

The Client Protection Webb*

A Publication of the National
Client Protection Organization

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President's Corner:

New VP's, Hecht Recipient, Head to Little Rock

*By Michael J. Knight, NCPO President, Deputy Counsel,
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It was great to see so many of you at our Annual meeting at the ABA National Forum in Denver! Members engaged in a terrific discussion and set some solid goals for the coming year. Important topics discussed included strengthening membership benefits, reaching out to non-member jurisdictions and implementation of new strategic planning goals.

NCPO announced a changing of the guard for two of our Regional Vice Presidents. We are so

grateful for the outstanding service of Elizabeth Turner of Washington and Danon Goodrum-Garland of Michigan. We are pleased to welcome Julia Crossland of Idaho as our new West Regional Vice President and Alecia Ruswinckel of Michigan as the new Midwest Regional Vice President.

Finally, Wisconsin's own Kris Wenzel was chosen as the 2015 Isaac Hecht Law Client Protection Award recipient. Congratulations Kris!

Things are gearing up for the September Regional Workshop in Little Rock, Arkansas. President-elect Kathy Peifer and Southwest Regional Vice President Mike Harmon (*con't. next page*)

Save the Date

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Please mark your calendar to attend the next NCPO Regional Workshop on September 28 – 29, 2015 in Little Rock, Arkansas. One of NCPO's top goals is to encourage greater participation in the workshops, where opportunities abound to network with other states' Funds, and delve into the issues facing those involved in the field. If your Fund is on a tight budget, consider applying for a grant from NCPO of up to \$1,000 to help defray the cost of attending the Forum. Applications will be assessed based on financial need, and must be received not later than 90 days before the Forum. For details, and to apply, visit www.ncpo.org/page12.html
See you in Little Rock, Arkansas!

President's Corner (continued)

are hard at work to develop an outstanding agenda. Program and registration materials are available on our website at www.ncpo.org. The workshop dates are September 28th and 29th. We hope to see you there!

Don't forget the NCPO Speakers' Bureau!! It is one of the best resources

available from NCPO! A distinguished team of members are eager to speak before your fund trustees, your bar association and even your Court. Check out the Speakers' Bureau brochure on our website. Simply get in touch with the speaker of your choice. There is NO COST - There are no speaker's fees, and, NCPO will underwrite all travel expenses for its speakers.

In closing, please continue to share with us what is happening in your jurisdiction - special claims experience, an important court decision even an administrative breakthrough! - e-mail it to our editor, Mike McCormick or reach out to your Regional Vice President. As always, we appreciate your continued involvement and interest in NCPO.

Mile-High Funds Honor Wisconsin Administrator

Kris Wenzel, liaison to the Wisconsin Client Security Fund since 1991, was honored as the twelfth recipient of the Isaac Hecht award during the ABA National Forum in Denver in June. In almost 25 years of client protection, Khri has engineered a number of structural corrections to Wisconsin's court rules and Fund policies, permitting the Wisconsin Fund to increase its award cap three times, reaching \$150,000 in 2010. Kris tackled the problem of under-funding, as well, in a series of steps, including petitioning the Wisconsin Supreme Court to eliminate a "sufficiency level" budget limitation on the Fund, and by setting a permanent lawyer assessment of \$20 per year. This assessment is re-evaluated every five years to ensure there is adequate cash flow to the Wisconsin Fund to meet client claims. Kris has also overseen the adoption of more client friendly fund policies and created a culture in and among her Trustees which encourages their attendance, participation and education at both ABA and NCPO forums and workshops. Perhaps most significantly, she has nurtured a mindset in which the Wisconsin Fund now seeks ways to assist clients rather than reasons to deny claims. When presented with the award, Kris noted, "The Fund is the reason I come to work every day!"

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 a frequent lecturer and writer on issues dealing with legal ethics, professional responsibility and the management of client protection funds. He 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. NCPO is pleased to recognize Kris Wenzel, as she continues the dedicated traditions of client protection embodied by Isaac Hecht in a lifetime of service.

Difficult Claims (hopefully) Made Easy

Following is an excerpt from the Difficult Claims Workshop held in Denver in June. Please consider the facts wholly independent from limits that may be in place in your particular jurisdiction so that we can answer the question “What should be done, and why?” Email your conclusions to the editor at michael.mccormick@judiciary.state.nj.us and we will share the results in a future issue of the Webb.

