A Newsletter for Law Client Protection Funds

The Client Protection Webb

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Mark your calendar....

NCPO's next regional workshop to be held in the City of Columbus, Ohio on Saturday, October 27, 2001. See page 3 for details.

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Editorial

Hail to the Chiefs!

The Client Protection Webb has been tracking the efforts of the Conference of Chief Justices to enhance the professionalism and ethics of lawyers nationwide, and to recapture public confidence and respect for our institutions of justice. Those efforts have included NCPO's dialogue with the Chief Justices on these important issues. They began with NCPO's proposed standards for client protection funds in the Chiefs' **A National Action Plan on Lawyer Conduct and Professionalism**, and which culminated – at least many of us thought – with a 90-minute personal presentation to them in Baltimore earlier this year.

Nothing disappoints more than an inability, actual or perceived, to persuade. But that's been the lot of client protection advocates for more than a generation. There seemed but a handful of judicial and bar leaders who fully accepted the concepts that lawyers have a collective obligation to protect legal consumers from dishonest colleagues, and that it's in the best interests of lawyers to deliver that protection. There have been exceptions, but progress seemed permanently glacial. Good news it is, then, that the Chief Justices are likely to stimulate real movement and progress.

The Chiefs are deliberating how best to implement their **National Action Plan.** Before them is a draft proposal which recognizes that our nation's high courts must commit to providing effective programs of lawyer discipline, law client protection, and lawyer assistance programs with stable sources of financing. The draft Implementation Plan acknowledges up front that these programs are expensive, and should be financed by mandatory assessments. Doubtless there will be state commissions to help the high courts achieve the **Action Plan's** standards and goals. NCPO stands ready to help, and *The Webb* will continue to track our progress. But it's also essential that you commit yourself – and your fund – to helping your Supreme Court invigorate your state's program of law client protection.

A great Chief Justice, Arthur Vanderbilt of New Jersey, once remarked that "court reform is not a sport for the short-winded." That truth probably applies to every aspect of legal reform. Perseverance is all. So let's all take a deep breath and join our Chief Justices in this new journey in public service. ■

A Message from the President

Outside the Box

William D. Ricker, Jr.

Baltimore in January can be draped in the dark days of Winter, a concept those of us from the sunny South do not fully understand; or it can be washed with dazzling sunshine. When Fred Miller, Isaac Hecht and I attended the mid-year meeting of the Conference of Chief Justices in January 2001 to present NCPO's case for the states' high courts taking aggressive responsibility for their client protection funds, not only were we washed in sunshine outside, but we were showered with as warm a reception from the people of Baltimore as one expects from southern hospitality.

Thanks to the good offices of Isaac Hecht and Maryland Chief Judge Robert Bell of the Maryland Court of Appeals, NCPO was invited to address the Conference at its session on the state supreme courts' "Special Responsibility for the Administration of Client Protection Funds." The February 2000 issue of The Client Protection Webb is devoted to this wonderful opportunity, and the three widely diverse perspectives presented at the Conference.

That event is now history, and hopefully a building block for the future. There are many

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Evaluating Client Protection Funds

Kenneth J. Bossong

The August 28, 2000 edition of **The National Law Journal** focused attention on client protection funds in the United States, and the extent to which they do, or do not, fulfill their stated missions. The series reinvigorated an examination of the nation's funds, and the many criteria used to evaluate them. Of those criteria, four are by far the most important: organizational structure, funding, accessibility and responsiveness. Let's look briefly at these four core principles.

Organizational Structure

A client protection fund should be a trust created by the high court in each state and should be administered by an independent and autonomous Board of Trustees appointed by the high court.

A fund that is struggling is often found to be just another committee of a state bar association (or perhaps just another agency in the government bureaucracy), with its fate ultimately in the hands of persons with multiple and conflicted interests and no particular expertise in client protection. That is why the ABA's Model Rule for Lawyers' Funds for Client Protection urges the establishment of such funds by the highest court in each jurisdiction as an exercise of its constitutional authority to regulate lawyers and the practice of law.

The model client protection fund is a *trust* (emphasis supplied), and those appointed by the high court to run it are "*trustees*" (ditto). The words are not chosen lightly. In funds that work best, the court appoints exceptional trustees to carry out their fiduciary responsibilities and provides rules granting them the discretion and autonomy to do so.

Good people working in client protection quickly come to grasp its worth and to care intensely about the fund. If they are, nevertheless, beholden to someone else for final authority to pay claims, or for finances or resources, that is a major organizational flaw. Vulnerable funds sometimes find precious financial resources removed and spent for unrelated purposes. Where a fund is properly constituted such action would be deemed an invasion of trust, which is both a tort and a crime in most places.

Funding

Funding must be steady, secure, and adequate.

The way to ensure that is with an annual assessment of lawyers. Exemptions from payment, if any, should be few and narrowly defined. A vocal minority of malcontents can be expected. Those who complain about paying into a fund simply haven't thought about it carefully enough. Most come to realize that just as dishonest acts by a few hurt all lawyers, so too does providing the remedy of a fund benefit them all.

Analogies of client protection funds to insurance are inapt, by the way, at least in my view. No one is asked to pay into a fund because they "contribute to the risk". To the contrary, lawyers far too honorable to contemplate dishonest conduct pay into the fund each year because it would be intolerable to leave victims of such conduct without a remedy.

Assessments should be set at a level likely to meet the need and they should be collected even in good times. As with any other trust fund, fiscal health is a virtue for a fund; maintenance of a reserve for future victims should require neither defense nor apology.

Funding is the ultimate client protection fund issue. Many fund problems, such as stinginess in paying claims and undue barriers to access, are funding issues in disguise.

Accessibility

Deserving victims who need the fund must know it exists and be able to find it. The fund should not be the profession's "dirty little secret". Its existence and purpose should be known to anyone in the system who is likely to encounter victims of attorney theft. News releases, annual reports, brochures and websites all can educate the public about the fund without creating the false impression that the profession is overrun with thieves. Invitations to speak should be accepted, and even sought.

There is another aspect to accessibility, though: when victims find their way to the fund, they should not be confronted with a series of daunting barriers to consideration of their claims on the merits. Do the claim forms and other materials make clear to claimants what is expected of them? Are there whole classes of claimants that are needlessly excluded from consideration? To what extent must the claimant exhaust potential collateral sources of recovery? Is the time period for filing claims absolute, or unrealistically short, especially for little known protection funds?

Responsiveness

A client protection fund must be responsive to the need of legitimate claimants.

Do the trustees consider it their challenge to find ever more artful ways to reject claims, or their duty to pay as little as possible? Even if the trustees are looking to help deserving claimants, as is usually the case, are they nevertheless burdened with low payment limitations or rules that limit their discretion in paying certain kinds of claims?

Time is also a factor in responsiveness. Sometimes a fund takes so long in paying a claim that much of the ameliorative effect is lost. How often do the trustees meet and how often do they pay claims? While there can be considerable delay as claimants provide proof of their claims, the real issue remains how long it takes from the time a claim of obvious merit is ripe for decision to the placing of a check in the hands of the victim.

