The Client Protection Webb*

A Publication of the National
Client Protection Organization

August, 2018

NCPO RISING TO PHOENIX

City to host Workshop on September 17-18, 2018

NCPO invites you to attend this year's fall workshop on September 17th and 18th at the Embassy Suites by Hilton in Phoenix Arizona. Sessions being planned will tackle "hot topics" in client protection – Why do funds exclude certain types of losses from being compensable? Should we rethink the exclusions and, perhaps, broaden the types of claims our funds can favorably consider? Bringing our funds up-to-date with technology is also a challenge: How can we use technology to make fund presentations to the court, bar and public more impactful? We'll continue to consider the case for (and cost of) tracking fund activity and data across the country in a central database.

Phoenix is the most populous state capital in the nation, with over 1.6 million residents, and is

America's fifth largest city. Plan on spending some time exploring in town, or make the 4.5 hour drive to the spectacular Grand Canyon.

Registration for the work shop is now open at http://ncpo.org/regionalworkshop.html. The NCPO Workshop Assistance Program, can provide financial assistance to NCPO members who meet certain criteria, so they may attend the workshop. A discounted room rate has also been arranged with Embassy Suites. For more information, please visit the link above.

Planning for the Future…

NCPO is already working on programs for 2019, so mark your calendars now. The ABA will visit our neighbors to the north for the 45th National Conference on Professional Responsibility in Vancouver, Canada on May 29-31, 2019. Next up will be NCPO's fall workshop in historic Princeton, New Jersey on September 23-24, 2019.

A Great Deal...

By Ken Bossong

Ken Bossong was Director of the New Jersey Fund for 30 years and is one of the founders of NCPO. He recently retired from his position as an Administrative Law Judge for the US Social Security Administration.

In the course of my thirty years with the NJ Fund, I was approached by insurance professionals eager to analyze the fund's data and propose a product that would supplement or replace the fund. My threshold question was whether a carrier would be willing to cede the decision on whether a claim would be paid to the fund's trustees. If not, the discussion was over.

Three or four times, we got past the dis-qualifier. Each time I then dutifully provided statistics, rules, regulations, and complete explanations of what the fund was and how it operated. Invariably, there were several meetings, much correspondence and many phone calls.

Even as the process unfolded, I was convinced that (1) If there were a proposal at all, it would be extremely expensive and dead on arrival; (2) It was more likely that they would not even bother with a proposal; and (3) This would be a complete waste of time.

I was correct about the first two, but wrong about the third.

Once, there actually was a proposal, which was preceded by a phone call that went something like this: "I'm sending you this quote because I have to, after doing all this work for all this time. We know there's no way you could purchase any of this at so many times the cost of what you're already doing."

The others never bothered, although one did ask for a final meeting at which there was one question: "How do you do it? How do you cover every lawyer in the state for malfeasance for an entire year up to (at the time) $250,000 per claimant and $1 million in the aggregate for fifty bucks? We haven't even figured out what we'd have to charge to provide a fidelity bond at that level for every lawyer without vetting." My answer included the extraordinary talents and work of the Trustees provided free and the staff consisting of public servants, with all of us serving something we believed in.

I have long believed that any state can do client protection well for an annual assessment of between $25 and $50 per lawyer. The figure will be closer to the fifty in states like New Jersey where the cost of living tends to be relatively high and less elsewhere, of course. This presumes relatively narrow exemptions from payment of the assessment, collection of it even when a good year has enhanced the reserve, and some effort and enthusiasm for pursuing subrogation receipts. But it also includes a predisposition to find ways to make deserving claimants as whole as possible.

Providing the requested information over the years did give me an opportunity each time to review and consider what we were doing, but the real reason I was so wrong in thinking I was wasting my time was that these analyses proved like nothing else what an amazing bargain a good, responsive and solidly funded client protection fund is. New Jersey's protections are now $400,000 per claimant (and yes, husband and wife can be two claimants) and $1.5 million in the aggregate - all for the same $50 a year it has been for forty years. If there were a better way for a judge or lawyer to spend less than a buck per week, I can't imagine what that would be.

President's Corner

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

As I begin my term as President of the NCPO, I'd like to give special thanks and recognition to our outgoing President, Kathryn Peifer Morgan. Kathy has provided great leadership in moving the organization forward on many issues. I am honored to continue the progress Kathy has provided. Kathy will remain on the NCPO Board in her role as Past President and I will rely upon her experience in leading this organization. I must also recognize Mike Knight who rotates off the NCPO Board. Mike's wisdom will be greatly missed, but I know I will rely upon his experience during my term. I would like to welcome the additions to the NCPO Board: Alecia Runswinckel of Michigan as President-Elect, Trinity Braun-Arana of Iowa as the Midwest Regional Vice President, and David Weyant as the Canada Regional Vice President. Alecia Professional Standards Assistant Division Director at the State Bar of Michigan. Alecia previously served as the Midwest Regional Vice President and has been invaluable to the organization in updating the NCPO webpage, organizing the NCPO Workshops, and by presenting at the ABA Forum on Client Protection. Trinity is the Assistant Director for Boards and Commissions at the Iowa Supreme Court Office of Professional Regulation and has served the organization by presenting topics at NCPO Workshops. David Weyant is the Chief Operating Officer of the Alberta Lawyers Insurance Association, the professional liability insurance program for lawyers in the Province of Alberta.

Speaking of NCPO Workshops, I'd be remiss in not mentioning the upcoming 2018 NCPO Workshop which will be held in Phoenix/Scottsdale, Arizona, on September 17 & 18. The workshop committee has been working hard to provide NCPO members with a great program with topics focused on education (difficult claims, exclusions), loss prevention (succession planning), subrogation, and system operation (office software, marketing, and data tracking). The Workshop should not be missed! Registration for the Workshop can be found on our website, NCPO.org.

Plans are already underway for the 2019 NCPO Workshop. New Jersey will be the host jurisdiction for the 2019 Workshop. Details about the 2019 Workshop will be forthcoming.

I look forward to serving NCPO as President. NCPO has a great team serving on the Board of Directors. However, we cannot be responsive to the needs of the members of this organization unless the Board hears from you. If you have any ideas or suggestions for me or the Board of Directors, please contact me at my office telephone number, 501.376.0313, or my email address, Michael-Harmon@arcourts.gov. I look forward to hearing from you.

Jim Coyle Honored with Hecht Award

Jim Coyle is Attorney Regulation Counsel for the Colorado Supreme Court, overseeing attorney admissions, attorney registration, mandatory continuing legal and judicial education, attorney discipline and diversion, regulation of the unauthorized practice of law, and inventory counsel matters. Mr. Coyle was honored for his dedication to client protection with the 2018 Issac Hecht Award during the ABA Law Client Protection Forum in Louisville Kentucky.

Mr. Coyle has been a trial attorney with the Office of Disciplinary Counsel and its successor Office of Attorney Regulation Counsel since 1990. Prior to that, he was in private practice. He served on the National Organization of Bar Counsel (NOBC) board of directors from 2014 – 2016. Mr. Coyle was on the Advisory Committee to the ABA Commission on Lawyer Assistance Programs and is now a member of the Commission for the 2017 – 2018 term.

