

# The Client Protection Webb\*

A Publication of the National  
Client Protection Organization

January, 2020

## Peer Into Your Orbuculum –

### It Says: “Go to New Orleans & Kansas”

*Happy New Year!*

If you have an orbuculum (a/k/a a crystal ball – see *companion article, page 2 “NCPO On the Road Again”*), chances are it is telling you to make plans now to attend the ABA National Client Protection Forum in New Orleans and the NCPO 2020 Regional Workshop in Lawrence Kansas. Both events provide excellent opportunities to tackle tough issues facing the client protection field.



The ABA’s 36<sup>th</sup> annual Forum will be held from May 29-30, 2020 in the New Orleans Marriott. Sessions being developed include “CP Fund Orbuculum: Recognizing Cataclysms and Creeping



Deterioration; Achieving Triumphs and Steady Success.” See page 2 for a list of program topics.

This year the NCPO’s annual workshop will be hosted by the Kansas Fund from

September 13 – 15, 2020 in the Eldridge Hotel, Lawrence Kansas. In addition to informative

panel discussions and the opportunity to network with other fund administrators, attorneys and trustees, the NCPO will present the prestigious Isaac Hecht Award to an individual or group who

has made an outstanding contribution to client protection. See page 3 for

information on how to nominate an honoree.

Remember that all members NCPO members are eligible for the Workshop Assistance Program which can help cover the cost of attending the annual workshop. The workshop assistance award is assessed upon financial need. The maximum award to be granted is \$1,000 for each event. The award recipient will also receive a waiver of the registration fee to the NCPO workshop. Of course, details are on the NCPO’s website at [www.ncpo.org](http://www.ncpo.org) .



# NCPO “On the Road Again”

## Joins the ABA in “The Big Easy,” then on to the “Center of the Universe”

The 36<sup>th</sup> ABA National Client Protection Forum will take place in New Orleans, LA May 29-30, 2020. The Forum will be held at the New Orleans Marriott located at 555 Canal St, New Orleans, LA 70130. The planning Committee is still working on finalizing the Agenda, but some of the planned program topics include:

- *The Proliferation of Alternative Legal Service Providers and the Implications for Client Protection Funds: A New Frontier for the Practice of Law?;*
- *The Dark Web and other Online Security Threats to Client Protection Funds;*

- *Hot Topics for Client Protection Funds;*
- *Innovations in Claims Investigations Part II: a follow up to last year’s popular program;*
- *Difficult Claims Interactive Workshop;*
- *CP Fund Orbuculum: Recognizing Cataclysms and Creeping Deterioration; Achieving Triumphs and Steady Success.*

Registration for the Forum should be open by the end of January so please be sure to check the ABA Center for Professional Responsibility for more information and updates:

[https://www.americanbar.org/groups/professional\\_responsibility/](https://www.americanbar.org/groups/professional_responsibility/)

## Interesting Facts About Lawrence, Kansas, home of the 2020 NCPO Fall Regional Workshop:

\* According to Google, Lawrence is at the center of the universe. The default center of Google Earth (on personal computers) is Meadowbrook Apartments, Lawrence, Kansas.



\*Dr. James Naismith invented the game of basketball but is the only basketball coach in the University of Kansas’ history with a losing record. (55-60) KU now plays its home games at Allen Fieldhouse, located at 1651 Naismith Drive.

\*Many of the streets are named for states – and generally speaking the state-

named streets are in the order that the states were admitted to the union, starting with Delaware.

\*In 1864, the University of Kansas was founded beginning with six departments of instruction: science, arts and literature, medicine, theory and practice of elementary instruction, and agriculture. KU now offers 5,000 courses in over 600 degree and certificate programs.

\*The first detection of a mass quantity of helium on earth occurred on KU’s campus in 1905.

\*The Eldridge Hotel was burned twice; once in 1856 during the Sacking of Lawrence and again in 1863 during Quantrill’s Raid. Colonel Eldridge vowed to add a floor every time it was rebuilt.



\*Last but not least: KU alumnus, Clyde Tombaugh, discovered Pluto.