Is the fund adequately staffed? Volunteer trustees must decide claims; they should not have to investigate and present them as well. Staff counsel should do that, all the while looking for trends and patterns of conduct and using the fund's subpoena power where neither the claimant nor the respondent has made a sufficient factual showing to ensure a just decision. Staff lawyers are also best able to replenish the fund with subrogation receipts.

Summary

The four pillars of any client protection fund are an independent organizational structure; steady, secure and adequate funding; accessibility; and responsiveness to the need. A crack in any one of them precludes excellence. Excellence is the only sensible goal for client protection funds, which make notoriously poor window dressing. That each state has a fund is a fact worth celebrating, but real achievement comes when every fund takes steps to improve its protection programs. ■

Kenneth J. Bossong is Counsel to the New Jersey Lawyers' Fund for Client Protection, and the Immediate Past President of NCPO and a member of its Board of Directors.

Report from NCPO's Secretary

Georgia Taylor

NCPO held its Fourth Annual Meeting in Miami Beach on June 3, 2001. Twenty-three members attended. A new slate of officers was approved, with Carole Richelieu of Hawaii succeeding Robert D. Weldon of Washington as Vice-President for the Western Region. There were reports from the Treasurer, and the Membership Committee's continuing efforts to recruit new organizational and individual members.

The Publications Committee reported on *The Client Protection Webb,* and the Speakers Bureau announced that it has seven members signed on to help. The Program Committee reported on NCPO's commitment to handle the Difficult Claims Workshop at next year's ABA's forum in Vancouver, British Columbia.

The meeting was followed by a brainstorming session focusing on the future of law client protection as a movement, and the role of NCPO as a leader, not a follower. Many beneficial concepts were discussed, including a proactive project of identifying those states who may need assistance and offering support. Another concept recommended that NCPO research the feasibility of creating an "umbrella fund" whose purpose would be the provision of catastrophic coverage for client protection funds.

The Annual Meeting was supplemented with a teleconference meeting of the Board of Directors on July 10. The Directors approved plans for a Midwest Regional Workshop in Columbus, Ohio, on October 27. The Directors also scheduled the next Annual Meeting in Vancouver on May 31, 2002, which is a Friday.

The Directors and Vice Presidents keep in touch. They "met" on 10 occasions in 2000-2001, eight times by telephone. ■

Georgia Taylor is NCPO's Secretary, and the administrator of the State Bar of Nevada's Client Security Fund.

October Regional Workshop Set For Ohio

The Ohio Supreme Court's client protection program will host NCPO's next Regional Workshop, which will be held in the City of Columbus on Saturday, October 27, 2001. Previous NCPO Workshops have been held in Boston, Nashville, Chicago, Phoenix and Halifax, Nova Scotia.

The October 27 Workshop is intended to provide fund administrators and trustees with important information on loss prevention measures available to protection funds nationwide, and serve as an exchange for information on client protection policies, procedures and strategies for dealing with difficult issues for funds, courts and bar association. The Workshop is open to interested persons from every jurisdiction in the United States and Canada.

Janet Green Marbley, NCPO's President-Elect and the Administrator of Ohio's client protection program, is organizing the 9:00 a.m. to 5:00 p.m. event. Janet invites suggestions for workshop topics.

The tentative agenda includes sessions on loss prevention mechanisms like financial record keeping, random audits of trust accounts, overdraft and bounced check programs, and notice to payees of insurance settlement checks. Also, the use of modern technology in investigations, client protection websites, and fund administration. There will be a session devoted to the resolution of difficult claims.

The $50 registration fee includes a luncheon with remarks by the Chief Justice of Ohio, Thomas J. Moyer. The Workshop will be held at the Adam's Mark Hotel in downtown Columbus. Reserve the date on your calendar, and contact Janet Green Marbley at (614) 995-5000 or Marbley@sconet.state.oh.us for additional information. ■

NCPO Creates Speakers Bureau

Celebrating a fund's anniversary? Honoring a trustee? Scheduling a retreat for fund trustees? Need some spice for your next affair? NCPO's Speakers Bureau may be the answer. It's is a resource for client protection funds as well as a source for conference speakers and seminar leaders for bar associations, community organizations, and professional organizations.

Speakers include seasoned fund administrators, and trustees who are familiar with the policies and practical concerns of both large and small funds. The Speakers Bureau seeks to promote the exchange of information among persons and organizations engaged in client protection activities, as well as to educate those who should be better informed about protection funds and their role as institutions of justice.

Presentation topics include: the purpose and function of protection funds; methods of financing; minimum standards for protection funds; fiduciary responsibility; publicity and public information; obstacles to prompt and significant reimbursement; the exercise of discretion; enforcing subrogation rights; difficult claims; the concepts of "last resort" and "exhaustion of remedies"; the exercise of discretion in client protection claims; and proven theft prevention techniques.

The Speakers Bureau consists of NCPO volunteers to speak to funds and other organizations anywhere in the United States. All speakers are diplomatically sensitive to local issues and concerns. The roster of available speakers, and their home states, include: William D. Ricker, Jr. (Florida); Frederick Miller (New York); Isaac Hecht (Maryland); Kenneth J. Bossong (New Jersey); Karen O'Toole (Massachusetts); Arthur Littleton (Pennsylvania); Martin Cole (Minnesota); Robert Weldon (Washington); and Janet Green Marbley (Ohio).

There are no fees charged for this service. It's expected that the speaker's actual travel and lodging expenses will be reimbursed. Speakers are also available to participate in meetings by telephone conference.

Contact any of the speakers directly to arrange a visit to your jurisdiction. ■

Profile: Law Client Protection in Minnesota

Martin Cole

(Editor's note: Part I of this profile was published in the Fall 2000 issue of The Client Protection Webb. One or more funds will be featured in future issues of The Webb. Submissions by Trustees and administrators are welcome. Manuscripts can be e-mailed to the Editor.)

Procedures

Claimants in Minnesota must file their claims on an official claim form, which includes a subrogation agreement that claimants must sign and have notarized. The Board has never completely defined itself as a remedy of last resort, although claimants are expected to demonstrate that they have made reasonable efforts to pursue available avenues of recovery.

Claimants are encouraged, but not required, to made a criminal complaint against the accused lawyer. Unless the attorney is disbarred or deceased, claimants are informed that they must make a disciplinary complaint if they have not done so previously. There are no limitations in the rules eliminating certain classes of claimants (relatives, partners, etc.).

Staff investigates all claims and has complete access to the disciplinary investigation and files. Claimants are frequently interviewed by telephone to fill in any missing information and request additional documentation; and the staff meets with claimants and respondents when appropriate. The Board will almost always wait for completion of proceedings in other forums, if those proceedings appear likely to provide findings upon which the Board can later rely.

Disciplinary proceedings are relied upon, and are afforded virtual collateral estoppel effect by the Board, as to dishonest conduct. Criminal findings are similarly respected. In some instances, if the attorney has admitted the dishonesty or a disciplinary finding has not been challenged (and only the level of sanction is yet undetermined), the Board will pay a claimant prior to the completion of related proceedings.

The Board is authorized to conduct contested hearings but, in fact, has never done so. The Board has requested claimants, and occasional respondents, to meet with the Board; but it generally relies upon staff to investigate claims and make reports and recommendations as to the appropriate disposition. The staff does not have the authority to dismiss claims, even if they are deniable on their face. All claims are presented to the Board and voted upon, a luxury that states that receive hundreds of claims each year probably cannot afford. Lively, and occasionally lengthy, discussions occur on many claims, and staff's recommendations are not automatically followed.