Donald is the independent owner of a title insurance agency and, at the recommendation of one of the underwriting companies for whom he writes insurance policies, he retained Respondent Huey to represent his agency in “various general legal matters.” Donald paid Huey a fee of \$7,200 for Huey’s services. As a result of his legal work for Donald, Huey became acquainted with other employees of Donald’s company. One of these employees stole Donald’s signature stamp together with a series of checks which she proceeded to make payable to herself, Huey, and a third employee. Six months later, a check cashing company called Donald to tell him that a check bearing his signature had been returned by the bank for insufficient funds. Donald then conducted an audit which revealed the theft of 70 checks which had been cashed in a total amount of \$25,000. Of this amount, 11 checks totaling \$4,000 had been written to, and cashed by, Huey. Huey deposited these checks to his attorney business account, and used the proceeds to pay his personal credit card bills.

The balance of the checks (\$21,000) were cashed by the other two conspirators, and half of the proceeds (\$10,500) were deposited into Huey’s attorney trust account, since Huey – once invited to participate in the scheme – became its ringleader and encouraged his co-conspirators to entrust the check proceeds to him so that he could invest in a land deal in New Mexico on their behalf. There is no evidence that the land deal existed, and these proceeds were ultimately drawn down to repay Huey’s other clients and creditors.

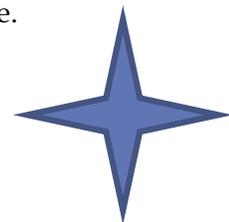
Donald said Huey was not entitled to any of the money as payment for legal services, since he had already been paid separately. Huey was arrested, and suspended from practice. The criminal case against him is still pending, and he has not responded to Donald’s claim. There were no funds remaining in Huey’s attorney accounts at the time of his suspension.

Donald noted that, if not for the attorney-client relationship, Huey would not have made the acquaintance of the employees who subsequently stole from their employer and who involved Huey in their scheme. Donald has also executed Affidavits of Forgery for each of the stolen checks and advised that he has retained new counsel to represent him in litigation brought against his title company by the check casher who accepted the stolen checks from the co-conspirators. After discovering the fraud, Donald said he stopped payment on as many of the checks as possible, although, by definition, this occurred after the checks had been presented to the check casher, who now seeks to recover from Donald the funds it paid to the co-conspirators.

How should Donald’s claim to the Fund be decided?

NCPO Speakers’ Bureau Ready and Willing

One often underutilized benefit of NCPO membership is the NCPO Speakers’ Bureau. If you need someone to talk about payee or overdraft notification, what constitutes a high performing client protection fund, the benefits of community education about your Fund, or a wide range of other topics, then the NCPO Speakers’ Bureau is for you. There are no speakers’ fees, and NCPO will underwrite all travel expenses for its speakers, who possess a huge body of knowledge and experience in client protection matters. Speakers are happy to talk to your trustees, bar association, court, law school or community organization. To arrange for a speaker, just get in touch with the speaker of your choice. Full biographies are available online at www.ncpo.org under the Speakers’ Bureau tab on the bottom left of the page.



Nominations Being Accepted for Annual Isaac Hecht Award

Nominations are now being accepted for the 13th recipient of the Isaac Hecht Law Client Protection Award.

The Hecht Award is presented annually at the ABA Client Protection Forum (next year on June 2-3, 2016 in Philadelphia, Pa) to recognize an individual, law client protection fund, or other professional organization that has demonstrated excellence in the field of law client protection. "Excellence"

includes achievements in promoting public confidence in the administration of justice and the integrity of the legal profession; the substantial reimbursement of law clients for eligible losses; the development of programs to prevent or detect professional misconduct in the practice of law; and meaningful public information programs for client protection funds, attorneys and legal consumers.

Isaac Hecht was a co-founder of NCPO in 1998 and served as its Director and Treasurer. Through 64 years of the practice of law in Maryland he remained committed to the belief that trust is the essential linchpin in every lawyer-client relationship.

Nominations may be submitted through NCPO members Janet Moss at tonimoss@aol.com or Janet Green Marbley at Janet.GreenMarbley@sc.ohio.gov.

Funds in Motion – News from the Front Lines

Thirty-two jurisdictions attended Denver's Town Hall in June, with many reporting on their "State of the Fund." 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@judiciary.state.nj.us, or better yet, come to Little Rock in September, and tell us yourself!

Virgin Islands is "busy making baby steps" towards the creation of a client protection fund. The V.I. Supreme Court has adopted professional responsibility rules and approved a trust account handbook. An "ethics school" for trust account management was held, and the 1,000 members of the Islands' Bar have begun registering and paying a \$50 annual fee to establish a Fund. The Virgin Islands welcomes visitors to stress the importance of client protection and advance the process of creating their Fund.

Texas has a new administrator who is tackling the project of digitalizing all of the Fund's files.

Claims involving immigration matters and resulting from lawyers who die leaving no money in their attorney accounts are increasing.

Kansas is being threatened by a legislative takeover of its \$7 million reserve. The State is facing a \$700 million deficit after passing a law which eliminated the state income tax.

