Prepared by Michael J. Knight and Frederick Miller, Esqs.
New York State Lawyers’ Fund for Client Protection
National Client Protection Organization, Inc.¹

2017

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### Cases

<table>
<thead>
<tr>
<th>Title</th>
<th>Volume and Citation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney Grievance Commission v. Finlayson</td>
<td>442 A.2d 565 (Md. 1982)</td>
<td>7</td>
</tr>
<tr>
<td>Beard v. North Carolina State Bar</td>
<td>357 S.E.2d 694 (N.C. 1987)</td>
<td>7</td>
</tr>
<tr>
<td>Bennett v. Oregon State Bar</td>
<td>470 P.2d 945 (Or. 1970)</td>
<td>7</td>
</tr>
<tr>
<td>Cousins v. Lawyers' Fund (Albany County, 2016)</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>Florida Bar v. Rogowski</td>
<td>399 So.2d 1390 (Fla. 1981)</td>
<td>8</td>
</tr>
<tr>
<td>Folly Farms I, Inc. v. Trustees of the Clients' Security Trust Fund</td>
<td>387 A.2d 248 (Md. 1978)</td>
<td>8</td>
</tr>
<tr>
<td>Forbess v. Minnesota Supreme Court, et al., No. 4-88-216</td>
<td>(D. Minn. March 22, 1988)</td>
<td>8</td>
</tr>
<tr>
<td>Hersh v. State Bar of California</td>
<td>496 P.2d 1201 (Cal. 1972)</td>
<td>9</td>
</tr>
<tr>
<td>Hippard v State Bar of California</td>
<td>782 P.2d 1140 (Cal. 1989)</td>
<td>9</td>
</tr>
<tr>
<td>In re Cater, 887 A.2d 1 (D.C. 2005)</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>In Re Clients' Security Fund, 493 S.W.2d 422 (Ark. 1973)</td>
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<td>9</td>
</tr>
<tr>
<td>In re Disciplinary Proceedings Against Teasdale, 2005 WI 137, 286 Wis. 2d 1, 703 N.W.2d 372</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>In re Judah, 282 Ga. 55, 644 S.E.2d 858 (2007)</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>In re Kennedy, 442 A.2d 79 (Del. 1982)</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>In Re Member of the Bar, 257 A.2d 382 (Del. 1969), app. dis.</td>
<td>396 U.S. 274 (U.S. 1969)</td>
<td>10</td>
</tr>
<tr>
<td>In re Reis, 291 A.D.2d 185, 739 N.Y.S.2d 148 (2002)</td>
<td></td>
<td>10</td>
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<tr>
<td>In re Stacy, 164 N.H. 706, 62 A.3d 885 (2013)</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Johnson v. State Bar of California, 16 Cal. Rptr. 2d 6 (1993)</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Jones v. State of Maryland, 616 A.2d 422 (Md. 1992)</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Kentucky Bar Ass'n v. Hall, 173 S.W.3d 621 (Ky. 2005)</td>
<td></td>
<td>10</td>
</tr>
</tbody>
</table>
Matter of Spagnoli, 559 A.2d 1352 (N.J. 1989) ......................................................................... 11
Nosal v. Neal, 318 Ark. 727, 888 S.W.2d 634 (1994) ................................................................. 12
People v. Hume, 196 Cal. App. 4th 990, 1000, 126 Cal. Rptr. 3d 824, 831 (2011) ..................... 12
Saleebey v. State Bar of California, 702 P.2d. 525 (Cal. 1985) ....................................................... 12
Sears Mortgage Corp. v. Rose, 634 A.2d 74 (N.J. 1993) ............................................................... 13
Williams v. Idaho State Bar, 848 P.2d 425 (Idaho 1993) ............................................................... 13

American Bar Association Publications ......................................................................................... 13