The Board's rules impose a maximum limit of $100,000 per claim, with no aggregate limit per attorney. The Board recently announced that it will consider the feasibility of asking the Court to increase the cap to $200,000. The fund's balance is currently $2 million.

Claimants and respondents are notified of the result and claimants have the right to request reconsideration if their claim is denied or not paid in full. This is a second opportunity for the Board to conduct a personal meeting with a claimant. In fact, the Board has met personally with claimants more often as part of the reconsideration process than the original investigation stage. The Board has on several occasions reversed an earlier denial or increased an award after a meeting with a sympathetic claimant. Judicial review is not available.

Although everyone in the system recognizes that the Court no doubt retains inherent authority to accept review of a decision of the Board if a major injustice occurred, to date the handful of attempts to obtain court review have been rejected by the Court in perfunctory one-line orders.

The Minnesota Attorney General's office represents the Client Security Board, as a state agency, in seeking to collect on its subrogation rights against the respondent attorney or third parties such as banks or the respondent's partners. The Board is not allowed to hire other outside counsel. The AG's services are free, although the Board is responsible for costs of litigation. Minnesota is comparatively aggressive in its collection efforts if the attorney can be located and has any assets or a job. We are often willing to waive interest and collection costs if the attorney will simply confess judgment and enter into a payment plan – and stay current on the payments.

Statistics and War Stories

In its 13 years of operation, the Minnesota Client Security Board has paid 304 claims in the total amount of $3,804,428 (an average of 23-24 claims paid per year and an average yearly payout of $292,648). Restitution in the total amount of $394,119, or approximately 10 percent of the fund's awards, has been recovered from various sources.

Perhaps ironically, the scandalous losses that resulted in the creation of the fund remain the most notorious incidents in the fund's history, even though other disbarred lawyers have surpassed them in terms of number of claims and in reimbursement paid. At least two other Minneapolis lawyers easily could have greatly exceeded the earlier losses. Fortunately for the fund, they were members of prominent and prosperous law firms, and their victims were reimbursed without involvement of the fund.

As a result, perhaps the fund's favorite "war story" involves a disbarred Minneapolis collection lawyer. As part of his federal criminal sentencing, the lawyer agreed to repay to the fund $150,000. More unique was the additional form of his restitution. A natty dresser with an extensive wardrobe of suits, sport coats and shoes, he was required to turn over his clothes to a consignment shop called the Pink Closet, with any profits earmarked for the fund. Thus far the Pink Closet has coughed up $3,870 from this unusual wardrobe liquidation. ■

Martin Cole is the Assistant Director of the Minnesota Client Security Fund and a Director of NCPO, Inc.

American Bar Association Contacts

For information in the client protection field, and access to information maintained by the American Bar Association, contact John A. Holtaway. Tel: (312) 988-5298; or jholtaway@staff.abanet.org Also at the ABA is the always helpful Debra (Debi) D. Taylor. (312) 988-5325; or debrataylor@staff.abanet.org

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A Message from the President

challenges ahead. Formidable challenges, not only for NCPO, but for law client protection. For that reason, most of the NCPO members who attended our Annual Meeting in Miami Beach on June 2 delayed their departures home to participate in a special brainstorming session following the meeting.

We tried to focus our efforts on the future: to dream, if you will, about where law client protection is going in the next several decades; to find mechanisms to elevate so many low - reimbursing jurisdictions to the standards of appropriate reimbursement called for by the Conference of Chief Justices. We need to be on the cutting edge of client protection. We need to think outside of the box.

When the Conference of Chief Justices adopted its 1999 **National Action Plan on Lawyer Conduct and Professionalism** – and unequivocal support for law client protection funds – our "movement" received an endorsement we could not have bought at any price. The **National Action Plan** itself sprung from concerns about the decline in lawyer professionalism and its effects on public confidence in our legal system and institutions of justice. The **Action Plan** covers areas ranging from continuing legal education, to law school education, to discipline, to public outreach.

Of special interest to NCPO, the **Action Plan** calls for every jurisdiction to maintain a jurisdiction-wide, mandatory client protection fund that *substantially* reimburses claimants; finances the fund through a mandatory assessment on lawyers; designates the fund's assets as a trust; provides for the fund's management by a board of trustees appointed by the high court; and requires that the trustees publicize the fund's existence and activities. The **Action Plan** is available on the Internet:**http://ncsc.dni.us/Natlplan.html.**

On August 2, 2001, the Conference of Chief Justices approved an Implementation Plan for the **Action Plan**. That effort will begin in the court houses and chambers of our high courts nationwide as the judges of all our supreme courts study the components of the **Action Plan** and decide what standards are appropriate for their states. Let your Supreme Court know how your fund measures up to these standards. It's a golden opportunity to improve and shore up your fund.

NCPO and the bar association leaders nationwide must build on the Chief Justices' commitment to law client protection. We must be sure that their goals are met. Without this support, those goals cannot be achieved. That is why we need to think outside the box. That is why we want and need your ideas and support, and why we want and need **you** and your organization to join us as members. ■

William D. Ricker, Jr. is President of the NCPO, Inc. He is a long-time Trustee of the Florida Bar's client protection fund, and a partner in Akerman Senterfitt, Esqs., with offices in Ft. Lauderdale, Fla.

www.ncpo.org

Visit NCPO's website. Resources include NCPO's By-laws, rosters of officers, directors and members, all issues of *The Client Protection Webb,* a national directory of client protection funds; the text of NCPO's **Bibliography** of client protection cases and writings, summaries of important judicial decisions, current and recent news about NCPO events, and the ABA's Model Rules for Client Protection Funds.

An Action Plan for Alcohol and Substance Dependency

Thousands of people in New York's legal community are suffering from the effects of alcohol and substance dependency. The afflicted include not only practicing lawyers, but judges, and students who are training for careers in the law. These diseases cause enormous personal suffering to those who are afflicted and to their families, friends and colleagues. They pose obvious and documented risks to law clients, litigants and to the general public. These are chronic diseases, not moral deficiencies. They are medically treatable diseases and, with early intervention, the consequences otherwise manifested may be prevented and controlled.

So provides the **Action Plan** of a blue-ribbon commission appointed by the Chief Judge of the State of New York, Judith S. Kaye, in September 1999. Chief Judge Kaye charged the 24-member panel of lawyers, judges, academics, and medical professionals to address the problems of alcohol and substance dependency within New York's legal profession. Judge Kaye also asked that the commission identify a reliable funding source for its proposals.

When the **Action Plan** was publicly unveiled in January 2001, the Chief Judge embraced the commission's recommendations, and pledged to work for their implementation.

A key component in the plan is the creation of an independent statewide entity to be called the Lawyer Assistance Trust which will be administered *pro bono publico* by a Board of Trustees appointed by New York's high court, the State Court of Appeals. This administrative structure is similar to New York's existing program for law client protection.