Mr. Coyle co-chaired the National Task Force on Lawyer Well-Being, which released its report, The Path to Lawyer Well-Being, Practical Recommendations for Positive Change, in 2017. Both the American Bar Association and the Conference of Chief Justices have passed resolutions encouraging review and consideration of this report's 44 recommendations for improving lawyer well-being.

Mr. Coyle has been actively involved with the National Client Protection Organization (NCPO), the National Conference of Bar Examiners (NCBE), and the International Conference of Legal Regulators (ICLR). He acted as co-chair and organizer of the First ABA Standing Committee on Client Protection UPL School in Denver in August 2013, and he was a member of the planning team for the second and third UPL schools held in 2015 and 2017.

Mr. Coyle served as a member of the Colorado Chief Justice Commission on Professional Development and its mid-career working group, the Colorado Bar Association/Denver Bar Association Professionalism Coordinating Council and its subcommittee on a professionalism rule, the Supreme Court Standing Committee on the Colorado Rules of Professional Conduct, and the University of Colorado Law Alumni Board's Diversity Committee.

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 .

Funds in Motion – News from the Front Lines

Thirty-two jurisdictions reported on their respective states of affairs at the Town Hall held in Louisville, Kentucky, on June 1, 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 .

Ohio is one of several states which continues to experience a drop in the number of claims filed. They see no particular reason for the reduction, calling it "the nature of the beast" in a very cyclical process.

Louisiana believes fewer claims are the result of a strong economy which now appears to be weakening. "It takes about three years to catch up." Claims against deceased lawyers, however, are a growing problem.

Oregon, on the other hand, said it is seeing "a significant uptick" in the number of claims because of the "implosion" of plaintiffs' attorneys. At the same time, the Fund's annual assessment has been reduced from $15 to $5 per attorney.

New York has the lowest number of claims in twelve years, but set a Fund record for the amount paid to defrauded clients. Director Tim O'Sullivan is retiring, and will be replaced by Deputy Counsel Mike Knight. The Fund has benefited from being the final repository for unclaimed escrow monies left in the court system for more than five years.

Pennsylvania is finally beginning to recover from a four year "tsunami" of claims during which it made over $15 million in awards.

Wisconsin is taking the opportunity presented by fewer claims to consider, and possibly pay, some larger claims which it has been holding for several years because it lacked resources.

Michigan has amended its rules to require claimants alleging losses in excess of $20,000 to report their claims to police. The Fund has also enlisted the support of a local state senator to push for the institution of payee notification. The Fund has seen the number of larger claims increasing.

New Jersey is bidding farewell to its Deputy Director, Edward Ehler, who is retiring in June. The Fund "is 100% online" and has a $20 million reserve. Although the number of claims being filed is increasing, applications to sit for the Bar exam have "plummeted."

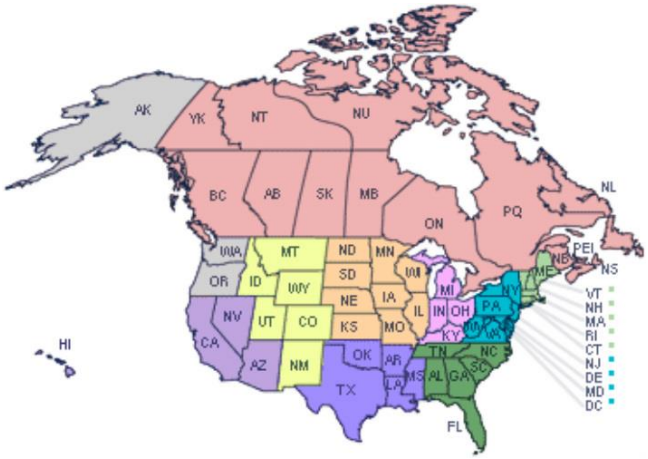
Tennessee paid just $5,000 in claims this year, but has changed its rules to allow the Fund to pay 100% of eligible losses.

New Mexico is pleased to report that it is "stable and solvent." While it typically pays and average of 20 to 25 claims annually, last year it paid on seven. It is considering requiring fee arbitration for cases less than $15,000.

Kansas is having problems with immigration claims and is considering petitioning the Federal Courts to establish a Federal Client Protection

Fund using mandatory contributions from all practitioners.

Massachusetts has revised its website to eliminate the term "defalcation" which may be confusing to some members of the public. The Fund has an $8 million reserve as a result of a decline in the number of claims which now appears to be reversing itself.



Delaware had no claims last year, but received 29 this year, including one with a $200 million alleged loss which was denied. A lawsuit filed against the Fund was dismissed by the court.

Maine paid one claim for $5,400 where the claimant was forced to retain new counsel after the Respondent – who had been appointed by the Court -- began sexting her. The Fund has begun advertising to let clients know it exists.

Arkansas paid one claim for $1,500 but now has "lots" of pending claims against deceased attorneys.

Texas has 300 pending claims, 50% of which have been filed against deceased attorneys. The Fund is concerned that "No one in the state knows how to balance a checkbook!"

Iowa set a claims record last year, but now has fewer claims than ever before. In an effort to publicize the Fund a press release was prepared and approved by the Court. After a "huge cry" from the Bar, however, the press release was never sent out.

Illinois does not have a surge in claims, but does have a surge in the size of the awards made in its claims. The Fund's reserve is gone, and the Fund has been forced to both prorate and delay payment of awards.

Florida also has fewer, but larger claims, with many resulting from estate and settlement thefts. Although the Fund was successful in securing some publicity for its efforts, the press incorrectly reported that a Fund award was "guaranteed," which has caused some problems.

Colorado's claims are down, which it would like to attribute to "ethics schools" now required in the state. The Fund has a $6 million reserve and has been able to hire an investigator as well as a part-time attorney.

Virginia has a $9 million reserve and just finished simplifying its rules, which are now included in a new website and claim form. The Fund has been paying unearned retainer claims which arise from lawyer impairment.

Kentucky described itself as being "in crisis mode" with the lowest reserve in 25 years and no increase in the annual assessment on the horizon.

The **District of Columbia** recently came close to paying a claimant who had already recovered from another Fund. Efforts are being made to increase communication with other Funds so that notice can be shared of claimants who file claims in multiple jurisdictions.

Idaho has a $975,000 reserve, but has not received any assessment monies in two years. It is dealing with claims against an attorney who sent an email confessing to stealing from specific clients, and then committed suicide.

Hawaii changed its rules to allow claims against disabled attorneys. It is also seeing an increase in

claims against older practitioners and is trying to increase publicity efforts so that the public knows the Fund exists.

North Carolina claims are on the rise, but the Fund is depleted. The Fund has found that messaging is particularly important in rural areas, and are visiting local bar associations to "sell" the Fund.

Minnesota is celebrating its 30th anniversary with a $4 million reserve. The Fund has caught up on processing older claims, and is working to clarify the difference between fee disputes and dishonest conduct.

New Hampshire is the only Fund in the nation with direct State Supreme Court review provisions. The number of claims is up, but the Fund is only allowed to pay out $1 million each year. Claims over $2,500 must wait until the end of the year to be paid. The Fund attributes the increase in claims to a new mandatory trust account review program.