Washington, D.C. is facing a similar attempt by local government to tap into the Fund's \$1 million reserve.

Missouri is facing a record number of claims, and has had to prorate its awards as a result, after one respondent used a co-conspirator to pose as his elderly mother in a scheme to steal client funds.

Kentucky appears to have been successful at working with the Court and Bar to replace retiring Trustees with members from similar practice areas and experience, thus reducing the learning curve, and "institutional loss" sometimes left by retiring board members.

“Funds in Motion” – continued

California has a staggering 5,500 pending claims with \$18 million in alleged client losses, but only a \$6 million reserve available to fund awards. Loan modification schemes and immigration cases account for the majority of the new claims.

Michigan has increased its per claimant maximum to \$150,000 and its respondent maximum to \$375,000, and has petitioned the Court for subpoena power as well as immunity for its staff and trustees. It also has seen an increase in claims arising from lawyers who die without leaving enough money in their accounts to satisfy client refund requests.

New York paid 621 claims last year in a total amount of \$6.1 million. A single respondent was responsible for 420 unearned retainer claims. The Fund has also published the eighth edition of its *Practical Guide to Attorney Trust Account and Recordkeeping* brochure, and is developing a new publication to assist legal consumers in finding a lawyer.

Massachusetts made the single largest award in its history this year - \$960,000 – which combined with other claims, is forcing the fund to fall back on its \$5 million reserve.

Georgia has no reserve, but is facing an influx of claims arising from immigration matters and personal injury cases.

Arizona is somewhat relieved that the number of claims this year has dropped off somewhat from its record year in 2014.

Maryland has 150 claims generated by two respondents accused of stealing their clients’ personal injury settlements. It has also instituted a “summary disposition” process for claims which are clearly non-compensable.

Oregon is pleased that it now has a \$1 million reserve.

New Mexico’s fund is nine years old this year. In 2014 it paid out \$50,000 on ten claims. Since it is

seeing many multi-jurisdictional immigration claims, it is working on developing reciprocity with other states’ funds.

Maine approved overdraft notification this year, and also has a new administrator who spends one-third of his time on fund business. Maine noted that acting with a “lack of integrity” is one definition of dishonest conduct in the state.

New Jersey is in the midst of its largest payout in history – over \$9 million on 49 approved claims against one respondent. The New Jersey and Pennsylvania funds worked together to address client losses in the case, with the Pa fund paying an additional \$3 million to victims. In addition, New Jersey’s annual report is available online at www.njcourts.com/cpf.

Wisconsin was forced to defer payment of some awards last year because its reserves had been depleted. This year, it is in a better position, and is working on instituting a payee notification rule as well.

Delaware was happy to report it has no pending claims and a \$5 million reserve. May it always be so!

Colorado is also among the states seeing a surge in immigration-related claims. The 25,000 members of its Bar contribute \$25 a year to the Fund, which has paid \$6 million in awards since its creation in 1999.

Idaho has a Bar of 6,000 members and has six pending claims, with a \$177,000 reserve.

North Dakota has updated its rules to include coverage for fee dispute cases. It is trying to publicize its existence to clients.

The Law Society of Upper Canada experienced protestors outside its Toronto offices after an attorney who served as the escrow agent for \$14.5 million in deposits to purchase condominiums gave the money to a developer and fled to South
(continued on next page)

“Funds in Motion” - continued

Korea. So far, \$8 million in claims have been filed with the Fund as a result.

North Carolina had its request to increase the annual assessment by \$10 turned down by the State Supreme Court. The Court noted that, where most nonprofits use 10% of their revenue for operating costs, the Fund uses 18%, although the Court apparently did not take into account the cost of pursuing respondents for judgments and recovery. The Fund plans on asking the Court again, hopefully before it needs to reduce the amount paid to victims.

Florida is proud that it has been able to pay

100% of approved losses during the last two years. It too, has lots of loan modifications and deceased lawyer-related claims.

Hawaii is relieved that its Supreme Court restored its \$50 annual assessment, which had been eliminated in 2007, and only partially collected in 2012. The Fund now has a \$200,000 reserve and a new administrator.

Tennessee has a new website which includes an online claim form. Claims are up, with 81 filed this year alone. A new rule has been approved, requiring respondents to reimburse the Fund in full before they can be eligible for reinstatement to the Bar.

“Funds of the World”

Following is some news from Scotland where lawyers (solicitors) are hoping to enhance their efforts at client protection by becoming more accessible, easier to understand, and better funded.