The Commission's major recommendations include:

- charging the Lawyer Assistance Trust with providing central leadership and financial assistance to programs for the treatment and prevention of alcohol and substance dependency among lawyers and judges;

- financing of the Lawyer Assistance Trust by the legal profession, not taxpayers, with a portion of the existing $300 biennial attorney registration fee;

- creating special educational programs designed specifically for law students, practicing lawyers and judges in the field of alcohol and substance dependency; and

- modifying and supplementing existing court rules and procedures to facilitate the early detection of alcohol and substance dependency, intervention and referral to needed treatment.

First or Last Resort: Does It Really Matter?

Victoria Rees

(Editor's note: This article is continued from the Fall 2000 issue of the Webb. It has been adapted from a presentation by Ms. Rees at the International Bar Association Conference 2000 in Amsterdam, the Netherlands.)

In his influential article in *The Client Protection Webb* "Exhaustion" (Fall 1999), Kenneth J. Bossong, administrator of New Jersey's client protection fund, asserts that funds of "last" resort also open themselves up to a range of complex issues:

"Requiring claimants to pursue collateral remedies presents an additional array of issues. Should claimants be expected to prosecute novel ground-breaking theories or liability, or only 'slam-dunk' actions (if they still exist)? What if a claimant pursues a collateral source and loses? What does a fund do where a collateral source makes a settlement offer to the claimant which is less than the full loss? What's the appropriate response when a claimant settles partially with a collateral source before applying to the Fund for the balance of her loss? Is the claimant rewarded for mitigating her loss, or prejudiced for settling for less?"

In addition to the application of the various monetary limits on awards in place in nearly all jurisdictions, an effective means of limiting a fund's exposure can be found in a wide range of eligibility criteria. The result is that certain claimants are excluded from protection before even filing a claim. Such criteria can exclude from the reimbursement process the following:

- relatives of the defalcating lawyers;
- financial institutions and others who, by comparison to "widows and orphans", fail to meet the test of being "in need of financial assistance";
- clients who entrusted funds to their lawyers for the purpose of investing; and
- claimants who are otherwise unable to demonstrate the existence of a valid attorney/solicitor-client relationship.

My conclusion? Funds on both sides of the scale are moving toward a middle ground. Is there then any significant difference with respect to whom funds of "first" versus "last" resort really protect and serve? If it can be said that one way or another, most deserving claimants are reimbursed for their losses in the end, then does it matter from a practical or philosophical perspective whether a fund adopts a position of "first" or "last" resort? Does such a position impact the interest of the public? I believe it does.

Bossong captured the essence of the problem when he said "...The mindless application of the 'last resort' policy can result in terrible hardship and injustice to victims of lawyer dishonesty; results that are wholly inconsistent with the mission and purposes of a client protection fund." He goes on to say that requiring hapless victims to pursue collateral sources of recovery "borders on cruel and unusual punishment", with the resulting "…exhaustion – not of remedies – but of clients who trusted their lawyers and the legal profession's representation that there is a fund to protect them from economic loss."

How, then, can funds reach an appropriate middle ground in the interests of protection of the public, and of the long-term viability of each fund? Guidance is available from jurisdictions such as Nova Scotia, New York and New Jersey in this regard.

- Consider establishing a policy which, when assessing which claimants must take specified steps toward exhausting collateral sources of recovery, factors in elements such as the claimant's age, mental capacity and/or education, economic hardship, length of litigation and other considerations.
- Adopt policies and procedures whereby the fund takes an assignment of claim following payment, and devotes resources to actions for recovery and restitution in the name of the claimant as a means for rebuilding capital and enabling payments of claims in full.
- Rather than requiring exhaustion of all potential collateral sources, compel claimants to proceed against other sources only where success is likely, and the effort and time required to secure restitution will only be commensurate with the effort;
- Encourage claimants to pursue certain collateral sources in situations where the fund has a policy of not covering certain losses, such as interest, penalties, fees, and other consequential and punitive damages.

For funds of "first" resort, it is worthwhile to take stock, and assess the impact of their more subtle but equally restrictive limitations – specifically, the criteria which limits from the start those who may file claims. "First" resort funds should also re-examine unreasonably low caps which result in claimants only receiving a portion of the compensation they are due, regardless of the extent of the financial hardship they have had to endure.

It has been suggested that funds should consider a hybrid position which has a fund standing as a first resort for victimized clients, but as a last resort for third parties who may be liable to claimants; that is, dishonest lawyers and collateral sources.

I believe that the goal for all client protection funds should be to find a balance: that position of equilibrium where clients can feel safe and confident that in the unlikely event of theft by their lawyer, the legal profession will step up to the plate and do the right thing. At the same time, funds should set *reasonable* limitations to ensure the preservation of fund assets for future claimants, and avoid leaps in annual assessments. Such a balance will, in the end, serve the interests of both the public and the legal profession, and will go a long way toward healing the deep and painful wounds caused by a lawyers breach of trust and theft. ■

Victoria Rees is the administrator of Nova Scotia's client protection program, and is a Vice President of NCPO.

Ohio Supreme Court Endorses Insurance Notice Rule

Janet Green Marbley

The Chief Justice of the Supreme Court of Ohio has urged the State Legislature to adopt an insurance payee notification rule in the State of Ohio. In his annual State of the Judiciary Address, Chief Justice Thomas J. Moyer reported that the Supreme Court's client protection fund had paid over $1 million to 121 victims of theft of personal injury settlement checks. These thefts might have been prevented by an insurance notification rule which requires insurance carriers to notify law clients when it mails settlement checks to the clients' attorney.

A common method of attorney theft nationwide is the forgery of a client's endorsement on a settlement check. In most instances, the client has not authorized the settlement and is unaware that the attorney has settled and discontinued the action. Insurance carriers typically issue personal injury settlement checks with both client and attorney as payees.

In many states, including Ohio, the client does not receive notice of the issuance of the check, which allows a dishonest attorney to forge the client's signature and misappropriate the funds.

The simple, low-cost procedure of notifying a law client when a settlement check is issued, which originated in New York State, could have saved Ohio's fund over $1 million dollars last year.

Both the Clients' Security Fund Board of Commissioners and the Ohio Supreme Court voted unanimously to begin efforts to enact legislation in the state of Ohio requiring notice to law clients when an insurance company mails a settlement check.

This is Ohio's second attempt to enact legislation aimed at preventing losses caused by this type of dishonest conduct. The first attempt failed because the insurance industry feared that these notices would be too costly to implement. However, states with this rule have demonstrated that the procedure involves little more than the cost of mailing a letter, which is minimal compared to the loss sustained without the notice.

Ohio's client protection fund was established in 1985 by Supreme Court Rule. It is funded by attorney registration fees paid by every licensed attorney. Over the past 12 years, Ohio attorneys have contributed through registration fees more than $4.6 million in dedicated revenues for law client protection. ■

Janet Green Marbley is the Administrator of Ohio's law client protection program, and the President-Elect of NCPO, Inc.

New Jersey Trustee Honored

(Editor's Note: Current and former Trustees of the New Jersey Lawyers' Fund for Client Protection gathered in December 2000 with fund staff and bar officials to honor the fund's former chair: Superior Court Judge Kyran Connor. What follows are excerpts from Judge Connor's remarks.)

"It was President Lincoln who said: 'Character is like a tree and reputation like its shadow.' The shadow is what we think about. But the tree is the real thing.