# New York's Tim O'Sullivan Honored with Hecht Award

Timothy J. O'Sullivan, the former Executive Director and Counsel for the New York Lawyers' Fund for Client Protection, was awarded the prestigious Isaac Hecht Award for 2019 during the NCPO's Fall Workshop in Princeton this past September.

Tim began his legal career as a summer intern



with the New York Lawyers' Fund in 1985, following his second year at Albany Law School.

Immediately

upon graduation the Fund hired Tim to serve as Deputy Counsel. In 2000, the Board of Trustees appointed Tim as Executive Director and Counsel, which he fulfilled with distinction until his retirement in July 2018. Under his quiet and steady leadership, and clear vision, the New York Lawyers' Fund has become one of the foremost client protection programs in the nation.

In addition to lecturing throughout the State, participating with bar associations, and continuing legal education programs, Tim was instrumental in creating invaluable cooperation with Disciplinary Committees and local prosecutors resulting in a unique coordination that has facilitated efficient and rapid assistance to victimized law clients.

Tim created a Digest of Precedents as a resource for the Trustees of the New York Lawyers' Fund. A redacted version of this document has been made available to ABA and NCPO membership as a resource template. Tim co-produced regulations leading to the Statewide adoption of policies and procedures permitting distribution of

over \$5 million in missing law client funds for the benefit of law client victims, and he helped develop and propose streamline procedures for securing post-discipline attorney restitution Court orders in cases of attorney resignation.

At the national level, Tim has had extended participation and leadership with the Standing Committee on Law Client Protection of the American Bar Association, as well as serving for 12 years as the Treasurer of the National Client Protection Organization. Congratulations, Tim!

## Who was Isaac Hecht?

A graduate of Johns Hopkins University and the University of Maryland School of Law, Isaac Hecht practiced law for 64 years. He was a partner in the Baltimore law firm of Hecht and Chapper. Mr. Hecht served as Treasurer of Maryland's law client protection fund from the time of its creation in 1967 until his death in 2003 at the age of 89. He served 18 years as a member of the American Bar Association's Standing Committees dealing with the support of law client protection funds in the United States and Canada.

Mr. Hecht 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. To Isaac's credit and because of his labors, there are now client protection funds in every State and the District of Columbia, and in each Province of Canada. Mr. Hecht was a co-founder of the National Client Protection Organization in 1998, and served as a Director and its Treasurer.

To nominate a future recipient of the Hecht Award, please contact Michael Harmon at [Michael.Harmon@arcourts.gov](mailto:Michael.Harmon@arcourts.gov)

# The President's Corner -

By **Michael Harmon, NCPO President**

*Deputy Director of the Arkansas Supreme Court Office of Professional Conduct.*

**H**appy New Year  
from the Board of  
Directors of the  
National Client Protection  
Organization.

With the change from 2019 to 2020, we can look forward to the opportunities that await us in the new year.

In May, NCPO will be holding its annual meeting in May during the American Bar Association's Forum on Client Protection. Notices of the date and time of the annual meeting will be sent later this spring. At the meeting, elections will be held for President-Elect, Secretary, Treasurer, Director at Large, and Regional Vice Presidents (Northeast, Southeast, Midwest, Southwest, West, and Canada). If you are



looking to get involved with NCPO, consider serving as an officer of your organization! More information about nominations will be coming soon.

Another way to be involved with NCPO is by serving on a committee. With the change in leadership following the annual meeting Alecia Ruswinckel, President-Elect, will be appointing members to NCPO committees.

In September, NCPO will be holding its Annual Workshop

on September 14 and 15 at the Eldridge Hotel in Lawrence, Kansas. Alecia Ruswinckel and Stan Hazlett have been working hard to provide a great line-up of topics for discussion and a great place to socialize with colleagues across the country (and Canada!). More information about the workshop can be found at

<https://www.ncpo.org/2020-ncpo-workshop>,

NCPO is well-positioned to make a difference in 2020. I look forward to working with each of you in the remaining six months as President of NCPO and to see what we can do.