Arizona has a $2.4 million reserve to deal with an increasing number of large value claims.

Georgia also has more claims and has raised its respondent cap from $350,000 to $550,000. Claims are pending against 39 respondents, one of whom created his own Facebook page which is now the subject of an "Inside Edition" episode.

Funds in the News

The **North Carolina Client Security Fund** recently paid $165,550 to 17 former clients of Fayetteville lawyer Dee W. Bray, (*pictured here*) for his failure to provide them services. The former clients include seven people accused of murder. The largest payment was $45,500. It went to a man who hired Bray to represent his son in a death penalty murder trial. The other clients faced a variety of charges, including assault, rape, illegal possession of a firearm and accessory to murder. Bray stopped serving his clients in February 2017 when he was put on "disabled inactive status" by Cumberland County Senior Resident Superior Court Judge Jim Ammons due to health issues. Bray was no longer allowed to practice law. Ammons kept secret the details of Bray's health problems. But he said at the time that Bray was in a hospital.

In **New York**, Albert Hessberg, a trusts and estates lawyer in Albany, was charged with defrauding and stealing money from clients as well as his own law firm. Hessberg was a senior partner at Barclay Damon and had practiced at the firm and its predecessor for 37 years before he was fired in March.

A string of partners of large firms have been charged —and many convicted—of various crimes in the last two years, including for insider trading and tax fraud.

But Hessberg's case stands out due to the stark allegations of stealing from clients, his connections in the community and the prominence of both Hessberg and his firm in the region.
According to Albany press reports, Hessberg sat on a number of local boards. "He's a very prominent lawyer and prominent community supporter," said his defense attorney, E. Stewart Jones, noting Hessberg's father and grandfather were both Albany lawyers.

Hessberg, charged with wire fraud and mail fraud by the U.S. Attorney's Office for the Northern District of New York, is accused of stealing and concealing the theft of at least $328,000 entrusted to him by clients, as well as taking payments for legal services that should have been made to Barclay Damon.

Barclay Damon is a midsize firm with 275 lawyers, including about 128 partners, spread out in 11 cities. While the firm is not ranked in the Am Law 200, its size and spread make it a large regional powerhouse. The firm also has sizable trusts and estates practices, with 22 attorneys.

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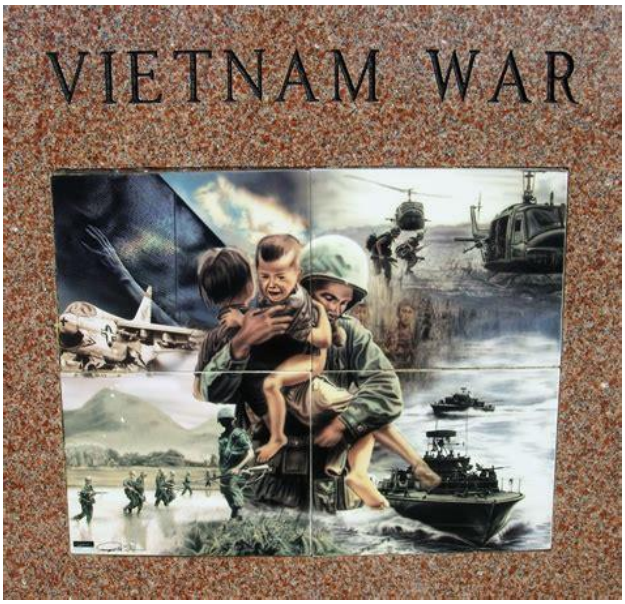
Milestones.....

Editor's Note: Fund staff are public servants both inside as well as outside their roles in client protection. This column attempts to share some of the great things being done in our communities by those active in the field of client protection. In this edition, we are honored to present the reflections of North Carolina's Root Edmondson, who is deputy counsel in charge of his state's Client Security Fund. Root recently returned to Vietnam and recalls his service there – for which we are very grateful. Please let me know about milestones in your jurisdiction by sending them to me at michael.mccormick@njcourts.gov .

In the spring of 1968, just before exams began at UNC-CH in my junior year, I realized that a study binge was not going to help me recover from the lack of serious attention to my coursework. I asked each professor if I could drop each course with no grade. All of my professors agreed. Thinking that I would be in summer school before my draft board knew what I had done, I dropped all classes on a Thursday afternoon just prior to final exams. After spending a party weekend in Chapel Hill, I went home on the following Monday to tell my parents what I had done. My report for physical notice was already at my parent's home.

I volunteered to go to basic training early, and was at Fort Bragg before exams were over. I assumed that the Army would use my education for its benefit, and refused to extend my length of service which would have allowed me to select my advanced training. That assumption was as erroneous as the assumption that enrolling in summer school would help me avoid being drafted. I was sent to Fort Polk, Louisiana, home of "Infantry Training for Vietnam." After nine weeks of hell at Fort Polk, I was sent to Fort Knox, Kentucky to learn to drive an armored personnel carrier ("track"). Comparatively, that was a three week vacation. I then got two weeks of leave before I reported to Travis Air Force Base on November 16, 1968 to be transported to Long Binh, Vietnam. At the airport in Oakland, CA, I spotted my best buddy from Polk and Knox, Hamilton "Kip" Ernst. We travelled to Long Binh together and both got assigned to the 2nd Platoon, A Company, 4/31st Infantry, 196th Light Infantry Brigade, Americal Division. After two more weeks of training about the booby traps and other hazards particular to our area just north and west of Tam Ky, which was about 25 miles south of Da Nang, we were taken by helicopter to our company's forward fire support base, Landing Zone West. From LZ West, they tried twice to deliver us by helicopter to A Company in Antennae Valley. Neither time did the pilot consider it safe to land in the valley. The next day, A Company was taken to a ridge overlooking the valley to dig in to support artillery that was



brought to the ridge to support the other companies still fighting in the valley. I spent the entire month of December on that ridge – digging, building, and patrolling without an opportunity to shower. I ate C-rations out of my canteen cup without the opportunity to clean it effectively. At least while on that ridge, I didn't have to shoulder my heavy pack while out on patrol. I only had to take ammo and water.

After the first of the year, A Company went on missions over hills and through valleys, and once through triple canopy jungle, usually while shouldering 60-pound packs. We often trudged through rice paddies and areas covered with elephant grass that had sharp edges that left cuts that would quickly become infected. As a result, we had to wear long sleeved shirts even when it was well over 100 degrees. We once travelled down a mountainside infested with leeches. Our biggest risk while out on patrol was random small arms fire and the possibility of booby traps. I never had to experience a full assault by an enemy force.