"I like to think of this protection fund as the ultimate guardian and guarantor of the character of the bar. I like to think of this fund as one of the main reasons why we can speak of ourselves as being truly members of a 'profession'. There are many strands which, taken together, make up the fabric of our professional mantle: in the lawyers' assistance program – we take care of our own; in our ethics committees – we correct, admonish and discipline our own; but, in the Lawyers' Fund, we complete the circle– essentially by cleaning up after ourselves. Yes. In many respects, that's what we are: The 'clean up crew'.

"We make people whole when their fortunes or their inheritances – or their meager savings – have been diminished by the dishonesty of our erring brothers and sisters at the bar. We do this, in my view, not just because it is the right thing to do (which, of course, it is). We do this, also, because it is the proper response of a 'learned profession' which invites itself into the most intimate parts of the private lives of the clients it serves, taking the risk that some few of its members will not be able to resist the temptations that such intimate involvement may present.

"We are the last, best defense against the human frailty that afflicts even the noblest of professions. I have to believe that it doesn't get any more important than this – even though the work of considering claims can be a drudge, can be tedious and time-consuming – even though it can be disheartening to discover that we ourselves can be abused, once we separate the wheat of meritorious claims from the chaff of bogus ones.

"It is relatively anonymous, undramatic work that we do most of the time. But perhaps the most remarkable thing about it is the spirit and the enthusiasm and the fidelity to our mission which'infects' everyone involved in the process – from trustees (present and past) – to professional staff – to administrative and clerical staff.

"This infectious spirit finds its source in the extraordinary staff without whom none of the Fund's 'heavy lifting' could possibly proceed; and, also, in the willing service of committed volunteer trustees among whose ranks I will always be proud to have been numbered.

"To have served as the Chair of this Fund will always stand, in my own personal calculus, as one of the great honors and privileges of my career. It was Cardozo who said that: 'Membership in the bar is a privilege burdened with conditions'. In the spirit of this season, may I say that this particular yoke has been easy, and that this particular burden has been light." ■

$350,700 Award From Montana Fund

Montana's client protection fund is financed by $20 annual contributions by the approximately 3000 licensed lawyers in that state. The fund's reserves in 2000 totaled $665,000. Then came along Craig Holt, Esq., who was retained to handle the administration of a decedent's estate and one of its legal representatives. Holt stole $350,700.

Holt blamed his secretary. That defense crumbled when investigators traced the transfer of client money into Holt's operating account, then to Holt. He was disbarred by the Montana Supreme Court in October 2000. Holt then "retired" to Nevada where he is defending litigation in the federal district court involving these thefts.

When the $350,700 loss was presented to the Trustees of Montana's Law Client Protection Fund, they voted unanimously to reimburse the loss 100 percent, notwithstanding the obvious financial impact of a $350,700 payout on the fund's assets of $665,000. By design, there are no caps on reimbursement awards, and the fund's Trustees value highly the concept that awards from the fund are "matters of grace".

The Trustees have also reimbursed a third theft attributable to Holt: $8,500 stolen from a conservator of an elderly Montanan. According to Raymond Williams of the Montana State Bar Association, "It's safe to say that the Board of Trustees is holding its breath." ■

Profile: The North Carolina State Bar's Client Security Fund

A. Root Edmonson

History

The North Carolina State Bar is an integrated bar created by the state legislature in 1933 to regulate the practice of law. The State Bar is governed by a Council that adopts rules and regulations subject to the approval of the North Carolina Supreme Court. The legislature retained control over the State Bar's dues structure. As a result, when the Council decided to create a Client Security Fund in 1975, the State Bar had to ask the legislature to impose a $10 annual assessment to finance the fund. That attempt was unsuccessful. The State Bar also attempted unsuccessfully to get the legislature to create a Fund in 1977 and 1981. In April 1984, after several high profile attorneys were disbarred for embezzling clients' funds, the State Bar petitioned the Supreme Court to establish a Client Security Fund. In October 1984, the Court entered an order creating a Client Security Fund managed by the State Bar, approving its structure and operating procedures and imposing a $50 per attorney annual assessment.

An assistant district attorney sued the State Bar for suspending his license for failing to pay the assessment. He challenged the Supreme Court's authority to "tax" attorneys in violation of the state constitution. In *Beard v. The North Carolina State Bar*, 320 N.C. 126, 357 S.E.2d 694 (1987), the Supreme Court indicated that, by imposing the assessment, it was not engaging in a legislative function but was exercising its inherent power to oversee the proper administration of justice. After a $50 assessment in 1986, the Supreme Court left future assessments to be determined by the Court on an annual basis. Assessments from zero to $50 were imposed over the following years. In 2000, at the request of the fund, the Supreme Court imposed a $20 annual assessment that will remain in effect until further order of the Court.

In 1992, after paying claims of almost $500,000, mostly to victims of one attorney, the fund asked the Council to petition the Supreme Court to impose a per claim cap of $60,000 and a per attorney cap of $100,000. The Supreme Court adopted the caps on June 24, 1992. In 1997, after Jim Toms admitted embezzling over $100,000 from three estates and lesser amounts from several others, the fund determined that the existing caps would not adequately compensate Toms' victims. The estates that had smaller amounts stolen were going to be squeezed out of any meaningful compensation by the estates that had larger amounts stolen. The fund asked the Council to petition the Supreme Court to eliminate the per attorney cap and to increase the per claim cap to $100,000. The Supreme Court changed the caps by order dated March 6, 1997. The Toms' claims were considered after the Supreme Court's order, and the estates from which less than $100,000 was stolen were fully compensated.

Structure

The fund's Board of Trustees consists of five members, including one public member. The Council appoints all of the members. Board members are appointed for five-year terms and are limited to one term. Board members' terms are staggered so that one new member is appointed each year. The State Bar Council selects a chair and vice-chair. The Board meets quarterly, usually in conjunction with the Council's quarterly meeting. Three of the Board's meetings are held at the State Bar Building in Raleigh, NC. The July meeting is held in Pinehurst, NC.

The Board shares staff with the State Bar. A Deputy Counsel of the State Bar spends about one quarter of his time serving as Counsel to the Board. A State Bar paralegal spends about 40% of her time on the fund's business, particularly its subrogation efforts. Each of the State Bar's financial investigators considers the fund's interests when conducting an investigation for the State Bar. The fund pays a percentage of the salaries of its Counsel and its paralegal, and pays the full salary of one of the financial investigators.

Assessment income is deposited into an account with the state treasurer. When the Board makes awards, a check is written on the account maintained with the treasurer in an amount sufficient to pay the awards. The amount is then deposited into the fund's operating account for disbursement to the claimants.

Claim forms, a brochure explaining the fund's procedures, and a copy of the Board's rules are provided to the public in several ways. Anyone who calls the State Bar's Client Assistance Program seeking assistance with a financial loss caused by a NC attorney is provided with a fund package. Packages can also be obtained from the clerk's office in all county courthouses. The State Bar has a web site at **www.ncbar.com** that contains a FAQ section on the fund. The web site will soon publish the fund's forms and information about claims paid. The Board issues a press release after each quarterly meeting detailing the awards made, without naming claimants. The Board has contracted with a programmer to acquire its own computerized record-keeping system and database. The new software will be especially useful for the paralegal and the Counsel in their subrogation efforts.