Articles ........................................................................................................................................ 15
Bossong, Kenneth J., Let's Get the Word Out About Clients' Security Funds, Bar Leader (March/April 1987) ........................................................................ 15
Bossong, Kenneth J. Getting Serious About Client Protection, The Professional Lawyer, August 1994, p. 10 ................................................................. 15
Chanen, Jill Schachner, Keeping a Lid on Illegal Takings: Commonsense Procedures Can Keep Employees' Hands out of the Cookie Jar, 85 A.B.A. J. 74, 75 (June 1999) .... 15
Frank, Cheryl, Some Client Security Funds Not So Secure..., Bar Leader ( Jan/Feb 1986) .......... 15
Hansen, Mark, Steady Course Consistent Results Are Sign of Success for Client Security Funds, ABA Survey Shows, ABA J., March 2003 ............................................................ 16
Hecht, Isaac, *Preventing Lawyer Theft*, Md. B.J. (Jan./Feb. 1991) .................................................... 16
Johnston, Stephanie J., New Mexico, *Kansas Start Up Client Protection Funds*, Bar Leader (May/June 1993)............................................................................................................. 16
Kalstrom, Jonathan, *Panel Settles 28 Claims*, Minn. Lawyer (July 1988) ..................................... 16
Leefe, David W. *Client Assistance Fund: Compensating for Lawyer Misdeeds, Repairing the Negative Image*, 60 La. B.J. 32 (2012) .............................................................................. 16
Miller, Frederick, *Farewell Caveat Emptor*, The Professional Lawyer (May 1994) ............... 17
Miller, Frederick, *Client Protection Funds Serve Noble and Pragmatic Needs*, N.Y. St. B.J., February 2001 ...................................................................................................................... 17
Minn. St. Bar Assoc., *Client Security Fund Reports Good Year*, In Brief (July 1988) ............... 17
Oths, Michael J., *Client Security Fund, An Important Service for the Public*, 36 Advocate 7 (October 1993) ............................................................................................................ 17
Turney, Harriet L., John A. Holtaway, *Client Protection Funds-Lawyers Put Their Money*
Law Reviews

Miller, Frederick, If You Can't Trust Your Lawyer...? , 138 U. Pa. L. Rev. 785 (1990) ................................................ 19
Note, Attorney Misappropriation of Clients' Funds: A Study in Professional Responsibility, 10 Univ. Mich.J.L. Ref. 415 (Spring 1977) ......................................................... 19
Note, The Disenchanted Lawyer and Client: Where Does the Legal Profession stand?, 42 Notre Dame Lawyer 382 (1967) ........................................................... 19
Rhode, Deborah L., Moral Character As A Professional Credential, 94 Yale L.J. 491, 590–91 (1985) ......................................................... 20

Digests and Encyclopedias ........................................................................................................ 20

Canadian Materials and Cases

The Blue Sky Committee, How Many Lawyers Steal Clients' Funds?, 36 Advocate 239, (1978) ........................................ 20
McColl, Bruce J., The Special Fund: Entitlement and Payment, Advocate (February/March 1980) ................................. 20
McColl, Bruce J., The Special Fund Custodians: Appointments, Duties and Discharge, Advocate (August/September 1980) ........................................................................... 20
McColl, Bruce J., The Special Fund Recent Developments, Advocate (October/November 1980) ................................................ 20
Duncan v. The Investigating Committee of the Law Society of Alberta, et. al. (Alta. CA No. 11587, April 4, 1994) ........................................................................................................ 21
Cases

Advance Finance Co., Inc. v Trustees of the Clients' Security Fund of the Bar of Maryland, 652 A.2d. 660 (Md. 1995). Finance company that loaned law clients money, secured by assignments of personal injury settlement proceeds has standing to seek reimbursement from client security fund where law firm misappropriated settlement proceeds.


Alvarado Community Hospital v. Superior Ct., et al, 173 Cal. App. 3d 476 (Cal. Ct. App. 1985). Law client who has received an award of reimbursement from California client security fund is estopped from pursuing a civil recovery against the lawyer whose dishonest conduct resulted in the client's award.