The Law Society of Scotland has launched a consultation on a new wider-ranging Client Protection Fund, to replace the present Scottish Solicitors’ Guarantee Fund. It follows a report by Sheriff Principal Edward Bowen which was commissioned by the society in response to a Scottish newspaper’s investigation into failures of the Scottish conveyancing system. The sheriff said the ‘guarantee’ fund was a misnomer as it did not provide a guarantee, and criticised its rules which prevented any compensation to a fraud victim until they had exhausted all legal avenues, at potentially ruinous cost.

The fund has been unable to assist two Aberdeen-based homeowners deprived by solicitor fraud of title to the properties they bought 13 years ago, until the completion last month of a Court of Session case in which they could not afford to defend themselves.

Carole Ford, the convener of the Law Society’s regulatory committee said: “By setting high standards for solicitors and regularly inspecting firms, the Law Society has an important responsibility to try and prevent problems from arising in the legal services market.

“We also need a robust system that protects innocent clients when things do go wrong, particularly when clients lose money through no fault of their own and as a result of the dishonesty of a solicitor or their staff.” Ms Ford said the society had already decided “the name itself is not fit for purpose and needs to be changed”. The Client Protection Fund would be “easier for the public to understand”.

The consultation will also consider whether the fund should continue to be financed by a levy on all practicing solicitors.

Lawyers Fund: Disbar all lawyers who steal



Timothy O'Sullivan with the Lawyers Fund for Client Protection, testifies during a public hearing of the Commission on Statewide Attorney Discipline, held at the New York State Court of Appeals on Tuesday, July 28, 2015, in Albany, N.Y. (Paul Buckowski / Times Union)

Reprinted from the July 28, 2015 edition of the Times Union of Albany, New York:

By Robert Gavin

The head of a state agency that reimburses the victims of crooked lawyers wants the state to disbar any attorney who engages in theft. Timothy J. O'Sullivan, executive director of The Lawyers Fund for Client Protection, also proposed random audits on lawyers across the state to ensure honesty and prevent attorneys from stealing their clients' money.

"Lawyers who steal should be disbarred," O'Sullivan said Tuesday, while testifying before the Commission on Statewide Attorney Discipline at the Court of Appeals. The commission was put together by Chief Judge Jonathan Lippman to review the state's disciplinary system for lawyers and to examine if improvements are needed.

O'Sullivan said the trustees of the Lawyers Fund recommend a new uniform disciplinary policy statewide requiring disbarment as the penalty for any lawyer who injures a client by intentionally converting escrow funds. And he said prosecutors should receive a prompt referral when disciplinary committees have uncontested evidence or an admission of theft by a lawyer of stealing clients' money.

"Such a policy will deliver a strong message to victims, the public and to lawyers about the administration of justice in New York State," O'Sullivan said.

In the last six months alone, O'Sullivan testified, the Lawyers Fund made 64 payments totaling \$1.5 million to reimburse the thefts of personal injury settlements involving two now-disbarred Manhattan attorneys, Steven Krawitz and Donald B. Rosenberg, whose wrongdoings were not detected by existing safeguards. He said more payments are still to come.

"These lawyers were able to conceal their thefts by offering excuses and explaining away their delay without paying clients their net settlement proceeds," Sullivan told the panel. "A random audit program may have deterred, detected, prevented these losses caused by these two lawyers which will now likely result in about \$3 million in awards from the Lawyers Fund. The lingering but unfortunate experience for the clients may also have been preventable."

The commission, which also will hold hearings in New York City and Buffalo, included Peter James Johnson Jr., who chairs the committee on character and fitness for the Manhattan-based First Department; Devika Kewalramani, who chairs the New York City Bar Association's committee on professional discipline; prominent Manhattan attorney Mark Zauderer; Cornell Law School professor W. Bradley Wendel; Robert Guido, executive director for attorney matters for the Brooklyn-based Second Department and Monica Duffy, chief attorney for the Committee of Professional Standards within the 3rd Department, based in Albany, which covers 28 counties.

Albany County Bar Association President Janet Silver and New York State Bar Association President David P. Miranda, who both testified, declined to comment on O'Sullivan's proposals. Silver testified that she would be supportive of a statewide disciplinary committee, which she said would help create a "consistent process, efficiencies in the system and ensure the public is being protected." She did express concerns about unfounded complaints against lawyers becoming public and hurting the reputations of attorneys to maintain a practice.

At present, attorney discipline cases are investigated by grievance committees within the state's four regional Appellate Division departments. The Appellate Division justices would then mete out any discipline that follows.

Miranda testified that New York is one of a small minority of states that provides "little or no discovery" (pretrial evidence) to lawyers accused of wrongdoing in its disciplinary process. "As you know, affording due process to anyone accused of wrongdoing is certainly a fundamental requirement of our legal system," Miranda testified. "And despite some reports to the contrary, lawyers are people too."

**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@judiciary.state.nj.us.