A member of our platoon had to go to the hospital in Da Nang monthly for hearing tests. He came back to our platoon after one of those trips and told me and Kip that the soldiers in F Troop, 17th Cavalry who were stationed at our company's rear fire support base, LZ Baldy, had it made. He claimed that they slept inside concertina wire at night on LZ Baldy, didn't carry everything they owned on their backs when they did venture out, and kept beer on their tracks. Kip and I, having been trained as track drivers, applied for a transfer to F Troop. Both applications were quickly granted which made me believe that my assumption that life was going to get easier was again incorrect. It certainly didn't take long to realize that F Troop did not spend nights on LZ Baldy very often. And we never took beer on our tracks since there was no way to chill it. After one mission with F Troop, I realized that small arms fire was much less risky than the prospect of a mine or a rocket-propelled grenade (RPG). I also concluded that the track driver was the most at risk since he was inside the track rather than riding on top, so when Sergeant Michael Hoffman suggested that I drive his track, I politely declined. He then ordered me to drive. As we crossed the first rice paddy dike, about a three foot tall mound of dirt that held water in the rice paddy, I properly balanced the track on the top of the dike. I was then supposed to ease the track down the far side of the dike. Instead, I let go of the brakes and allowed the track to slam into the rice paddy, propelling Sergeant Hoffman over the barrel of his 50-caliber machine gun into the mud in front of the track. That was the last time I had to serve as his driver. Amazingly, Sergeant Hoffman and I remain close friends today. In June 1969, Kip Ernst's track was hit by an RPG. He was severely wounded and spent five months in an Army hospital in Japan. I still keep up with him.

In August 1969, F Troop was ordered into Antennae Valley. We patrolled the valley for a couple of weeks without incident. However, we knew that

the Viet Cong (VC) and the North Vietnamese Army (NVA), our main combatants, knew that we only had one way out of the valley – through the pass we had used to enter the valley. The pass road was narrow and elevated along the edge of the mountain. Due to the risk of mines, we were led out by a large D-7 bulldozer that was dragging its blade. The D-7 hit a large mine. Nobody was injured, but it disabled the D-7 which was now blocking our exit from the valley. We put a shaped charge under the D-7 that blew it over the edge of the cliff. We watched it tumble into the valley. We were then able to exit the pass without further incident.

Not every day was spent on high alert during my tour of duty. Every combat unit got to "stand down" every three months. Our entire company would go to the Americal Division's rear area at the Chu Lai Marine Air Base for three days off in a very secure area. We were fed well and drank a lot. Otherwise, we read and relaxed. Late in my tour, I got a 7-day R&R (rest and relaxation) leave in Sydney, Australia. The only downside to that trip was the flight on a military transport from Da Nang to Cam Rahn Bay. The C-130 aircraft had been damaged by ground fire in an earlier flight and could not be pressurized. Although the pilot promised to descend slowly, he failed to do so. It was the most painful experience I have ever had in my life. The pain was an effect of the rapid change in air pressure had on the tiny air bubbles in my teeth. I also got a three-day in-country R&R at China Beach in Da Nang that involved less dental pain.

Late last year, my wife, Sue, and I talked about taking a Yangtze River cruise in China in the spring. I decided that I didn't want to travel that far around the world without also going back to Vietnam. The cruise tour group could not add a Vietnam trip to its itinerary, but could give us a layover in Hong Kong so we could make our own arrangements to get to Vietnam. A deputy bar counsel in Chicago had once told me that if I ever wanted to return to Vietnam, I should contact a company called Journeys Within. I sent an email to Journeys Within saying that I didn't want to take a tour and didn't want to go to the major cities in Vietnam, but wanted to know if they would provide me with a guide that would take me to where I had been on the ground during my first experience in Vietnam. They responded that they would be happy to do that. I sent them names of fire support bases and other places, such as Antennae Valley, that I wanted to visit. The company planned a six-day trip for us. Our guide, Hiêú, (he told us to pronounce it "Hugh") and a driver, Tran, picked us up at the Da Nang airport and took us to a nice hotel in Hoi An. We stayed two nights in that historic city visiting sites the company chose. The following day we departed for the Tam Ky area. While travelling down Highway 1, I could spot the hill where LZ Baldy was. Unfortunately, LZ Baldy is now a Vietnamese military base and was off limits to us. Further down Highway 1, I discovered that Tam Ky had grown from a small village to a rather large, industrial city. We found a nice place for lunch before going further south on Highway 1 to Chu Lai and the site of the Marine Air Base. Hiêú's research found that Chu Lai was not a Vietnamese town prior to the arrival of the Marines, but that Chu and Lai were the Vietnamese letters for the initials of the first Marine commander of that base. All vestiges of the Marine base and its Army attachments were gone other than the airport's runways. It is now a small airport.

After visiting Chu Lai in the late afternoon, Tran next drove us to a dock on the bay and we took a boat to our hotel on an island. It was secluded and very nice. We stayed there for three nights, taking the

boat back to our car during the day for excursions. Hiếú had found two valleys that were identified as Antennae Valley. He took me to the first and told me to get out of the car because we were in Antennae Valley. I got out, quickly looked around, and announced that this was not the Antennae Valley I was looking for. We departed to go to the other valley he had identified. On the way there, we went through a pass to get to the valley. Suddenly, I knew exactly where I was, the same place where the D-7 bulldozer had hit the mine. Of course I was curious, and looked over the cliff to see if the D-7 was still there. It was gone, and probably was gone within days after it came to rest in the valley. The valley itself was cleared and cultivated. It was nothing like it had been before. We had lunch in a home that Journeys Within had arranged for us. Our hostess had cooked several regional dishes that were all very delicious. I inspected some elephant grass that was in her side yard and was not cut or infected.

The next day, we went to another home where I was able to sit down to talk with two former Viet Cong resistance fighters. The younger man, Ba Lai, had been captured while attacking LZ West. I told him (with Hiếú interpreting) that I had been stationed on LZ West and asked when he was captured. He had the date tattooed on his arm. It was a year prior to my arrival. The older man was Ba Lai's father. He said nothing for a long time, but eventually leaned over the coffee table between us, looked me right in the eye, and talked rapidly for quite a few minutes. I looked at Hiếú and jokingly said that I knew he could recall all of what was just said. Hiếú said that Ba Lai's father had said that he owed a deep debt of gratitude to the Americans because, after he was wounded, the Americans patched him up and sent him to an Army hospital. After he was rehabilitated, he was released. However, he returned to his resistance of the American cause. After a couple of hours of fascinating conversation about our experiences, I sat with them on the couch and pictures were taken of us sitting together, smiling. Being able to have a friendly conversation with former combatants without even a hint of animosity was the best part of my return trip.

The next day, we decided to stay at our island resort. Hiếú came by in the afternoon to suggest that we take a motorbike trip around the island. There was a fishing village on the ocean side of the island. We visited a home where an elderly gentleman was building a round fishing boat in his back yard (the Vietnamese began to build round boats when the French taxed boat bows.) When he saw us Americans, he began to sing loudly. Others helping with the boatbuilding tried to get him to pipe down. Hiếú said that he was singing the South Vietnamese Army's fight song. The others didn't want to offend any of the Vietnamese military that were also present in the town. A younger man came up to Sue and me and began to talk to us in a stern voice, pointing to the ocean. I asked Hiếú if we had done anything to offend him. Hiếú said that the young man was telling us not to call the ocean the South China Sea, but to call it the East Sea. The Chinese navy will not allow the Vietnamese to fish near the atolls just offshore. Thus, he was speaking of his desire to rename the South China Sea. The next day, Sue and I went swimming in the East Sea. We crossed the bay in front of our hotel in kayaks and walked across a small stretch of land to the ocean. Some of the water in the bay was polluted with trash bags and other non-biodegradable floating objects. All of the stretch of land we crossed to the ocean was covered with the same kind of debris. It really bothered Hiếú that his country was not doing enough to clean up the

waterways since tourism is one of the country's primary economic engines. Otherwise, Central Vietnam was a beautiful place to visit.

