

NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION

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*To the Honorable Chief Justice and Members
of the Supreme Court of New Jersey*

Respectfully submitted under *Rule 1:28-4(a)* is the 2011 Annual Report of the Board of Trustees of the New Jersey Lawyers' Fund for Client Protection. The 2011 Annual Audit and revision have been previously submitted.

History and Purpose

The Lawyers' Fund for Client Protection ["Fund"], known as the Clients' Security Fund before 1991, was created by the New Jersey State Bar Association in 1961 and formally established by the Supreme Court of New Jersey in 1969. Its purpose has always been to reimburse clients in those rare instances when a lawyer betrays a client's trust by misappropriating funds.

The Fund is governed by *Rule 1:28* of the *Rules Governing the Courts of the State of New Jersey*. Rules and Regulations adopted by the Board of Trustees and approved by the Supreme Court of New Jersey provide for the administration of the Fund, the exercise of the Trustees' investment powers, and the procedures for the presentation, consideration, and payment of claims.

Board of Trustees

The Fund operates under the direction of a volunteer, seven-member Board of Trustees comprised of five lawyers and two non-lawyers. Members are appointed by the Supreme Court of New Jersey to serve staggered five-year terms. The Trustees serving at the close of 2011 were:

1. Bar Member	Jean M. Ramatowski	Term Expires	December 31, 2012
2. Bar Member	Tina E. Bernstein	Term Expires	December 31, 2011
3. Bar Member	Patrick J. Caserta	Term Expires	December 31, 2013
4. Bar Member	Lisa J. Rodriguez	Term Expires	December 31, 2014
5. Bar Member	Michael L. Rodburg	Term Expires	December 31, 2015
6. Public Member	Alan L. Williams	Term Expires	December 31, 2013
7. Public Member	Vacant	_____	_____

Fund Resources

New Jersey lawyers and judges, as well as lawyers granted permission to practice in New Jersey, pay into the Fund each year. The Fund receives \$25 from New Jersey lawyers in their third and fourth calendar year of admission, \$50 from those in their fifth through 49th year, and \$50 from *pro hac vice* attorneys, multi-jurisdictional practitioners, in-house counsel, and foreign legal consultants.

Proper Claimant and Proofs Required

A successful claimant must prove an attorney/client or fiduciary relationship with a lawyer and show a compensable loss, that is, that the lawyer stole money collected in trust on behalf of the claimant. A successful claimant must prove the case by showing receipt by the lawyer of money or property belonging to the claimant, conversion of funds by the lawyer, and a loss resulting from

dishonest conduct. Specific proof of payment to the lawyer may include copies of canceled checks, escrow agreements, retainer agreements, and settlement statements. Each lawyer named in a claim will receive a copy of the claim with its supporting documentation and an invitation to reply and provide proofs.

The Fund's Limited Jurisdiction

Before the Fund can formally begin its investigation, the lawyer who is the subject of a claim must be suspended, disbarred, or deceased. Claims involving pure fee disputes, unfortunate or ill-advised investments placed through attorneys, and professional negligence or allegations of malpractice are not compensable. The Fund does not generally pay interest on losses or consequential damages.

How to File a Claim

Claim forms can be requested in writing or by telephone. The Fund's staff will assist callers with the filing process. The original and two copies of an executed claim form must be submitted. There is no filing fee and a lawyer assisting a claimant with a claim to the Fund may not charge a fee.

How Claims are Decided

The Fund's legal staff reviews and investigates all claims and prepares a comprehensive agenda for the Board of Trustees to consider. The Trustees meet monthly to decide claims. Court *Rule 1:28-3* gives the Trustees sole discretion to decide all claims, including the amount, timing, and

conditions of payment. In some instances, a hearing is held to take testimony from the claimant, the respondent, and any other persons with relevant knowledge concerning the matter.

Limits on Claims

There is a limit of \$400,000 per claimant for claims arising after January 1, 2007, with an aggregate maximum of \$1,500,000 for claims paid against any single lawyer. On certain occasions, the Court has considered petition by the Board of Trustees for an increase in the aggregate maximum to best serve the Fund's mission.

Recovery of Payments Made

For every claim that is paid, the Fund and the claimant will execute a *Release, Assignment and Subrogation Agreement* that will then permit the Fund to pursue the claimant's rights against the dishonest lawyer and anyone else that might be liable under the law. It is the Trustees' policy to seek reimbursement for all claims paid in order to protect the integrity of the pool of money that they administer on behalf of the Bar.