Attorney Grievance Commission v. Finlayson, 442 A.2d 565 (Md. 1982). Maryland Court of Appeals suspends lawyer from practice and conditions reinstatement upon lawyer making full restitution to the client security trust fund for awards to lawyer's clients.


Beard v. North Carolina State Bar, 357 S.E.2d 694 (N.C. 1987). North Carolina Supreme Court order which imposes lawyer assessments to support a clients' security fund does not violate state's separation of powers doctrine. Court rules are a proper exercise of its inherent constitutional powers over lawyers and the state's justice system.

Bennett v. Oregon State Bar, 470 P.2d 945 (Or. 1970). Oregon Supreme Court upholds enabling statute for a clients' security fund and assessments on lawyers to support the fund. Statute does not violate the state constitution.

Beutz v. Lawyers' Fund for Client Prot., 187 Misc. 2d 359, 722 N.Y.S.2d 708 (Sup. Ct. 2000). The Fund had a reasonable and rational basis to conclude that client's own criminal conduct substantially contributed to his loss from attorney's fraud, and that, therefore, client failed to provide sufficient evidence of a loss reimbursable from the Fund.

Court holds that the discharge of a lawyer's debt in bankruptcy does not relieve the lawyer from his restitution obligations to the California client security fund.


Clients' Security Fund v. Grandeau, 526 N.E.2d 270 (N.Y. 1988). New York Court of Appeals holds that lawyers' fund for client protection has standing, as subrogee of reimbursed law clients, to pursue negligence causes of action against the law partner of a dishonest lawyer.


Cousins v. Lawyers’ Fund (Albany County, 2016). Court denied former attorney’s request for Fund records under FOIL (Freedom of Information Law) holding that the New York Lawyers’ Fund is an agency which performs judicial functions in the discharge of its duties and exempt from FOIL.

Florida Bar v. Rogowski, 399 So.2d 1390 (Fla. 1981). Disciplinary court lacks authority to impose monetary sanction against lawyer, payable to the client security fund, where lawyer's misconduct did not involve the loss of law client money, or result in an award from the fund.

Folly Farms I, Inc. v. Trustees of the Clients' Security Trust Fund, 387 A.2d 248 (Md. 1978). In reviewing the denial of an award from the Maryland clients' security trust fund, which involved a theft by a corporate officer who was also a lawyer, the Court of Appeals articulates a "but-for" standard for evaluating losses in transactions with lawyers.


Goldberg v. New Jersey Lawyers' Fund for Client Protection, 932 F.2d 273 (3d Cir. 1991). In disbarred lawyer's Chapter 7 bankruptcy proceeding, debts owed to title insurer and client protection fund are held to be non-dischargeable. Federal Court of Appeals directs a pro-rata sharing of proceeds remaining in the lawyer's trust account to reimburse losses of title insurer and client protection fund.
Haskins v. Lawyers Fund for Client Prot., 286 A.D.2d 440, 729 N.Y.S.2d 499 (2001). Determination made by board of trustees of the Lawyers' Fund for Client Protection, denying claimant's application for reimbursement of funds allegedly misappropriated by attorney, was not arbitrary or capricious.

Healthcare Recoveries, Inc. as Agent for United Healthcare of Arkansas v. Arkansas Client Sec. Fund, 363 Ark. 102, 107, 211 S.W.3d 512, 516 (2005). Health care provider claim denied by Client Security Fund for unpaid medical bills it believed should have been satisfied from settlement escrow misappropriated by patient’s attorney. The health care provider argued that a fiduciary trust was created for the benefit of the health care provider when settlement proceeds for the minor were deposited with her attorney.

Hersch v. State Bar of California, 496 P.2d 1201 (Cal. 1972). California Supreme Court upholds statute which authorizes assessment from bar dues to support a client security fund.