We spent our last night in Vietnam back at the same hotel in Hoi An. We had a final night's dinner with Hiêú. The next morning, I asked Tran to take us by China Beach on the way to the airport in Da Nang. He picked us up early enough to do that. When we approached China Beach on the waterfront road, we found one construction fence after another on the beach side of the road. Each fence had a drawing of the high-end resort that was being built there. I sadly realized that neither the average Vietnam citizen nor I would ever be able to return to China Beach. I did see it from the air as we took off for Hong Kong.

I found my return to Vietnam to be like a visit to a totally different place. Most of the area I had patrolled in was now cultivated. The people were very welcoming and friendly. The food was wonderful. I had assumed that I would enjoy this trip. That was one assumption that turned out not to be wrong.

New Jersey Fund Receiver Sues for Recoveries

Businesses and individuals paid with money belonging to clients of disbarred Glen Rock, New Jersey, attorney Jay Lazerowitz are being asked in a fraudulent conveyance complaint to give the money back. Georgetown University, Syracuse University and BMW of North America are among the defendants named by court-appointed receiver Gary Norgaard in a complaint dated Dec. 28, 2017. Norgaard was appointed in November 2016 under a court order issued upon the request of the Lawyers' Fund for Client Protection. The Lawyers' Fund has received claims of $4.3 million from former clients of Lazerowitz.

According to the complaint, Lazerowitz has been engaged in a scheme to defraud his clients for nearly 30 years, converting client funds from his attorney trust account for his own personal expenses, and hiding his actions by paying back old clients with money from newer ones. He signed a confession in September 2017 in which he said he began converting client funds in the early 1990s "to support a lifestyle my legitimate earnings could not support." He used the funds for his personal bills, including "mortgage payments, credit card bills, college expenses, car leases, vacations, clothing, restaurants and other personal expenses."

In 1993 and 1994 he started defrauding clients on a larger scale, "taking ever-increasing sums from my clients and spending the funds with the design to place them beyond the reach of my creditors" pursuant to the state fraudulent conveyance law, according to the confession. Norgaard's complaint also seeks recovery from American Express, Neiman Marcus, check printer Deluxe for Business and a South Hackensack landscaping contractor for payments they received from Lazerowitz. Also named as defendants in the complaint are Lazerowitz's wife and his sons.

Norgaard's complaint seeks actual damages, counsel fees and costs from any of the parties that received converted funds. Norgaard says the complaint does not allege improprieties on the part of any defendants, but seeks the return of funds paid to them under the fraudulent conveyance law.

Moving Forward at the ABA: Reorganization, Realignment and Realization

By Selena Thomas
Senior Counsel, Client Protection, Center for Professional Responsibility, American Bar Association

Many of you have heard rumblings about the changes afoot at the ABA. Those of you who attended the NCPO Annual Meeting in Louisville were provided with a brief report, which may have led to more questions than answers. The goal of this article is to provide a more in-depth explanation of those changes, and to hopefully answer any questions or allay any fears about what those changes will mean to the Center for Professional Responsibility and the Standing Committee on Client Protection.

ABA Reorganization

Over the last several years, ABA leadership has been grappling with budgetary concerns. Like many membership organizations, the ABA has seen a steady decrease in the number of dues-paying members, creating a gap in dues revenue without a meaningful concomitant rise in non-dues revenue. In past years, the leadership has addressed this gap through its annual budgeting process. But the leadership realized that a more long-term approach was necessary to ensure the ongoing fiscal health of the organization through effective resource allocation. Accordingly, the leadership engaged in a multi-step review of its staffing and organizational structure.

As an initial step, the Board of Governors (the "Board") approved a one-time Voluntary Incentives Package ("VIP"), which was a voluntary separation package offered to ABA employees whose years of service combined with their age equaled 75 years or more. This VIP offer "enabled eligible individuals to decide for themselves whether to accept the Program's benefits" before leadership completed its reorganization analysis. The package was offered to 111 eligible employees with 42 employees accepting. Most of those positions were eliminated and responsibilities reassigned.

Subsequently, the staff leadership, led by Executive Director Jack Rives, instituted an Association-wide entity reorganization. The primary goal of the reorganization was to "refocus staff support and thus resources of the Association," breakdown the walls between the various entities that created unnecessary overlap and wasted resources, and to encourage collaboration. The reorganization places each entity into one of nine "big Centers," each organized under

one of the four Association goals. Under the reorganization, no ABA entities were eliminated, though many staff functions were affected. The staff reorganization provided a "more rational framework [to] enable the Board to better understand the implications of funding decisions." It also set the stage for phase 3, the Board's realignment of Association resources.

Building on the anticipated savings to ABA General Revenue resulting from the VIP package recipients and the increased efficiencies resulting from the staff reorganization, the Board undertook a review of current funding policies and entity functions to determine what, if any, funding would be provided to current ABA General Revenue-funded entities (which generally exempts ABA sections and grant-funded entities). The Board's Finance Committee recommended eliminating or significantly limiting funding to a number of General Revenue entities, and the Board approved those recommendations at its June

Board Meeting. Additionally, the Board capped the amount of funding that would be provided for reimbursement to members of General Revenue funded entities with each entity receiving a flat, uniform amount for reimbursement expenses. All changes will take effect in FY2019.

What Does that Mean for CPR and Its Entities

In early 2017, in anticipation of calls to streamline resources, the Center for Professional Responsibility undertook to develop a strategic plan of its entities and staffing structure to examine its mission, determine priorities, and where potential cuts could be made, realign resources. The Center's internal efforts to streamline ahead of the ABA leadership's process allowed the existing Center entities to remain largely intact, with a few exceptions. As part of the reorganization, the Standing Committee on Specialization was moved to the new Center for Accreditation and Education. Additionally, the Center for Professional Responsibility and Section Officers Conference (CPR-SOC) will be revamped following the August Annual Meeting. In lieu of in-person meetings and teleconferences, it will be transformed into a "virtual" community making use of a new ABA collaborative communications platform. The CPR-SOC was originally created to assist ABA Sections and Divisions and Center entities in the sharing of information and in the coordination of ABA ethics and professionalism related initiatives, programs, and policy. In reaching the decision to transform this group, it was determined that there were better, newer, and more innovative ways to engage these same groups on an ongoing and more involved basis.

The ETHICSearch function has been transformed. With Peter Geraghty's retirement, the Center is no longer able to provide a detailed and individualized ethics research service. We are currently in the process of revamping our ETHICSearch website (www.ambar.org/ethicsearch) which will offer links to a variety of resources including state rules, ABA model rules and opinions, articles, and publications on a myriad of ethics topics. In reaching our decision to transform this member benefit, we determined that most state supreme courts, bar associations or discipline authorities operate ethics hotlines, draft ethics opinions on questions from members, and provide online information for lawyers. Further, in reaching out to our membership, we have learned that the membership as a whole wanted "on-demand" or "real-time" products that could be obtained and searched on the members' own time table.