Overview of 2011 Activity

Claim filings increased for the fourth consecutive year, perhaps due to the economic pressures created by the downturn in the economy, but aberrant behavior cannot be easily measured in economic terms. The total paid increased from the relatively low levels of 2009 and 2010 although the average size of awards decreased. Lower interest rates continued to depress the Fund's interest income but subrogation receipts were up by 98% percent from the previous year, resulting in an unexpected increase in total revenues for 2011.

Revenues exceeded expenses in 2011. The \$923,442 added to the reserve makes the Fund better prepared to handle large or voluminous claims in the future, or to take another step toward the ultimate goal of full reimbursement of all deserving claimants.

Events Involving Fund Personnel

The Trustees conducted their organizational meeting on January 19, 2011. Jean M. Ramatowski was elected Chair, Tina E. Bernstein was elected Vice-Chair, Alan L. Williams was elected Treasurer, and Lisa J. Rodriguez was elected Alternate Treasurer. The Trustees reappointed Kenneth J. Bossong, Director; Daniel R. Hendi, Deputy Director; Edward T. Ehler, Senior Counsel; Ruby D. Cochran, Deputy Counsel and Secretary to the Board; and Shelley R. Webster, Assistant Treasurer. Mr. Bossong, having served as Director of the Fund for more than 30 years, had earlier announced his plan to retire at the end of April 2011.

In February, the Fund welcomed Michael L. Rodburg, Esq., a member of the firm of Lowenstein Sandler in Roseland, NJ, who was appointed as a Trustee of the Fund for a full five-year term effective January 1, 2011 through December 31, 2015. The public member vacancy that resulted from the premature ending of Frank Farr's term at the end of 2010 remained vacant for all of 2011.

Effective April 4, Deputy Director Hendi informally assumed the duties of Acting Director and Edward Ehler informally assumed the duties of the Acting Deputy Director. One of Mr. Hendi's first duties was to meet with representatives of WithumSmith+Brown, the accounting firm that was awarded the contract to audit the Judiciary's dedicated funds. At its April meeting, the Trustees approved Acting Director Hendi's participation on the ABA's Individual Rights and Responsibilities Committee. The Committee was convening to examine lawyer participation in fraudulent loan

scams that contributed to the national housing crisis and develop a plan to deter and prevent such participation.

In April, Mr. Hendi asked Mr. Bossong to delay his retirement for one month to complete the Fund's *Code of Policy*, a tool that the Trustees use when dealing with claims and other issues.

The American Bar Association's 27th Annual Forum on Client Protection Funds was held on June 3 and 4 in Memphis, TN. Acting Director Daniel Hendi moderated the Difficult Claims Workshop and the Town Hall Meeting where hot topics from the 36 jurisdictions in attendance were shared. One of the year's popular and informative sessions included the pros and cons of the "payee notification rule" in personal injury and tort cases where insurers send checks to the lawyer and notify the payee at the same time. Mr. Hendi suggested implementation of a mortgage funding notification model rule within the ABA that is similar in nature to the "payee notification rule" used by insurance carriers in personal injury cases. The implementation of such a rule would serve to make closings more transparent to those involved and prevent dishonest closing agents from delaying in making payoffs and using the closing funds for other purposes.

Justice Jaynee LaVecchia, Trustees Patrick Caserta and Lisa Rodriguez, and Supreme Court Clerk Mark Neary comprised the interview panel for a nationwide search for a new director for the Fund following Mr. Bossong's retirement. Acting Director Hendi, a 24-year veteran in client protection, was selected for the position effective July 1. Mr. Hendi's appointment provided a seamless transition to provide Fund services to the public and Bar.

In September, Christine Evans, Judiciary Clerk 3 in the billing unit, was selected to fill the Judiciary Clerk 4 position that was vacated in April upon Kimberly Stroman's departure to pursue another career. The Clerk 3 position vacated by Ms. Evans was not filled because increased attorney participation in the online system resulted in a manageable manpower decrease in the billing unit.

In October, Daniel Hendi, Edward Ehler and Ruby Cochran gave presentations at the National Client Protection Organization Workshop in Santa Fe, NM. Mr. Hendi facilitated the appearance of Leslie Russo, Esq. from the Thriving Lawyers' Institute with a presentation on the recent findings of neuroscience and how mindfulness practices can combat the ravages of stress faced by many practicing lawyers and law students. For the first time, the program was simulcast on ustream.tv through the University of New Mexico's channel. Mr. Hendi notified the deans of the three New Jersey law schools of the programming as well as those at the University of Seattle and Western New England University who previously worked with Mr. Hendi on presentations for ABA programs. Mr. Hendi also chaired the Town Hall meeting at the NCPO Workshop where each of the 26 jurisdictions in attendance provided the audience with a brief presentation about events in their jurisdictions. At the Town Hall meeting, the Fund's former Director, Kenneth Bosson, shared "events of the retired" and announced his appointment as Administrative Law Judge at the US Social Security Administration. Ms. Cochran presented "Lawyers Who Practice More Than Law," an overview of client protection issues when dealing with claims against lawyers who have dual roles such as insurance brokers, and estate or financial planners. Mr. Ehler presented "Is Dying Dishonest Conduct," an overview of the issues that client protection funds confront throughout the United States when an attorney with an active practice dies unexpectedly and clients are left without the benefit of services or the fees paid in advance. It is vital to note that whether presenting or attending, we share and learn from each jurisdiction's particular experiences which makes us aware of trends and ways that they can be efficiently addressed.