Hippard v State Bar of California, 782 P.2d 1140 (Cal. 1989). California Supreme Court holds that a lawyer's failure to attempt restitution to client security fund is grounds to deny the lawyer's application to be reinstated to the bar.

Indeck v. Clients' Sec. Bd., 450 Mass. 379, 879 N.E.2d 57 (2008). Decision by Clients' Security Board on reimbursement from Client Security Fund was not subject to certiorari review; client did not have a justiciable or material right to any payment from Fund, board's decision did not give rise to substantial injury or injustice, and it did not reflect substantial error of law.

In re Cater, 887 A.2d 1 (D.C. 2005). Court rules permit a restitution as a requirement to law client victims in attorney disciplinary proceedings where the attorney's sureties reimbursed clients, but restitution to the sureties was not required as a condition of reinstatement.


In re Crews, 389 S.C. 322, 342, 698 S.E.2d 785, 795 (2010). In disbarment opinion, Supreme Court of South Carolina ordered both restitution to former clients, as well as to the Lawyers' Fund for anticipated future claims to be made.

In re Disciplinary Proceedings Against Teasdale, 2005 WI 137, 286 Wis. 2d 1, 703 N.W.2d 372. Attorney was required to pay the Wisconsin Lawyers' Fund for Client Security as a sanction in attorney disciplinary proceeding where the Fund approved reimbursement of unearned fees to three of attorney's clients.

In re Johnson, 380 S.C. 76, 668 S.E.2d 416 (2008). In ordering restitution, the Supreme Court directed that the Lawyers’ Fund must be repaid before the client can receive any additional restitution from the attorney.

In re Judah, 282 Ga. 55, 644 S.E.2d 858 (2007). The Supreme Court held that attorney satisfied
procedural and legal requirements for readmission, even though he had not completely reimbursed the Client Security Fund.

In Re Kennedy, 442 A.2d 79 (Del. 1982). Delaware Supreme Court holds that the client protection fund's random audit program does not violate lawyer's constitutional privacy right or attorney-client privilege. A lawyer entrusted with law client funds is a fiduciary subject to reasonable government regulation.

In Re Member of the Bar, 257 A.2d 382 (Del. 1969), app. dis., 396 U.S. 274 (U.S. 1969). Delaware Supreme Court rejects constitutional challenge to court rule establishing the Delaware clients' security trust fund, and assessing lawyers for its support. Rule is within the court's inherent power to regulate the legal profession.

In re Reis, 291 A.D.2d 185, 739 N.Y.S.2d 148 (2002). Award from Lawyers’ Fund preceded default disbarment of attorney. Restitution not ordered since disbarment was based on respondent’s default, and not a Court finding of willful misappropriation or misapplication of client funds.

In re Stacy, 164 N.H. 706, 62 A.3d 885 (2013). Supreme Court of New Hampshire held that client was not entitled to reimbursement under Public Protection Fund because he failed to prove by the preponderance of the evidence that attorney's conduct amounted to defalcation.

Jewell v. Fletcher, 2010 Ark. 195, 377 S.W.3d 176 (2010). Award from Client Security Fund was considered a "collateral source," wholly independent from respondent attorney, and thus client's claims against attorney's law firm in dissolution proceeding was not be reduced by award received from Client Security Fund.

Johnson v. State Bar of California, 16 Cal. Rptr. 2d 6 (1993) . Court of Appeals sustains the authority of the client security fund to reimburse unearned legal fee. Court discusses standards of judicial review in mandamus proceedings involving determinations of the client security fund.

Jones v. State of Maryland, 616 A.2d 422 (Md. 1992). Maryland Court of Appeals holds that Defendant was not deprived of constitutional right to counsel because his criminal defense lawyer had been suspended from practice after failing to pay client security trust fund assessment.