Mary McDermott, formerly Associate Counsel to the Standing Committee on Ethics & Professional Responsibility, will be the Center's Education & Policy Initiatives counsel. In this role, Mary will be staff counsel to the Policy Implementation Committee, CPR Conference Planning Committee, Publications Board, and the CLE Committee.

The Commission on Interest on Lawyers Trust Accounts (IOLTA) and the Standing Committee on Lawyers' Professional Liability, formerly housed in the Legal Services Division, are now a part of the Center for Professional Responsibility. Thanks to the foresight of Center Director Tracy Kepler and Coordinating Council Chair Lucian Pera in preemptively assessing the Center's resources, the Center is in a better position to accept these additional responsibilities, while continuing to fulfill its commitment to our members and volunteers.

The strategic planning process also revealed that the names and jurisdictional statements for some of its entities were no longer an accurate reflection of the scope of work currently or what is anticipated in the future. Therefore, there was a recommendation that Center Committees examine their jurisdictional statements and consider proposing amendments to bring them in line with current and future goals. As a result, the Standing Committees on Professional Discipline, Professionalism, and Client Protection submitted proposals for amendments to the House of Delegates for its consideration at the 2018 ABA Annual Meeting.

Client Protection Bylaws Proposal

The Standing Committee on Client Protection, in its assessment of its name and jurisdictional statement, identified three primary challenges. First, many people outside of the client protection community do not understand that "client protection" is more than a "feel good" term of art, but instead a set of policies and practices that are meant to prevent and/or mitigate

harm to clients in the client-lawyer relationship. Second, the name and jurisdictional statement do not accurately reflect the scope of the Committee's work. Finally, the jurisdictional statement is not in line with current ABA policy, specifically the ABA Model Regulatory Objectives for the Provision of Legal Services, which were adopted in light of advancements in technology, the need to create better access to legal services, and the expansion of delivery models beyond the traditional client-lawyer relationship. As models for the delivery of law-related services expand, so too does the need for protections for consumers of those services, particularly when those services are not delivered by licensed lawyers bound by rules governing the practice of law.

A Brief History

The Standing Committee on Client Protection was created in 1984 to supersede previous committees on client security funds and unauthorized practice of law. Upon its creation, the Committee's mandate included the enhancement of mechanisms to ensure the reimbursement of financial loss caused by lawyers' misappropriation of client funds and the promotion of public interests in the delivery of legal services by those not licensed to practice law. Reasonable minds differ as to the prudence of that decision, but the mandate given to the Committee requires this dual focus.

The Committee's jurisdictional statement was amended in 2004 to reflect its expanded focus on aspects of the client-lawyer relationship beyond policies to address the reimbursement of financial losses. Specifically, the amendments included two separate mandates to "promote and enhance mechanisms for the arbitration of client-lawyer disputes" and "promote and enhance mechanisms for the mediation of client-lawyer disputes." Since the 2004 amendments, jurisdictions have expanded the availability of alternative dispute mechanisms in their efforts to resolve client-lawyer disputes, and when possible, preserve the client-lawyer relationship. The 2004 amendments also included a mandate to "identify and comment on emerging concerns in the regulation" of the unlicensed practice of law and the multijurisdictional practice of law.

Proposed Amendments

First and foremost, the Committee's commitment to promote mechanisms to protect clients through programs to reimburse financial losses caused by lawyers' misappropriation of client funds remains unchanged. In fact, the only change in that portion of the jurisdictional statement expands the Committee's mandate to include the protection of the "public interest in the provision of legal services." Although the term "public interest" is inclusive of clients of lawyers, the specific reference to "programs to reimburse financial loss caused by lawyers' misappropriation of client funds and other causes of client loss" remains.

The proposal primarily focuses on the 2004 amendments, specifically those relating to alternative dispute resolution (ADR) and unauthorized practice of law (UPL) enforcement. The current jurisdictional statement mandates the Committee "promote and enhance mechanisms for the arbitration of lawyer-client fee disputes" and to "promote and enhance mechanisms for the mediation" of non-fee related disputes." The proposed amendments would combine those sections and remove limitations on the applicability of specific ADR mechanisms to certain categories of disputes by requiring the Committee to "promote and enhance mechanisms for the alternative dispute resolution of lawyer-client fee and non-fee related disputes." The Committee believes that amending the jurisdictional statement to encompass the promotion of all types of ADR opens jurisdictions up to the scope of available options to resolve client-lawyer disputes and mitigate client losses.

As they apply to UPL enforcement, the amendments empower the Committee to "promote and enhance mechanisms to address the unauthorized practice of law." The mandate currently only empowers the Committee to "identify and comment on emerging issues" in the regulation of UPL. While the Committee continues to identify and comment on emerging issues in the regulation of the UPL, the Committee has expanded its expertise and influence regarding UPL enforcement to include increased educational initiatives and outreach. In addition, recent Court decisions have raised questions about the constitutionality of state licensing enforcement

structures. Today, jurisdictions are looking to the Committee for increased assistance as they evaluate their enforcement structures to ensure compliance within newly defined parameters.

The newly adopted ABA Model Regulatory Objectives, the changing landscape of legal service delivery models, and the potential restrictions on UPL enforcement require the Committee to clearly state its role in protecting the public by promoting the enhancement of mechanisms to protect consumers of legal services by those licensed to practice law, otherwise authorized to deliver legal services, or those engaged in unauthorized practice.

It is also important to note that the lack of clarity regarding the Committee's policies and initiatives by the broader legal community required the Committee to repeatedly justify its existence. Strained Association resources only led to greater and more frequent challenges. The Committee hopes that the proposed name change and jurisdictional statement amendments will clarify the Committee's purpose and minimize those challenges moving forward.

Bottom-line

The Committee's proposed changes to its name and jurisdictional statement do not alter the Committee's mission nor does it lessen the Committee's commitment to the client protection community. They are meant to provide clarity for the scope of the Committee's work and to better reflect its purpose as the only ABA entity with the protection of the public interest in the provision of legal services as its primary mandate.

If you have questions about the ABA Reorganization and Board Realignment, or about the Committee's proposed Bylaws amendments, please contact me directly at selina.thomas@americanbar.org or (312) 988-6721.

Cooperating Funds Obtain $36 Million Judgment

On July 6, 2018, lawyers hired by the New Jersey and Pennsylvania Lawyers' Funds obtained judgment against Defendants: Michael W. Kwasnik and his father, William M. Kwasnik; Opis Management Fund; LLC; Oxbridge Investors Fund, LLC.; Kwasnik, Kanowitz & Associates, P.C.; and Kwasnik, Rodio, Kanowitz, and Buckley, P.C. The judgment, alleging fraud and Civil RICO violations was for $12,291,851.78. When treble damages were added for violation of civil RICO Act, the total award was for $36,875,555.67. The judgment is jointly and severally enforceable.