Digitizing the Fund's records began in earnest in November with the uploading of historical claims documents into the Fund's database and the posting of the monthly agenda to the Fund's website for access by those Trustees who prefer the electronic format over the 300-500 page printed

copy. Also in November, the Fund revamped its brochure to better inform the public.

Continuing the valued tradition with the Japanese Judge Visitation Program, Mr. Hendi met with Judge Rui Ueda of the Osaka District Court in October and the Trustees welcomed him at their November 16 meeting.

Edward Ehler was formally named Deputy Director effective November 19. Steps to replace Mr. Ehler at the same title and grade were initiated in early December, but Human Resources responded in late December with a determination to fill the vacant position with a lesser title. The Trustees directed Mr. Hendi to appeal this determination and, as of this writing, the position remains vacant.

In December, the Director met with Susan Feeney, President and Angela Scheck, Director of the New Jersey State Bar Association [NJSBA]. Justice Jaynee LaVecchia, the Fund's liaison with the NJ Supreme Court, also attended. Mr. Hendi explained some of the inner workings of the Fund such as how claims were investigated and the Trustees' litigation policy. NJSBA representatives suggested that perhaps the Fund could share its work at a NJSBA meeting, and explain what it does and how it works for the benefit of clients and the Bar. Current reserves were discussed in the context of pending claims and anticipated claims in 2012 due to the alleged dishonest conduct of one South Jersey attorney. Claims against that one identified attorney alone may range from \$7 to \$10 million, raising the Fund's total exposure to between \$17 and \$20 million.

In December, the Fund reached a \$60 million landmark for reimbursements to 3,804 claims/victims on behalf of the Bar since the Court created the Fund in 1969. Those victims most likely would have had no other place to obtain relief. It was noted that the Fund collected over \$14 million in subrogation receipts from various sources during these years, leaving a net payout of between \$45 and \$46 million.

After the regular December Trustees' meeting, the current Trustees and staff met with the former Trustees of the Fund. Matters discussed included whether a defalcating attorney should be given credit for attorney fees and the Trustees' discretion in deciding these claims, how to define retired status, and the refund policy for attorneys who want to retroactively claim the retired exemption, sometimes for multiple years. A brief ceremony followed in which a certificate of appreciation for dedicated service was presented by Chair Jean Ramatowski to Trustee Tina E. Bernstein upon completion of her term as Trustee of the Fund. Ms. Bernstein's departure reduced the Board to just five members.

Bar Population

The number of New Jersey lawyers increased from 88,091 to 90,149. New admittees totaled 3,421; 1,363 deletions included 567 revoked 257 deceased, 513 resigned, and 26 disbarred. The breakdown of the billing status for members of the Bar at year end was as follows:

<u>Category as of 12/31/11</u>	<u>No. of Attorneys</u>	<u>% of Bar</u>
Paid \$50	59134	65.60%
Paid \$25	5001	5.55%
Plenary Exempt (1st Year)	2897	3.21%
2nd Year (Paid DOC & LAP)	2918	3.24%
50 Year Exempt	854	0.95%
Military Exempt	347	0.38%
Retired Completely Exemption	12183	13.51%
Administrative Delete	21	0.02%
Ineligible	6314	7.00%
Old New/No Response/Holding	2	0.00%
Suspended/Disability Inactive	478	0.53%
TOTAL	90149	100.00%

Billing

The Fund again handled the annual assessment for itself, the Disciplinary Oversight Committee (DOC) that funds the Disciplinary Review Board and the Office of Attorney Ethics, the Board on Continuing Legal Education (BCLE), and the Lawyers Assistance Program (LAP). The billing unit of the Fund fielded over 25,000 telephone calls in 2011. A section was added to the billing form for reporting compliance with mandatory Continuing Legal Education. Out of the \$204 paid by most New Jersey attorneys, the Fund received \$50, the DOC received \$140, LAP received \$10, and BCLE received \$4; the \$175 payments made by lawyers in their third and fourth years of admission were split \$25 to the Fund, \$140 to the DOC, and \$10 to LAP. Those in their second calendar year paid \$35, of which \$25 went to the DOC and \$10 went to LAP. Second-year lawyers remained exempt from the Fund's portion of the assessment. The assessment brought \$3,185,150 to the Fund in payments from lawyers in the first two categories. This represented only a 0.78% increase from 2010. Late fees from all categories yielded \$333,149 for the year, a 17.4% increase, and reinstatement fees for those getting off the Ineligible List were \$81,925, 3.31% more than in 2010. It is our belief that the newly instituted reporting requirement for Continuing Legal Education compliance led to an increase in late responses to this year's billing.