Procedures

Claimants must file their claims on a claim form provided by the Board, which includes a subrogation agreement that claimants must sign and have notarized. Although claimants are expected to demonstrate that they have made reasonable efforts to pursue available avenues of recovery, the fund normally does not require claimants to file a lawsuit against the attorney or to pursue disciplinary action or file criminal charges. Counsel to the Board often makes efforts to determine whether losses from real estate transactions are covered by title insurance or whether losses from estates are covered by a bond before the Board considers those claims. The fund's rules list types of claims that are not deemed as "reimbursable losses" including claims of relatives, partners, or employees of the respondent-attorney and losses arising in investment transactions.

A copy of each claim is sent to the respondent-attorney. The respondent-attorney is asked to respond in writing. The fund's investigator conducts an investigation of each claim, including interviewing claimants, respondent-attorneys and others as needed. The investigator prepares a report that is then reviewed by Counsel. Counsel makes a written recommendation to the Board. For each claim on the Board's meeting agenda, a member is assigned to present that claim to the Board. Claimants and respondent attorneys are notified of the Board's meeting and are invited to attend. Because claims are confidential until paid, attendees must notify the fund's administrative assistant in advance so that they can be assigned a time to appear. The Board votes on claims after interested parties have departed. After the Board's meeting, the minutes of the meeting are prepared and sent to the Chair. After the Chair approves each payment contained in the minutes, Counsel sends a letter and a check to the claimant, with a copy to the respondent-attorney.

After a claim is paid, a demand letter is sent to the respondent-attorney asking him or her to sign a confession of judgment in the amount of the fund's payment. The respondent-attorney is also asked to sign a financial

statement and to suggest a proposed payment plan. The respondent-attorney is advised of a NC statute that allows damages to be doubled against an attorney for fraudulent conduct. If the respondent-attorney signs the confession of judgment, he or she can avoid a complaint being filed seeking double damages. Often, the filing of a complaint results in the respondent-attorney filing bankruptcy. If it is a Chapter 7 case, Counsel files an adversary proceeding seeking double damages and asking the Court not to discharge the respondent-attorney's debt to the fund. If a respondent-attorney fails to establish a payment plan, or fails to pay pursuant to the plan, an asset check is conducted to determine whether execution on the judgment is likely to provide any recovery. If no assets can be located, the Board usually directs Counsel to suspend collection efforts. ■

A. Root Edmonson is Counsel to the North Carolina State Bar Association's Client Security Fund.

Profile: Law Client Protection In Illinois

Eileen W. Donahue

As I read Martin Cole's opening profile of the Minnesota client protection program in the Fall 2000 issue of *The Client Protection Webb*, I was struck by the many similarities between the Minnesota and Illinois programs. That encouraged me to borrow Mr. Cole's format for this profile of the Illinois program.

History

Like Minnesota, Illinois started with a voluntary fund. From 1964 to 1994, the Illinois Clients' Security Fund was operated jointly by the Illinois State and Chicago Bar Associations. Like Minnesota's fund, the voluntary fund had scarce resources. In the early 1990's the voluntary fund was effectively insolvent, and the bar associations turned to the Illinois Supreme Court and asked it to create a new fund. In 1994, the Supreme Court adopted rules to create new program, to be operated under the auspices of the Attorney Registration and Disciplinary Commission (ARDC) which is an agency of the Supreme Court. Although there was no special assessment to finance the new fund, the Commission allocated $300,000 from the Disciplinary Fund for the first year of operation.

The new fund assumed responsibility for the backlog of claims from the old fund and distributed press releases announcing the program. As a result of this publicity and the more secure funding, the new program really took off. To illustrate, in the last two years of the voluntary program, there were less than 100 filed claims. In the first two years of the Supreme Court Program, new filings exceeded the 300 mark.

Structures and Procedures

The Attorney Registration and Disciplinary Commission consists of seven members: four lawyers and three non-lawyers. The Commission is responsible for the administration and supervision of the registration process and of disciplinary proceedings affecting Illinois lawyers, as well as for the client protection program. Unlike most other funds, the Illinois fund does not have a separate board to oversee the state's client protection fund.

The program is staffed by employees of the ARDC, and has the benefit of the Commission's resources for investigating and processing claims. The program is currently staffed by one full- time lawyer; paralegal, investigative and secretarial services are shared with the disciplinary section.

Each year the Commission allocates a certain amount of money from the Disciplinary Fund for payment of claims. The annual allocation is based upon statistical projections developed by the program's staff. During the first seven years of the program, annual allocations have averaged about $314,000. Since the program does not carry a significant reserve, its funds are simply invested in short-term treasury notes.

The program has an official claim form but, as long as the content is clear, it will accept a claim submitted in any written form. If the lawyer is not yet disciplined, the claim will be held in abeyance until disciplinary proceedings are complete. If the claimant has not also filed a disciplinary complaint, the claim is referred to disciplinary counsel to determine if action is warranted. If the claim is ripe, the staff will investigate. When the investigation is complete, the staff prepares a report and recommendation for submission to the Commission.

The Commission meets about eight times a year, and it votes on all claims. The claimants and lawyers are informed of the Commission's decisions, and they have an opportunity to request reconsideration. If there is any arguable basis for reconsideration of the decision, the Commission refers the request to a review panel: three volunteer lawyers and one public member. They will review the original investigative file, recommend additional investigation where appropriate, and, sometimes, hold informal hearings. The party requesting reconsideration has the right to request a hearing. Although hearings are often requested, in fact they are seldom held. There have been about 10 since ARDC took over the fund. The Review Panel then presents its own report and recommendation to the Commission for final decision. There is no judicial review.

Given the structure of the program, the Review Panel is an invaluable asset. Client protection is just one of the responsibilities of ARDC, but it's the only issue for the Review Panel. The Panel members have the time to discuss difficult claims in depth, and they make recommendations to the Commission on rules and policies.

The Illinois program does not perceive itself as a fund of last resort. The rules state that claimants must make "reasonable efforts" to exhaust administrative remedies, but the Commission is liberal in its definition of "reasonable efforts." As a matter of policy, the Commission considers it "unreasonable" to make a victimized claimant pursue futile civil proceedings against a lawyer who has lost a law license, and presumably a livelihood, before the victim can turn to the program for help.

As with most funds, the majority of claims involve unearned fees. The Commission is pretty pro-claimant on these claims, and will not let a lawyer's performance of merely token services defeat a claim.

Statistics and War Stories

Since the Illinois program began in 1994, it has taken in an average of about 200 claims per year. It has approved 682 claims totaling $2,435,000. The Program pays about 80 percent of claims in full. There is no doubt that the fund is operating much more effectively in its current form than it did as a voluntary fund. Of course, there is room for improvement.

The Illinois program was singled out for criticism in the **National Law Journal's** August 2000 critique of the nation's client protection programs because of its limited funding and limits on awards. (*Editor's Note: Elizabeth Amon's article,* **An Empty Promise**, *is available on the Internet: www.nlj.com/2000/home/promise.html.*) The reason rests

continued on p.11

Gleanings from Georgia

NCPO's President-Elect **Janet Green Marbley**, administrator of the Ohio Supreme Court's client protection program, has been elected to the House of Delegates of the American Bar Association. Janet is busy planning NCPO's next Regional Workshop in Columbus, Ohio on Saturday, October 27.