Fund Directors Daniel Hendi of New Jersey and Kathy Morgan of Pennsylvania testified at the proof hearing to establish their Fund's losses. Kwasnik was a member of both Bars and operated offices in both jurisdictions, defrauding clients from New Jersey and Pennsylvania. From the beginning, it was the goal of both Funds to cooperate and maximize their payouts to the victims. The total awards paid by both Funds was the largest against any one Respondent in their history. This is also the largest judgment ever obtained and will be docketed in multiple jurisdictions in order to proceed to collection. A copy of the Judgment and Statement of Reasons can be obtained by contacting the New Jersey Lawyers' Fund at Daniel.Hendi@NJCourts.Gov

Kwasnik, 47, now living in North Miami Beach, Florida, was indicted in February 2017 by a federal grand jury on three counts of wire fraud, two counts of mail fraud, one count of conspiracy to commit money laundering, seven counts of money laundering, and eight counts of transacting in criminal proceeds. The case is pending.

Legal Regulation in Canada – The Changing Landscape

by Victoria Rees, BA, LLB, CAE

Director of Professional Responsibility

Nova Scotia Barristers' Society

Significant regulatory reforms are underway across Canada which have begun to take root in States such as Colorado, Illinois and New York. The reforms focus on enhancing our ability to regulate in the public interest, while engaging lawyers in working with regulators to do so, rather than seeing us solely as the reactive 'disciplinarian'. The Western Provinces including British Columbia and Alberta, as well as Ontario and Nova Scotia have made great strides in modernizing the regulation of legal services, and giving lawyers and firms the tools to improve quality of service, and competent, ethical decision-making. This article highlights the reforms underway in Nova Scotia which it is hoped will, among other things, result in a reduction in complaints, professional liability claims and claims against the Compensation Fund.

Regulatory Objectives

In November 2014, Council approved the six Regulatory Objectives, to guide the work of the Society in meeting its purpose, role and functions. They are:

i. Protect those who use legal services.
ii. Promote the rule of law and public interest in the justice system.
iii. Promote access to legal services and the justice system.
iv. Establish required standards for professional responsibility and competence in the delivery of legal services.
v. Promote diversity, inclusion, substantive equality and freedom from discrimination in the justice system.
vi. Regulate in a manner that is proactive, principled and proportionate.

Council determined the six Regulatory Objectives are equally important, and require a consistent effort on the Society and Council's part to maintain a proper balance between them and the goal of any regulation.

Council then directed the development of a proactive and principles-based form of regulation, and support for lawyers and firms in establishing appropriate management systems to enhance the quality of legal services delivered, in the public interest.

Triple P: Proactive, principled and proportionate

The sixth Regulatory Objective, to "regulate in a manner that is proactive, principled and proportionate", known as the 'Triple P' approach, guides the Society's regulatory policies, including design, implementation, monitoring compliance and enforcement of regulations. This approach plays a fundamental role in the Society's ongoing regulatory reform.

Being "proactive" calls for anticipation of risks and prevention of potential harm. It calls for intervention before complaints or claims arise and/or to prevent further complaints or claims; to focus more on encouraging the provision of competent and ethical legal services rather than responding after the damage has been done.

"Principled" calls for general and goal-oriented regulatory statements instead of prescriptive and detailed rules. It is a more flexible approach. It is accompanied by tools to assist lawyers and law firms to establish processes to attain a stated regulatory goal. The Management System for Ethical Legal Practice (see below) embodies this approach.

"Proportionate" calls for a selection of efficient and effective regulatory measures to achieve the regulatory objectives. Using risk assessment and risk management tools, it calls for a balancing of interests and a 'proportionate' response in terms how the Society regulates members, and how it addresses matters of non- compliance.

This Triple P approach challenges the Society to engage in a continuous review, assessment and evaluation of the efficacy of all regulations, and to establish goals which are both achievable and measureable.

Regulatory Outcomes

In the fall of 2015, Council also adopted clear Regulatory Outcomes for the Society, to address in tandem with the Regulatory Objectives and the MSELP:

- Lawyers and law firms provide competent legal services
- Lawyers and law firms provide ethical legal services
- Lawyers and law firms safeguard client trust money and property
- Lawyers and law firms provide legal services in a manner that respects and promotes diversity, inclusion, substantive equality and freedom from discrimination
- Lawyers and law firms provide enhanced access to legal services

These Regulatory Outcomes provide a basis to measure the success of the Regulatory Objectives. For example, measurements in respect of competence and safeguarding trust funds could include reduction in Compensation Fund claims and complaints in certain areas, uptake in professional development, improved results at the Bar Admissions Course and on exams, development of written firm policies, results from our Land Registration Act audits and assessments, etc. These outcomes will help demonstrate that Regulatory Objectives one and three are being advanced.

Risk-focus

An essential component of a transformed regulatory regime is an enhanced focus on risk. To begin this work, the Society engaged in a 'risk audit' with a view to:

(a) examining its 'as is' capability to carry out the new Triple P and law firm regulation based approach;
(b) evaluating what tools and processes the Society will need in order to engage in Triple P and risk-focused regulation; and
(c) identifying existing and potential risks to the organization and to firms as it relates to achieving the Society's collective goals.

Results included the development of a Risk Based Maturity Model - tracking development and implementation of the Triple P and risk-focused model from 'development' to 'embedded' over five years - as well as a Risk Matrix which identifies the top 15 risks which could impact the Society's ability to achieve the Regulatory Objectives. Finally, this led to creation of Risk Responses in relation to minimizing the impact of the top 15 risks in the Matrix, which run the gamut from monitoring and education, to proactive supervision and/or intervention.

Of significant value has been a reallocation of effort and resources to areas of higher risk, and a reduction of effort and resources dedicated to areas of low risk and low probability. This has enabled the Society to reengineer some of

its key regulatory processes, and create greater capacity to focus on proactive Legal Services Support, rather than discipline and reactive responses. The Society also engaged in training staff in areas of risk identification and management, as well as process mapping.

The Management System for Ethical Legal Practice (MSELP)

Foundational to this work is the self-assessment process, which will ensure that each law firm interprets the principles of ethical practice outlined in the ten MSELP elements in the context of their unique practice characteristics and circumstances.

The MSELP self-assessment process in Nova Scotia comprises the following components:

- 10 core MSELP practice infrastructure elements
- a self-assessment tool (SAT) and Workbook (and related practice tools and resources) to support law firms through their self-assessment
- a means for law firms to report their self-assessment findings, including identified goals for MSELP improvements, via the law firm's Responsible Lawyer
- a range of Society follow-up responses (and ongoing support) to address and support law firms in achieving their identified infrastructure improvements

Lawyers and law firms are currently required to comply with a number of regulatory standards in the *Legal Profession Act* and Regulations, professional standards and the *Code of Professional Conduct.* In developing the MSELP self-assessment process, the Society has compiled aspects of these various requirements in one place and expressed them in a manner which is proactive, principled and proportionate, with a focus on key risks to the public. It is hoped that this approach will foster an environment in which lawyers and legal entities exercise professional judgment to meet the requirements for an effective management system, rather than simply follow prescriptive rules.

The connections between these components are expected to create a sustainable improvement in the quality of legal services and ethical legal practice of individual lawyers and law firms. Because law firm regulation and the MSELP reflect a more collaborative approach to regulation, the design involves enhanced dialogue and trust between the Society, lawyers and law firms.