Kentucky Bar Ass'n v. Hall, 173 S.W.3d 621 (Ky. 2005). Attorney suspended for five years with reinstatement conditioned on reimbursement to Client Security Fund for awards paid to former clients.

Lawyers' Fund for Client Prot. of State of N.Y. v. Bank Leumi Trust Co. of N.Y., 94 N.Y.2d 398, 727 N.E.2d 563 (2000). NY Court of Appeals affirmed that under the Uniform Commercial Code, the Lawyers' Fund, as subrogee, could pursue the full face amount of a forged/converted check against drawee, despite the Fund having only paid a two-thirds award to the law client/subrogor.

Lawyers' Fund for Client Protection v. Manufacturer's Hanover Trust Co., 153 Misc. 2d 133 (N.Y. Sup. Ct. 1992). In an action against a depository bank to recover for its payment over a forged settlement draft, court holds that an attorney does not have the apparent authority to negotiate or endorse a check which is payable to a law client.

Matter of Cooper, 168 A.D.2d 695 (N.Y. App. Div. 1990). First disciplinary court decision invoking court's statutory authority to order lawyer to make restitution to law clients, or to the lawyers' fund for client protection as subrogee, enforceable as civil judgments.

Matter of Douglas, 764 P.2d 1 (Ariz. 1988). Arizona Supreme Court holds that Disciplinary court has no authority to require a dishonest lawyer to pay sanctions to the clients' security fund for a loss which was reimbursed by the lawyer's malpractice insurer.

Matter of Gans, 75 B.R. 474 (Bankr. S.D.N.Y. 1987). In a Chapter 7 adversary proceeding which challenges the dischargeability of a debt based on a lawyer's fraud or deceit, Bankruptcy Court holds that the client-creditor's burden of proof is "clear and convincing".


Saferstein v. Lawyer's Fund For Client Prot., 298 A.D.2d 726, 748 N.Y.S.2d 438 (2002). Denial of client's claim for reimbursement of funds allegedly misappropriated by his former attorney became final and binding, and four-month limitations period for filing Article 78 proceeding began to run when client signed for and received letter from the Lawyer's Fund for Client Protection notifying him that denial of his claim was "final."

Matter of Saferstein v Lawyers' Fund for Client Protection, 30 A.D.3d 653, 815 N.Y.S.2d 787 (2006). In an Article 78 proceeding, Court determined that client failed to state a viable claim for reimbursement and was not entitled to recover from Lawyers' Fund for Client Protection for attorney's alteration of mortgage instrument.

Matter of Spagnoli, 559 A.2d 1352 (N.J. 1989). New Jersey Supreme Court cites finding of "dishonest conduct" by clients' security fund in disbarring lawyer.

Matter of Tooks, 75 B.R. 162 (Bankr. S.D.Cal. 1987). For purposes of Chapter 7 of the Bankruptcy Code, an award by the California client security fund to the debtor-lawyer's victims does not reduce the amount of the debtor's criminal restitution obligation, or affect dischargeability.
Monumental Life Insur. Co. v. Trustees of the Clients' Security Trust Fund, 588 A.2d 340, (Md. Ct. App. 1991). Maryland Court of Appeals holds that a life insurance company which paid insurance proceeds to improper party as a result of lawyer's dishonest conduct cannot recover loss from clients' security trust fund: the insurance company was not a law client of the dishonest lawyer.

New Jersey Lawyers' Fund For Client Prot. v. First Fid. Bank, N.A., 303 N.J. Super. 208, 696 A.2d 728 (App. Div. 1997). As subrogee and assignee of claimant's rights, the Lawyers' Fund is entitled to seek reimbursement from collateral sources other than the defrauding attorney, and does not need to distinguish between morally "innocent" or "culpable" collateral sources.

New Jersey Lawyers' Fund for Client Prot. v. Stewart Title Guar. Co., 203 N.J. 208, 1 A.3d 632 (2010). Supreme Court of New Jersey held that no agency relationship existed between attorney and the title insurer at the time attorney misappropriated his client's funds, therefore, the insurer was not liable for the misappropriation by the attorney.