## **Did you know.....***that the clients' security movement did not begin in the United States?*

*Like so much in our legal tradition, clients' security committees, boards and funds originated in the British Commonwealth countries. During the last few years of the 19<sup>th</sup> century, continuing through the early 1920's, law societies in England, Australia and New Zealand held extensive discussions about different varieties of clients' protection programs. Those discussions took place against a backdrop of heavy client losses due to law firm bankruptcies, a stock market crash and the then-common practice of comingling client and firm accounts. In 1929, New Zealand created the Solicitors' Fidelity Guarantee Fund. Australia followed suit in 1930, as did Alberta (Canada) in 1939 and England in 1941. Scotland joined the ranks in 1949 and Ireland in 1954. In January 1959, Vermont created the first clients' protection fund in the United States. (Reprinted from the Fiscal 2015 Annual Report of the Massachusetts Clients' Security Board).*

# National Task Force on Lawyer Well-Being Celebrates Two Years and a Changing Legal Culture

By William D. Slease, Esq.

*Chief Disciplinary Counsel for the New Mexico Supreme Court Disciplinary Board*

The National Task Force on Lawyer Well-Being is celebrating two years since the release of its groundbreaking, profession-changing report, [The Path to Lawyer Well-Being: Practical Recommendations for Positive Change](#). During the month of August 2017, the Report was published, and both the ABA and the Conference of Chief Justices passed Resolutions urging all states to review and consider the Report's 44 recommendations.



A mere two years later, the Task Force is proud to announce that 29 states have established a multi-stakeholder task force (often initiated by the Supreme Court's Chief Justice or executives of the state bar association) or have undertaken major initiatives to bring about a culture change in the legal profession (see [www.lawyerwellbeing.net](http://www.lawyerwellbeing.net) for interactive map). Using the Report as a springboard, these states have formed working groups or task forces; revised regulations related to CLE programming and to bar admissions, commissioned studies; hosted well-being summits; or reallocated funds to enhance the well-being and support services offered to members of the profession.

The Report was issued after two national 2016 studies confirmed that lawyers struggle greatly with substance abuse and mental health challenges. Born of a passion to candidly confront these challenges, the Task Force began as a grassroots movement initiated by the ABA Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL). Two years later, its membership has grown to 13 national legal associations (some within the ABA and some

independent associations) that represent the judiciary, regulators, bar examiners, lawyers' assistance programs, law schools, as well as individuals representing the risk-management and insurance industry and global law firms.

The Report calls to action all stakeholders in the legal profession and challenges them to both reduce impairments and increase lawyer well-being. "Our report offers practical recommendations for stakeholders' unique needs and abilities to bring about systemic change in how they tend to their own members' well-being," states Bree Buchanan, a founding co-chair and author of the Report. With the ultimate goal of improving professionalism, protecting the public, and preserving the rule of law – while also enhancing both quality of life and profitability of law practice – the Report sets out a path that effectively addresses and reduces impairments, such as substance use disorders and mental health problems, and the promotion of overall well-being.



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## Task Force on Well-Being

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Since publication of the Report, the Task Force has developed a website,

[www.lawyerwellbeing.net](http://www.lawyerwellbeing.net),

which provides a link to the Report, a working definition of lawyer well-being, and information about the well-being initiatives spreading across the legal profession in the United States. “Task Force members have crisscrossed the country speaking to law firms, lawyer associations, and judicial officers about the Report’s recommendations and, without fail, the reception has been warm with audience members expressing high interest in learning about well-being initiatives,” says Chris Newbold, a co-chair and author of the Report.

The Task Force remains proud of its work and is poised to move to the next stage: serving as a clearinghouse and resource bank for well-being programs and initiatives, as well as offering education and support to improve the robustness of stakeholders’ well-being efforts. “We look forward to continuing to lead the discussion and to raise awareness of the critical component of well-being in every lawyer’s skill set,” states Bill Slease, a co-chair and author of the Report

## NEW YORK FUND MAKES VICTIMS WHOLE

An attorney from Long Island is facing a host of charges after being arrested and arraigned for allegedly stealing nearly \$300,000 from his former clients, authorities announced.

Arnab Bhukta, 38, who formerly lived in Merrick and now resides in Arizona, was charged with the theft of \$296,700 from two ex-clients. The U.S. Attorney’s Office said that in July 2013, a client hired Bhukta to represent him in a personal injury case following a car crash. When the claim was settled with National General Insurance, Bhukta allegedly forged his client’s signature on a “release of all claims” form and collected \$10,000 without notifying his client.