Observed in Miami Beach at the ABA's 17th National Forum on Client Protection in June: **Carole Richelieu** (Hawaii) washing out her luggage and its contents after witnessing an airport vehicle roll over her luggage, which contained a special sauce that Carole smuggled into the mainland.

Yes that was **Betsy Brandborg** of Montana strolling down the Miami Beach boardwalk with a six-foot long live snake–reportedly borrowed–wrapped around her neck.

The Loews, site of ABA's Forum, experienced its own problems. Seems some rowdy musicians trashed several rooms the weekend prior to our arrival, leaving burn marks on the carpets and slits in the curtains and furniture. And then we arrived.

Everyone had a great time at the dinner Saturday night at Gloria Estafan's Lario's on the famed art deco Ocean Drive. **Bill Ricker** of Ft. Lauderdale made all the arrangements and we had delicious food, attentive service, wonderful company, and ambiance, too!

Bob Weldon of Washington, former NCPO Western Region VP, has accepted a position on the ABA's Standing Committee on Client Protection. The Standing Committee is chaired by **Lynda Shely** of Arizona, NCPO's Southwest Region VP. Other members include **Melissa DeLacerda** of Oklahoma, **Thomas Sumners** of New Jersey, **James Towery** of California, and **Jack Weiss** of Florida.

Carole Richelieu (the Hawaiian with the suspicious luggage) has accepted the position of Chair of the ABA's Advisory Commission on Lawyers' Funds for Client Protection. She is joined by **John Bomster** (New Hampshire), **Marty Cole** (Minnesota), **Cheri Grodsky** (Lousianna), **David Jordan** (New Hampshire), **Tim O'Sullivan** (New York) and **Georgia Taylor** (Nevada).

Thanks to Georgia Taylor for this new feature. Send new items of interest and intelligence to Georgia at **www.georgiat@nvbar.org.**

Report from New York

Michael J. Knight

The New York Lawyers' Fund for Client Protection had a busy year in 2000, despite a decrease in filed claims. The text of the fund's annual report for 2000 can be viewed on its website at **www.nylawfund.org.**

The year began with an increase in the fund's maximum coverage to $300,000 per eligible claim. There were 235 pending claims alleging losses of $16 million. There were 492 new claims filed which alleged $20 million in losses.

The fund's 205 awards of reimbursement approved in 2000 restored $10.5 million to law clients and represented the largest one-year payout in the fund's history. More than 97 percent of eligible clients in 2000 received full reimbursement.

A milestone was reached in 2000 with the approval of the 5000th award of reimbursement. That award was typical of many and provided full reimbursement for a Manhattan attorney's theft of a $31,000 real estate down payment. The attorney was a male, sole practitioner whose misconduct was apparently due to a drug problem. He was disbarred and prosecuted criminally.

Through 2000, the fund has processed 10,154 applications for reimbursement and determined that 5,081 claims qualified for awards. Of the 5,073 claims found to be ineligible, only four claimants have judicially challenged their adverse determinations. Three of those proceedings have been dismissed. One remains pending.

At the behest of the Lawyers Fund in 1993, court rules were adopted which require the reporting of dishonored checks on attorney trust accounts. The enforcement of that rule has detected more than 80 lawyers who have dishonestly used client and escrow funds in the practice of law. The fund itself has provided $5.1 million in reimbursement to victims of 45 of those dishonest lawyers in 270 awards of reimbursement.

The fund's Trustees continue to recommend changes in policy and legal practice to protect consumers from dishonest conduct in the practice of law. These recommendations include fee arbitration; mandatory training for fiduciaries; supervision of fiduciary financial accounts; and requiring that the named fiduciary be provided with a copy of monthly bank statements. ■

Michael J. Knight is Deputy Counsel of the New York Lawyer's Fund for Client Protection.

Express Your Commitment to Professional Responsibility. Join NCPO!

Membership contributions are tax deductible: organizations ($200); individuals ($25). New memberships and renewals should be sent to NCPO's Treasurer: Isaac Hecht, c/o Hecht & Chapper, Esqs., 315 North Charles St., Baltimore, MD 21201-4325.

Awards Debut in Miami Beach

The Colorado and District of Columbia client protection funds each received NCPO's new **110 % Award** at NCPO's Annual Meeting in Miami Beach. The new award recognizes the generosity of client protection funds who enroll all their Trustees as individual members of NCPO: for going that "extra mile" in support of NCPO.

NCPO's Directors also created a **Friend of Client Protection Award**. The charter recipient? Robert W. Minto, Jr., President and Chief Executive Officer of the Attorney Liability Protection Society of Missoula, Montana. The award recognizes the professionalism, financial support, and technical assistance that ALPS and its staff provides in the printing and distribution of *The Client Protection Webb.* ■

Profile: Law Client Protection in Kansas

Carol G. Green

Kansas lawyers have long been concerned about losses from attorney misappropriations and defalcations. In 1971, the Kansas State Bar Association, a voluntary organization, established a Client Security Fund which existed until 1985. The fund, however, had minimal funding and few claims filed; and only clients of bar association members were covered.

The bar association continued efforts to re-establish a fund, concentrating on Supreme Court approval and sponsorship. Those efforts met with success, and the Court established the Kansas Lawyers Fund for Client Protection, effective July 1, 1993. The Supreme Court's support of the program extended to appointing one of its members to serve as liaison to the newly created Commission which would administer the fund, and that direct communication with the Court has proven invaluable in the development and support of the fund.

An initial transfer of $400,000 from the Disciplinary Fee Fund with annual transfers into the Client Protection Fund have provided the kind of economic stability so essential to successful operation of the fund. The fund balance currently stands at $1,457,664 with 9211 active lawyers covered. The fund is deposited in the State Treasury and earns a modest, but safe, 5-6 per cent return which is credited monthly.

The Kansas Client Protection Fund Commission consists of one judge, four active lawyers, and two non-lawyers, appointed by the Supreme Court. Service is limited to two consecutive three-year terms, and the Commission meets quarterly. This Commission, like the Kansas Commission on Judicial Qualifications, has found that non-lawyers contribute a different, valuable perspective and enrich the claims discussions.

Eligible claims must arise from the dishonest conduct of an active member of the bar, in the course of a lawyer-client relationship and by reason of that relationship, and must be filed within one year after the claimant knew or should have known of the loss. "Dishonest conduct" is defined as wrongful taking or conversion, refusal to refund unearned fees, borrowing from a client with no intent or ability to repay, or intentional dishonesty which proximately leads to a loss. The complete text of the rules appears on the Supreme Court's website at **www.kscourts.org.**

Kansas operates with a $50,000 cap for any individual claimant and a $200,000 cap for claims against any attorney, the attorney cap having been raised from $150,000 last year. Even with those caps, there have been only four claims in the current fund's history which could not be fully reimbursed. The Commission's first claim, filed in 1993, was one of those large claims, exceeding $2.5 million in losses. Not only was the dollar amount overwhelming for a newly established fund, but the issues were also among the most difficult which the Commission has ever considered.