Nosal v. Neal, 318 Ark. 727, 888 S.W.2d 634 (1994). Court reversed and remanded denial of claim by Committee on Professional Conduct and Client Security Fund Committee because defalcating attorney died before being suspended or disbarred for conversion. Court referred to amended rules which permitted an award as a matter of grace when there were sufficient amount in fund to allow reimbursement of client if claim was otherwise appropriate for compensation by fund.

Office of Disciplinary Counsel v. Sigall, 538 N.E.2d 109 (Ohio 1989). Ohio Supreme Court rejects suspended lawyer's application for reinstatement where a lawyer settled restitution obligations to clients' security fund and other victims. Full restitution is required.


Pappas v. Lawyers' Fund for Client Prot., 60 A.D.3d 1195, 875 N.Y.S.2d 608 (2009). Appeal from Article 78 challenge which affirmed Lawyers' Fund denial of claim that alleged misconduct took place outside of attorney-client relationship and therefore petitioner was not entitled to reimbursement from the Fund.

People v. Hume, 196 Cal. App. 4th 990, 1000, 126 Cal. Rptr. 3d 824, 831 (2011). State Bar has total discretion to pay a claim or not, and no claimant has a contractual right to restitution from Client Security Fund.

Saleeby v. State Bar of California, 702 P.2d. 525 (Cal. 1985). California Supreme Court holds that a claimant who is denied an award from the client security fund may seek judicial review by mandamus. The fund must provide claimants with an opportunity to be heard with respect to determinations, and must make sufficient findings to afford judicial review. State bar cannot prohibit lawyers from charging legal fees to claimants.
Schettino v. Alter, et al., 140 A.D.2d 600 (N.Y. App. Div. 1988). New York lawyers' fund for client protection performs quasi-judicial functions, and all participants in the fund's proceedings are absolutely immune from liability in defamation, including claimants and lawyers who assist them prosecute claims seeking reimbursement from the fund.


Siener v. Zeff, 194 P.3d 467 (Colo. App. 2008). Client who accepted award from Client Security Fund for theft of unauthorized personal injury settlement sought thereafter to restore underlying personal injury action. Trial court dismissed on summary judgment, holding acceptance of Fund award was ratification of the unauthorized settlement. Appeals court reversed and remanded, holding acceptance of Fund did not equate to ratification of the unauthorized settlement which was a question of fact to be determined.

Southeast First Nat'l Bank of Miami v. Florida Bar, 389 So.2d 1222 (Fla. Dist. Ct. App. 1980). The Florida clients' security fund, as subrogee, may pursue claims against a depository bank on a forged endorsement of a settlement draft. The Fund's subrogation claims are not limited to claims against dishonest lawyers.


Williams v. Idaho State Bar, 848 P.2d 425 (Idaho 1993). The Idaho Supreme Court upholds award determinations made by the clients' security fund. The court adopts a preponderance of evidence standard of judicial review for clients' security fund determinations.

American Bar Association Publications


For the ABA's Annual Meeting in 1953, President Robert G. Storey endorses a program of "lawyers indemnity" for the United States.

**Articles**


Chanen, Jill Schachner, *Keeping a Lid on Illegal Takings: Commonsense Procedures Can Keep Employees' Hands out of the Cookie Jar*, 85 A.B.A. J. 74, 75 (June 1999). Twenty-six states now have mandatory overdraft protection for client trust accounts. Banks are required to notify the state lawyer disciplinary agency when those accounts are overdrawn.


Gay, E. Phelps, *Professionalism Successes, Challenges*, 53 La. B.J. 234, 235 (2005). A reflection of how far the legal profession has come in terms of addressing professional misconduct and providing reimbursement where clients were harmed due to misconduct.