That \$10,000 was allegedly deposited into Bhukta’s escrow account but never paid out to his client.

It was further alleged that in May 2015, a second client hired Bhukta to represent him in a disability claim. Bhukta allegedly submitted a claim to Mass Mutual Insurance Company. Once the claim was settled, Mass Mutual mailed a \$475,000 settlement check to Bhukta, who deposited it into his escrow account again.

Singas said that, after the victim requested his money from Bhukta multiple times, he only allegedly paid \$90,000 to the victim, who was owed \$380,000.

**Both clients later filed claims with New York Lawyer’s Fund for Client Protection and received full restitution.**

The alleged stolen money was used on work and personal expenses, Singas said. Bhukta was disbarred on July 17 last year by the New York State Appellate Division.

“Attorneys have a duty to act in their clients’ interests, but this defendant allegedly betrayed his clients’ trust and stole nearly \$300,000 from their personal injury settlements,” Singas said. “My office has held more than 25 crooked attorneys accountable because of the great harm they do to their clients and the legal profession, and we encourage anyone else victimized by this defendant to come forward.”

# The Special Case of Out-of-State Immigration Lawyers

By Douglas E. Burry, Esq.

*Doug is Senior Counsel to the NJ Lawyers' Fund for Client Protection*

**W**hat do you do when you get a claim against an attorney who practices in California, or Texas, or Florida, but is licensed only in your state? You may face this question when the attorney practices immigration law and has passed your bar. This article discusses the nature of the (potentially growing) problem of claims made against immigration lawyers who don't have – or need – a license in the state in which they practice.



## **So Many Cases, So Few Lawyers**

An immigration law practice is primarily a federal one. Immigration cases are handled by the Department of Homeland Security, and the courts are run by the Justice Department's Executive Office for Immigration Review. Admission to practice in these courts requires only that an attorney be licensed in any state – maybe not the state the attorney practices in.

Immigration law is also fairly geographically concentrated. Four states handle more than half of all immigration cases: California, Florida, New York and Texas are home to 572,303 of the total 1,023,767 backlogged immigration cases in the United States.<sup>1</sup> The number of those backlogged cases has increased from 186,108 in 2008 to 1,023,767 in 2019, which is an all-time high.<sup>1</sup> And those cases are not moving very quickly - [hearing delays average nearly two years](#) in the 58 United States immigration courts.<sup>1</sup> In today's political climate, with an uptick in immigration enforcement, the backlog can only to grow, and the demand for immigration lawyers is skyrocketing. There is a significant shortage of experts qualified to represent immigrants, families and employers, while the supply of immigration lawyers has remained level.<sup>2</sup> With demand so high, the supply may be met by less experienced, careless, or even dishonest attorneys.

## **Troubled Waters**

Not surprisingly, complaints against immigration attorneys are on the rise. "There are a lot of unhappy immigrant clients out there, and some of them have very good reason to be unhappy," says D.C. Deputy Bar Counsel Elizabeth A. Herman, who has handled immigration complaints for more than a decade.<sup>3</sup> "You have a very vulnerable population," said Jennifer Barnes, bar counsel for the Executive Office for Immigration Review. "Many immigrants", she said, "don't speak English, and few understand the statutes and regulations that are second perhaps only to the tax code in complexity. And you have attorneys out there looking to take advantage of that vulnerability,"<sup>3</sup>

Anthony Guidice, an immigration lawyer in Rochester, N.Y., has his own perspective:

"I've heard lots of times from foreign nationals, 'This guy said he'd help me, he took my money, and I never heard from him again,'" Guidice says. "There are millions of potential clients, and outdated laws sometimes prohibit lawyers from doing anything

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<sup>1</sup> Transactional Records Access Clearinghouse; Syracuse University; <https://trac.syr.edu>.

<sup>2</sup> [Immigration Lawyer Shortage Nearing Crisis](#), Chris Liedle, KATU News, April 2, 2017.

