some documents that would basically give him control of all of his client's money," according to the prosecutor, John J. Flynn. Subsequently his client died, and after the death he had the sister sign some more documents, giving him further control over this money. He basically stole that money." The victim's sister, her only beneficiary, will be fully reimbursed by the New York Lawyers' Fund for Client Protection. "If you think about it, it's unfortunate that we have to have that in our society, but we do unfortunately," Mr. Flynn said, "and so the victim will be paid back all of the money."

Top 10 Reasons to Attend the NCPO Workshop in Princeton, NJ

September 24 – 25, 2019



Home of Albert Einstein



10. New Jersey's early autumn weather is near perfect!
 9. Princeton shops and restaurants are great!
 8. While you're here, visit the #1 University in the U.S.
– Princeton!
 7. Celebrate the New Jersey Fund's 50th Anniversary.
 6. Learn how to use custodial receiverships to mitigate losses & maximize recovery.
 5. Tackle the problem of aging lawyers with cognitize issues.
 4. Answer the question: Can Funds make awards without findings of dishonest conduct?
 3. Learn how to make your trustees the best they can be.
 2. Find new ways to make your fund known & accessible to claimants.
- The Number 1 Reason to go to Princeton for the NCPO Fall Workshop:
We need YOU to be a part of the future of client protection!

Register today at <https://www.ncpo.org/events/2109-ncpo-workshop>



**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