Hansen, Mark, *Steady Course Consistent Results Are Sign of Success for Client Security Funds*, ABA Survey Shows, ABA J., March 2003.  The latest ABA survey of state client security funds show that the number of claims they process and the total amounts they pay out haven't changed much over the past several years.


Johnston, Stephanie J., *Just How Secure are Client Security Funds?*, Bar Leader (July/Aug 1992).  A look at the increase of claims on client security funds nationwide, and the resulting financial pressure brought to bear on different states' programs.

Johnston, Stephanie J., *New Mexico, Kansas Start Up Client Protection Funds*, Bar Leader (May/June 1993).  An account on the re-establishment of client protection funds in Kansas and New Mexico.


Lousberg, Peter, *1993 Client Security Fund Forum Welcoming Address*, The Professional


Miller, Frederick, *Farewell Caveat Emptor*, The Professional Lawyer (May 1994). Discusses new rules of professional conduct for counsel in matrimonial litigation, including a client's bill of rights.

Miller, Frederick, *Client Protection Funds Serve Noble and Pragmatic Needs*, N.Y. St. B.J., February 2001. Discussion of the different purposes the Client Protection Fund serves and its importance to promote public confidence in the legal profession.


Turney, Harriet L., John A. Holtaway, *Client Protection Funds-Lawyers Put Their Money Where Their Mouths Are*, 9 No. 2 Prof. Law. 18. Discussed the purpose and history of Client Protection Fund programs.


Zacharias, Fred C. *A Word of Caution for Lawyer Assistance Programming*, 18 Geo. J. Legal Ethics 237, 249 (2004). A look at how the various bar functions, including those aimed at client protection, interrelate and considers the tensions created as a result.

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Monopoli, Paula A., *Fiduciary Duty: New Ethical Paradigm for Lawyer/fiduciaries*, 67 Mo. L. Rev. 309 (2002). Reforms directed at increasing deterrence -- discouraging lawyer/fiduciaries from engaging in misconduct in the first place, including but not limited to lawyers reporting professional misconduct and random audits by the bench.


Note, *The Disenchanted Lawyer and Client: Where Does the Legal Profession stand?*, 42 Notre Dame Lawyer 382 (1967). Note discusses the consequences of lawyer theft and various methods to address it, including disciplinary proceedings and clients' security funds.

Outcault, R.S and George Peterson, *Lawyer Discipline and Professional Standards in*

Rhode, Deborah L., Moral Character As A Professional Credential, 94 Yale L.J. 491, 590–91 (1985). For the Bar to maximize public protection, control over the disciplinary process should be vested in less-partisan quarters. Professional attention should also center on less fundamental reforms, such as stiffer sanctions, increased client security funds, mandatory arbitration and audit procedures, adjustments in malpractice standards, and expansions in disciplinary agency jurisdictions.

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3 Fed. Prac. Dig. 3d (West) Attorney-Client 663.


7 Cal. Jur. 3d Attorneys At Law §338.

7A C.J.S. Attorney-Client §279.

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McColl, Bruce J., The Special Fund Recent Developments, Advocate (October/November 1980). The third in a three-part series discussing how imposed award limits affect claimants to the Special Fund.

Duncan v. The Investigating Committee of the Law Society of Alberta, et. al. (Alta. CA No. 11587, April 4, 1994). Court authorizes Alberta Law Society to proceed with assurance fund claims prior to the hearing of discipline proceedings.


Poy and Totzauer v. Law Society of British Colombia, 11 B.C.L.R. 2d 246, (1987). Court dismisses law client's appeal. Special fund's findings are adopted that absent dishonesty or fraudulent conduct, no wrongful conversion occurred.

Eckstein v. Law Society of Manitoba, 3 W.W.R. 171 (1981). Court holds that regardless of eligibility, the statute that governs the Manitoba special fund creates no obligation to pay any claim, and that the special fund has full discretion to deny even eligible claims.