<sup>3</sup> [Complaints Rise Against Immigration Lawyers](#), Henri E. Cauvin, Washington Post, January 7, 2007.

for them. But lawyers imply they can do something just to get a fee. It's called false hope, and clients don't know any better."

Guidice also complains that too many lawyers in his field fail to return unearned fees. "Let's say you charge to do a cancellation-of-removal case," he says. "After your client pays you, you examine the case in depth and find there's an aggravated felony charge you can't get around that prohibits you from obtaining that relief for your client. Ethically, the thing to do is to tell the client and refund the fees you didn't earn."<sup>4</sup>

Given the nature of the field of law, don't be surprised if you receive some claims involving immigration matters.



### **So What Can You Do?**

Client Protection Funds have tools available to assist out-of-state immigration claimants. Since each jurisdiction has its own rules, the best place for you to start is with your own Fund's rules. An examination of each jurisdiction's rules is beyond the scope of this article, though, so the ABA Model Rules and how they apply to this type of case will be discussed.

Jurisdiction is the big issue here. Does your Fund have jurisdiction over a lawyer who doesn't live or practice in your state; or over a claim where the client doesn't live in your state and the legal matter at issue was handled entirely out-of-state? Under the ABA Model Rules, the answer seems to be yes. Model Rule 1(B)(1), the definition of "lawyer," provides that a lawyer is a person "licensed to practice law in this jurisdiction, *regardless of where the lawyer's conduct occurs.*" (emphasis added). Under this rule such a claim would, nominally at least, fall under the jurisdiction of the Fund.

Since some Boards, however, may well be hesitant to consider a claim with no bearing on the bar of their jurisdictions other than long-distance membership of the respondent, other equitable considerations should be taken into account. The purpose of the Fund, pursuant to Model Rule 1(A), is to "promote public confidence in the administration of justice and the integrity of the legal profession." In immigration cases such as we are discussing here, an out-of-state claim is the only way for a claimant to get relief, and thereby promote public confidence. In addition, we are dealing with a particularly vulnerable population, often with limited financial means, a language barrier, and dealing with a very complex area of law – certainly a group worthy of the integrity of the legal profession.

Consideration should also be given to Model Rule 10 (G), which provides that "[i]n cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion and consistent with the purpose of the Fund, recognize a claim that would otherwise be excluded under these Rules." This sort of equitable authority should be considered when deciding whether a particular immigration matter is worthy of payment.

Given the unique nature of out-of-state immigration claims, Fund personnel need to take a careful look at the nature of the claim and the attorney and be able to use available resources to bring about a just result. While your jurisdiction's rules may not parallel the ABA Model Rules, you should examine your rules for analogous provisions that will aid you in deciding whether these types of claims can and should be paid by your Fund.

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<sup>4</sup> Hot Zone: Immigration Law Raises a Unique Mix of Ethics Issues for Lawyers, G. M. Filisko, ABA Journal, March 1, 2012.





# Keep Calm & Carry On? UK Fund Moves to Cap Victim Awards

In Great Britain, the Solicitors' Regulation Authority (SRA) will seek to end multi-million payouts through its compensation fund in the midst of soaring burdens on the profession to prop it up. Recently proposed measures seek to make the fund more sustainable in the face of growing risks and ever-increasing demands for compensation from wronged clients.

Plans include reducing the single claim limit to £500,000 (barring exceptional circumstances) and capping the total amount payable for a group of related claims.

New eligibility criteria will focus on people that need most protection. Plans for a hardship test have been dropped, but the scheme will prioritize payments based on the 'impact of loss'. Clients who have been able to claim on a law firm's professional indemnity insurance policy are also likely to be excluded.