The Ten Core Elements

The ten core MSELP elements were defined after extensive research and consultation with the profession. Careful consideration was given to the obligations outlined in the *Code of Professional Conduct*, the Society's various Practice Standards, and regulations establishing requirements for the practice of law. In addition, the Society examined lessons learned from complaints and Compensation Fund claims made against lawyers in Nova Scotia.

Under this framework, all law firms in Nova Scotia are required to have in place each of the elements that apply to them for an effective MSELP, and to demonstrate that they are engaged in and committed to them. Law firms, including sole practitioners, will be required to use the ten elements as principles for creating and maintaining an effective ethical infrastructure that fits the nature, scope and characteristics of their practice. The ten elements describe 'what' legal entities will be asked to achieve, but not 'how' to get there – representing in a sense, a form of co-regulation between the regulator and the regulated. This is an important step away from our traditional 'one-size-fits-all' approach to regulation.

The defined MSELP elements are:

- **Maintaining appropriate file records and management systems**
- **Communicating in an effective, timely and civil manner**
- **Ensuring confidentiality**
- **Avoiding conflicts of interest**

- **Developing competent practices**
- **Ensuring effective management of the law firm and staff**
- **Charging appropriate fees and disbursements**
- **Sustaining effective and respectful relationships with clients, colleagues, courts, regulators and the community**
- **Working to improve diversity, inclusion and substantive equality**
- **Working to improve the administration of justice and access to legal services**

The MSELP Self-assessment Tools

Tools have been developed to assist law firms with a reflection on their ethical infrastructure in relation to the above-mentioned 10 elements. An online reporting tool is supplemented by a more detailed Workbook to allow firms to reflect on a number of identified considerations under each of the ten elements. The self-assessment tools aim to increase firms' awareness of their performance in each of the areas, and to help identify areas in which improvement would be suitable or required. The Society will provide assistance to law firms to complete the self-assessment and achieve their goals through direct follow up, with focus on those in greatest need. Extensive resources are housed in an online MSELP Portal – and linked to via the Workbook - to provide practical "how to" assistance and precedents.

Based on the results of the self-assessment, each law firm is empowered to engage in its own planning, including identifying risk, prioritizing actions, and developing internal policies and processes aiming at reducing risk and improving its ethical infrastructure. This, in turn, is expected to enhance the quality of service provided to clients, and reduce complaints.

Other Compliance and Reporting Obligations

The Society has determined that it is important to distinguish between 'compliance' reporting and aspirational, goal-setting reporting (e.g. MSELP). It remains a regulatory requirement that law firms maintain effective trust account management systems, that firms confirm adherence to these rules annually, and that the Society continues to test the effectiveness of these systems through its Trust Audit Program. There are also a series of risk-based and other compliance-based questions that the Society requires lawyers to respond to in an Annual Lawyer Report (the ALR) and Annual Firm Report (AFR), including familiarity with the Client Identification Rules, the Code of Professional Conduct, and the like. The ALR also collects useful member demographic information, including areas of practice.

These regulatory compliance reports will be separate from the SAT, which law firms (only) will be asked to complete every three years. Further, the Society's risk responses to concerns arising from the mandatory compliance reports will be different from its responses to the SATs, which will highlight goals for improvement and education, for example. While the Society's first approach in each circumstance of SAT reporting will be to work with law firms to improve their systems and ethical frameworks, escalated risk responses (i.e. monitoring to active engagement to investigation, if needed) will be limited to only those situations presenting the greatest risk to the public interest.

Measuring outcomes and success – the MSELP Pilot Project

Key to the success of legal services regulation and the MSELP will be the ability to measure against clear, identified outcomes. As part of the design process, the Society conducted a Pilot Project to test the experiences of a representative selection of law firms, and to gauge their understanding and ability to incorporate the elements and test the self-assessment tool. The project unfolded between September 2016 and April 2017. A preliminary report was prepared dated February 17, 2017[53], and the final report was prepared on June 6, 2017[54] summarizing the results of the eight month pilot project.

The Pilot Project provided a preliminary evaluation of the MSELP's potential to achieve the goal of assisting lawyers and law firms in delivering highly competent and ethical legal services. Specifically, it sought to assess whether the MSELP self-assessment process has the capability to change behaviours, improve competence and quality of legal services, support ethical decision making, and enhance job and client satisfaction. It also aimed to allow the Society to assess the staffing and financial resources required to implement an impactful self-assessment process.

The Pilot Project was successful in a number of respects:

- The Pilot Project process itself was effective in achieving its stated objectives.
- Lawyers and firms appreciated the opportunity to interact with the Society on something positive, focused on risk-prevention and support.
- Valuable feedback from the volunteer firms who completed the SAT clarified which form worked best for them, what reporting process they preferred, and whether the self-assessment prompted any changes in law firm policy, practice management systems, or other areas.
- Constructive critique was provided about the value of the SAT, whether it needed to become a mandatory regulatory obligation, and how to minimize the perception of it being an added regulatory burden.

On this new foundation of Triple P and risk, the Society is already seeing significant changes and improvements in the way it regulates. In particular, the Society is developing an improved process for lawyers' trust account oversight: the Society will be considering such risk-based changes as excluding retainers from having to be deposited as trust funds, thereby reducing the number of firms requiring trust accounts; applying a risk assessment process to determine which firms need not file annual accountants' reports on trust accounts, but rather bi- or tri- annually (in addition to annual lawyers' compliance reports on trust accounts); we have brought the audit function in-house to maximize the benefit of the auditor's experience for firms and for the organization; and we are working more proactively with lawyers considering retirement to help them minimize trust accounts management problems at the end-of-career stage (some of this support is also being developed through a Succession Planning Task Force)

Potential Measurements of Success

There are a number of short and longer term benchmarks the Society hopes to see:

- A reduction in professional liability claims and complaints about poor quality of service, and ineffective
- client and practice management systems
- Continued reduction in Compensation Fund claims through early risk identification by both the Society and law firms, and enhanced trust safety measures
- a slow but steady increase in incorporation of new policies and procedures within law firms based on working toward achieving the ten elements – these results will be tracked through follow-up surveys and in-person discussions with firms within varying periods following completion of the SAT
- increased traffic on the Society's website, with calls, and requests for education in respect of the SAT and its resources from the Legal Services Support team
- increased early resolution of complaints about lawyer conduct with corresponding reduction in resources devoted to investigation and prosecution of complaints
- formal and informal feedback from lawyers and law firms about improved work environments and enhanced job satisfaction, as well as enhanced trust and satisfaction from their engagements with the Society

Will this new approach to regulation better enable the Society to regulate the practice of law in the public interest? The expectation is yes, and the early results suggest the Society is definitely on the right path.

GALLOPALOOZA

As participants in this year's National Conference on Professional Responsibility arrived at the Louisville Marriott Downtown they may have noticed a painted horse outside. His name is "On The Rocks" and he is painted with bourbon barrels. On the way to, or from, the NCPO's excellent dinner at

Eddie Merlot's, guests saw another painted horse named G'Day Mate. Two Koala bears are sitting on his back, his face reflects the Sydney harbor, and his body shows the sea creatures that live around Australia. These statutes are part of Gallopalooza, a civic pride initiative used to beautify the streets, encourage local exploration, increase tourism and showcase local artists.

**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