

# Law Client Protection Funds



## **BIBLIOGRAPHY**



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

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## **A Bibliography of Reported Cases and Selected Materials**

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New York State Lawyers' Fund for Client Protection  
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# The Lawyers Fund for Client Protection

of the State of New York



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Dear Colleague:

The New York Lawyers Fund produced in 1995, as a public service, a bibliography of judicial decisions and writings from legal publications nationwide about client protection funds.

We are pleased to join with the National Client Protection Organization, Inc. (NCPO) with this new edition, with decisions, articles, commentary and Internet sites available since 1995.

This new effort benefits greatly from the research skills of Siheem Roseborough, a student at the Albany Law School and a legal intern here at the Lawyers Fund during the Summer of 1999.

We ask that you continue to send us copies of court decisions and other writings from your jurisdiction for future supplements of the bibliography and issues of NCPO's newsletter, *The Client Protection Webb*.

We hope very much that you find this bibliography to be helpful in the important work of your protection fund.

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Ainsworth v. State Bar of California, 762 P.2d 431 (Cal. Sup. Ct. 1988). California Supreme Court sustains referee's exercise of discretion in dismissing claims to client security fund, without prejudice, until conclusion of lawyer's disciplinary proceeding. Lawyer's due process rights were not violated.

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.

Brookman v. State Bar of California, 760 P.2d 1023 (Cal. Sup. Ct. 1988). California Supreme 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. Goldome, 148 Misc. 2d 157 (N.Y. Sup. Ct. 1990). New York Lawyers' fund for client protection, as subrogee, may recover against a depositary bank on the forged endorsement of a check. Defendant bank has no standing to challenge the trustees' discretion in reimbursing for a post-disbarment theft in the practice of law.

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.

Clients' Security Fund v. Security Title and Guaranty Co., 634 A.2d 90, (N.J. 1993) New



Jersey Supreme Court articulates standards of liability for thefts in mortgage refinancings involving title insurance. Court reviews client protection fund's policy relating to collateral sources. Companion case to Sears Mortgage Corp. v. Rose, *infra*.

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.

Forbess v. Minnesota Supreme Court, et al, No. 4-88-216 (D. Minn. March 22, 1988). Federal District Court rejects lawyer's motion to restrain implementation of Minnesota clients' security fund.

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.

Hersh 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.

In Re Clients' Security Fund, 493 S.W.2d 422 (Ark. 1973). Arkansas Supreme Court establishes a clients' 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.

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.

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".

Matter of Estate of Sheridan, 149 Misc. 2d 519 (N.Y. Surr. Ct. 1991). New York lawyers' fund for client protection may invoke the state's sovereign prerogative right to priority over other unsecured creditors of a deceased lawyer's estate.

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

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.

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.

Sears Mortgage Corp. v. Rose, 634 A.2d 74 (N.J. 1993). New Jersey Supreme Court articulates standards of liability for lawyer thefts in real property purchases involving title insurance. Companion case to Clients' Security Fund v. Security Title and Guaranty Co., supra.

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.

Trustees of the Clients' Security Fund of New Jersey v. Miller, 578 A.2d 887 (N.J. Super. Ct. App. Div. 1989). In a receivership proceeding, the New Jersey client protection fund recovers embezzlement proceeds from the estate of a disbarred lawyer. State tax lien is denied priority.

Wasman v. Goshgarian, 537 So.2d 1026 (Fla. Dist. Ct. App. 1988), reh'g denied 548 So.2d 664 (Fla. Dist. Ct. App. 1989). Florida Supreme Court rejects investor's claim for an award from clients' security fund. Evidence of an attorney-client relationship is inadequate.

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.

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discussion of reimbursement by a client protection program contrasted with insurance by mandatory bonding.

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*Immunity upheld for CSF Executive, Officials*, Bar Leader (Sept/Oct 1988). An account of Schettino v. Alter, et al, 510 N.Y.S.2d 806 (N.Y. App. Div. 1988), which extended absolute immunity in defamation to trustees and executive director of New York client protection fund, including claimants and lawyers assisting them.

Jarvis, Robert M., *Partner Ethics: You Are Your Brother's Keeper*, N.Y.S.B.J. (July 1989). A discussion of law partnership liability in light of Clients' Security Fund v. Grandeau, 72 N.Y.2d 62 (N.Y. 1988) which holds that the New York client protection fund, as subrogee of reimbursed law clients, had standing to pursue negligence causes of action against the law partner of a dishonest lawyer.

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# **Law Client Protection Funds**

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New York State Lawyers' Fund for Client Protection  
National Client Protection Organization, Inc.

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