One million-dollar claim in 1996 exceeded the attorney cap, and two lesser claims exceeded the individual claimant cap. The typical loss in Kansas, however, is small. On those small claims, attorneys will sometimes reimburse clients once a claim has been filed with the Commission but before action is taken. For those claims paid by the Commission, full restitution is possible.

It is the Commission's practice to consider claims at the next quarterly meeting, approving payment if proof of loss is established. Some claims will be carried over for further investigation, and claims which potentially exceed the attorney cap must, of necessity, be held until the Commission is certain that all claims have been filed or the time in which to file a claim has lapsed. Prompt payment, however, is the Commission's goal.

From July 1993 through December 2000, 160 claims had been filed with the Commission with 53 denied, generally because the Commission found no dishonest conduct. A total of $531,797 has been paid to 89 claimants.

Kansas has a small staff, all working on client protection as an adjunct to other responsibilities. The Clerk of the Supreme Court serves as the fund's administrator with the assistance of a deputy clerk. The Disciplinary Administrator is a valuable resource, and his office provides investigative services on request of the Commission. The Disciplinary Administrator also attends Commission meetings.

Since the inception of the fund, three measures have been implemented which should discourage dishonest conduct or reveal it before significant losses occur: bank overdraft notification to the Disciplinary Administrator on attorney trust accounts, insurance payee notification on disbursements, and random compliance audits of lawyer trust accounts. ■

Carol Green is the Clerk of the Supreme Court of Kansas and administrator of Kansas client protection program.

Profile: Illinois *continued from p. 9*

with the fact that the Illinois program has a very modest per award limit of $10,000, and an $100,000 aggregate limit on awards involving an individual lawyer. The impact of these caps was made strikingly clear after the 1997 death of Illinois lawyer Anthony G. Cappetta, who had stolen about $10 million from clients who had invested with him over many years. His estate was valued at no more than $3 million. The probate battle between the family and the victims is still raging.

Many of the victims were elderly, and Cappetta's theft had a devastating impact on them. Most of the clients filed claims with the program to share in its $100,000 allocation. Claimants received less than 24 cents on the dollar on their more than $6 million in claims. Through it all, the program's staff was touched and impressed by the spirit of the victims. Expressions of gratitude for the small payments from the program were particularly poignant.

The disheartening Cappetta experience notwithstanding, the Commission and the staff have found their work with the new Supreme Court effort to be rewarding and gratifying. Changes in Illinois since 1994 have been positive ones, and we search for ways to improve the experience. ■

Eileen W. Donahue is Client Protection Counsel for the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois.

News In Brief

More Money for Florida's Protection Fund

The Board of Governors of the Florida Bar has approved a budget for the State Bar Association's 2001-02 fiscal year that increases annual membership fees from $190 to $265 for active members, and from $140 to $190 for inactive members. It's the first such hike since the 1990-91 fiscal year, and is expected to provide a $2 million surplus for next year, rather than the current year's $1.7 million deficit.

Florida's client protection program is a big beneficiary of the dues hike. The new budget earmarks $20 of each dues assessment for the Florida Bar's Clients' Security Fund, up from its current $15. This increases the bar's total annual contribution to its client protection fund from $983,310 to $1,352,560.

Progress in Louisiana

The Client Protection Fund Committee of the Louisiana State Bar Association reports that the Committee has received a $50,000 contribution from the Board of Governors of the State Bar and voluntary contributions from lawyers totaling $2,980. With earned interest of $730, the Committee has total available funds for the 2000-2001 fiscal year of $124,387.

To meet its goal of timely reimbursement, the Committee uses a panel system of three members to investigate claims for reimbursement and make recommendations to the full Committee. The client protection program seeks to resolve all claims at the second meeting of the Committee following filing of the claim.

Also at work in Louisiana is a Study Committee of the Client Protection Fund Committee which is expected to recommend changes to improve and ensure a positive continuation of the work of the State Bar's client protection and reimbursement program.

Big Bucks in Maryland

Maryland's law client protection fund, called the Client Security Trust Fund, has paid out one of the largest awards in its 38-year history: $283,200 to a California man who was defrauded by Ronald Maurice, a Maryland lawyer who was handling the intestate estate of the victim's uncle in Prince George's County, Maryland.

The victim had previously retained Maurice in a similar capacity, without problem. This time he permitted Maurice to be sole signatory on the estate's bank account. Maurice, now disbarred and a convicted felon, looted the estate. Maurice was unable to make restitution.

The protection fund in Maryland stands near the top in the nation with respect to reimbursement protection it provides to victims of dishonest conduct in the practice of law. According to Isaac Hecht, long-time Treasurer of the fund, its regulations establish a maximum limit on awards to individual claimants based on the fund's reserves at the end of each fiscal year. The limit is 10 percent. The fund's current reserves are upwards of $ 3.7 million.

Advance Fee Claims Hit Maryland Fund

According to **The Daily Record** of the Maryland bar, the state's law client protection fund has received more than $175,000 in advance-fee claims involving the state's leading criminal defense attorney. M. Christina Gutierrez consented to her disbarment in May, 2001 after nearly two decades of a "no-holds barred practice" in Maryland. Most of the claims to the Client Security Trust Fund involve five-figure advance retainers – one as much as $45,000 – and litigation expenses paid in advance. The claims allege that Gutierrez did little or no work for her clients.

Malpractice Insurance Notice Rules Spreads

Ohio has joined Alaska and South Dakota in requiring lawyers and law firms to notify their clients if they do not maintain a minimum measure of malpractice coverage. In Ohio the notification requirement is triggered if a lawyer does not maintain malpractice insurance of at least $100,000 per occurrence and $300,000 in the aggregate. The Supreme Court voted 5-2 to adopt the new rule. Said Chief Justice Thomas J. Moyer in a statement issued by the court's press office: "A prospective client could consider the existence of malpractice insurance, together with information about an attorney's ability and experience, to make a more informed choice regarding legal counsel."

Oregon is the only state that mandates malpractice insurance as a condition of practicing law. Virginia lawyers need not carry professional liability insurance but must certify annually, for public inspection, whether they have malpractice insurance coverage.

Minnesota Seeks to Raise Cap

The Minnesota Client Security Board is petitioning the Minnesota Supreme Court for a rule change to increase the maximum payment per eligible loss from $100,000 to $150,000. Minnesota has no aggregate cap. The Supreme Court generally solicits comments from the public and bar for 60 days and holds oral argument on the petition; in this case, sometime in the fall.

The Client Security Board has studied the issue thoroughly, and has determined, based upon the current fund balance and the historical average number of claims received each year, that exceed the present cap, that the maximum limit on awards could be raised to $150,000 without any increase in the attorney registration fee for Minnesota lawyers.

In Memorium

Gilbert A. Webb, Esquire

The Client Protection Webb

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Frederick Miller, Editor
5 Chestnut Hill South
Loudonville, New York 12211
Telephone and Facsimile: (518) 465-8682
millerfg@aol.com

Designer: Adept Impressions
2196 Webster Drive,
Schenectady, NY 12309
Telephone: 518-372-6533
Fax: 518-382-9322
adeptimp@nycap.rr.com

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