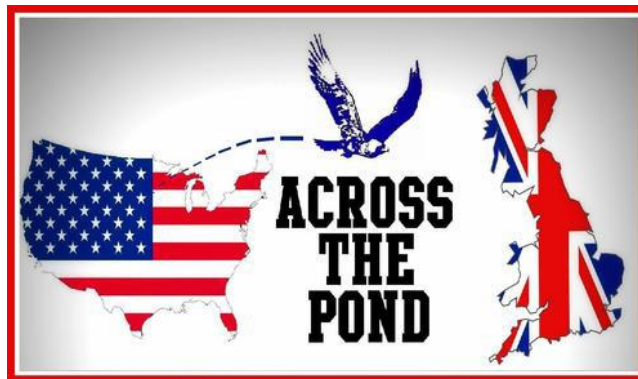
Successful applicants must be the direct client of solicitors or firms who have done wrong - for example, therefore, buyers who have lost money because of the dishonesty of their seller's solicitor in a real estate transaction would not be eligible. Neither would spouses in a divorce matter where the other solicitor is holding and then steals money set aside for a financial settlement.

Paul Philip, SRA chief executive, said the compensation fund provides an essential safety net for those who need it, helping to

maintain trust in the profession when things go wrong. But he stressed that funding the scheme comes at a cost, which is borne by the wider profession and ultimately their clients.

Philip added: 'We have seen how significant risks in the market over recent years, including solicitor involvement in dubious investment schemes, have affected the fund and contributions from the profession. 'We want to strike the right balance between protecting clients' money and making sure

that the fund remains sustainable for the future.' The regulator fears the potential liability of the fund is set to increase and is building a £30m contingency reserve for anticipated payments. This follows considerable spikes in levels of contribution from the profession.



In total, the solicitors' profession paid £25.6m into the fund in 2018/19, with firms contributing £1,680 and individuals £90. In comparison, for 2010/11 firms paid £120 and individuals £10 each, resulting in a total contribution of £2.1m. A revised £500,000 limit will affect a relatively small number of cases. From 2010 to 2018, a total of 32 cases paid out more than that figure, with a total value of £30m. Almost all these higher single payments involved stolen probate and mortgage monies or damages settlements. The highest individual compensation award in this period was for £3.9m.

*Reprinted from the Law Society Gazette, 1/21/20*

# Investigation underway into lawyer and missing \$895,000 in client funds



John L. Allen

John L. Allen, a Manchester New Hampshire lawyer, had his law license suspended after two clients complained that he failed to properly disburse over \$895,000 in trust funds.

Tenants at Allen's downtown Manchester office said they haven't seen Allen in at least a month. State officials with the New Hampshire Attorney Discipline Office have been removing records from his office. In early October, the state Supreme Court issued an emergency suspension of Allen's law license, after the Attorney Discipline Office filed paperwork warning about a "danger to the public" if Allen continues to practice law.

According to filings from the Attorney Discipline Office, Allen has been suffering from a heart condition, at one point telling a client's lawyer he was going to Florida for treatment. Meanwhile, a client described Allen's erratic behavior to the Discipline Office.

"Mr. (David) Moore described that Mr. Allen began taking vacations with his significant other, and appeared to be spending large sums of money on these trips," the Discipline Office wrote.

Moore is mentioned in filings as Allen's largest client, one who Allen in fact confided in that he buried the funds from another client so deeply that it will never be found, the filing reads. Moore has told investigators that Allen has \$370,000 that belongs to Moore's various companies.

The other client whose money is missing is a Manchester developer. Autumn Frost LLC wants \$525,000 that Allen held in trust for a development project in Hooksett. Lawyers often hold large sums of money on behalf of clients, usually to ensure that the funds are used for specific purposes. *(Reprinted from the New Hampshire Union Leader)*

## Don't Forget.....

Go to [https://www.americanbar.org/groups/professional\\_responsibility/](https://www.americanbar.org/groups/professional_responsibility/) to register for the ABA Forum in New Orleans on May 29 – 30, 2020 and <https://www.ncpo.org/2020-ncpo-workshop> for more information on the NCPO Regional Workshop in Lawrence, Kansas on September 13-15, 2020!

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*\*The Client Protection Webb is published in memory of Gilbert A. Webb, Esq., who served as Assistant Client Protection Counsel for the American Bar Association's Center for Professional Responsibility.*

*Mr. Webb was dedicated to protecting the welfare of clients victimized by their attorneys and served as an editor of the ABA's first client protection newsletter. Submissions to the Webb are always welcome. Please send them to the editor, Mike McCormick at [Michael.McCormick@njcourts.gov](mailto:Michael.McCormick@njcourts.gov).*