Expenses were equally shared by the Fund and the DOC, but revenues favor the DOC as they get a larger percentage of the assessment. The late fee for lawyers not in timely compliance with the annual assessment was \$40, evenly split between the Fund and the DOC. Those lawyers who failed to comply were declared ineligible to practice law by Order of the Supreme Court effective September 26, 2011. The fee for reinstatement from the Ineligible List was \$50 if on one year's list or \$100 if on two or more years' lists, except for those entitled to the retired or military exemption for every year previously ineligible. The reinstatement fee was also evenly split. *Rule 1:28-2*

requires all lawyers to keep their addresses current with the Fund. Nevertheless, the published Ineligible List each year includes the names of hundreds of lawyers who seek immediate reinstatement. Reminders to keep addresses current are periodically published as Notices to the Bar in an effort to limit the need to require late fees or place names on the Ineligible List. When three consecutive pieces of mail are returned as undeliverable to the addressee, no further mailings are attempted until the Fund is given another address. With lawyers availing themselves of online payment, it is also essential that they keep their e-mail addresses current with the Fund.

The Fund used the lockbox services of the Division of Revenue to process responses to the billings for plenary attorneys, *pro hac vice* attorneys, multijurisdictional practitioners, and in-house counsel that were in good standing. The Fund's staff continued to process payments from foreign legal consultants and attorneys who sought reinstatement from Ineligible Lists. Payments were deposited into a clearing account, and then split into the appropriate interest-bearing accounts for the Fund, the DOC, and LAP. BCLE's portion was kept with the Fund's share and monthly disbursed by check.

In 2007, online payment and registration was made available to New Jersey plenary lawyers in good standing. The number of lawyers using the online system increased each year since implementation. In 2011, online payments from individual lawyers totaled 30,038; law firms completed 472 transactions on behalf of 625 attorneys. Forty-five percent of New Jersey lawyers who paid in 2011 used the online system, up from 38% in 2010. The Fund was proactive in assisting the Court and the AOC with plans to encourage even greater use of the online system. The Fund made constructive suggestions to enhance the Online Center web pages and Mr. Hendi completely redesigned the annual paper form to a landscape format that included several prompts for online access for the 2012 billing. Mr. Hendi also recommended to the AOC continued use of the Fund's

staff to serve as the Judiciary's help center for registration, fielding frequently asked questions for the other entities in addition to answering billing questions about the assessment.

Subrogation Receipts and Collateral Sources

Upon payment of awards, the Fund uses assignments of rights from all claimants to seek recovery of the money paid, both from the wrongdoer and from third-party collateral sources. Whether and to what extent compensable losses occur in a way that presents potential recovery from collateral sources is a matter over which the Fund has no control. Where appropriate, the Fund may make demand on both respondents and collateral sources of recovery even before paying claims.

Daniel Hendi, Edward Ehler, and Ruby Cochran led the Fund's legal department in pursuing subrogation at all levels pursuant to *Rule 1:28-1 et seq.* Receipts increased from \$387,934 in 2010 to \$767,472 with 53% collected on behalf of just two respondents. 201 of 669 respondents for whom claims have been reimbursed have repaid the Fund in full. An additional \$24,459 in claims were discontinued rather than paid by the Fund in 2011, when collateral sources paid the claims directly. Thus, the overall benefit to the Fund of the subrogation and litigation effort was \$791,931. This figure is over half of the Fund's entire administrative (non-claims) expense for the year.

Other Revenues

With interest rates remaining at historically low levels, interest income on US Treasury securities, the Cash Management Fund, and government-backed certificates of deposit decreased 13.6% from \$261,646 in 2010 to \$226,109 in 2011.

Enhancing Fund revenues were payments by the non-plenary categories of attorneys. Lawyers admitted *pro hac vice* must pay the annual assessment for as long as their appearance

continues in at least one New Jersey matter. The ABA Model Rule on Lawyers' Funds now follows New Jersey's rule, by requiring *pro hac vice* lawyers to pay, while having Funds explicitly cover losses caused by their dishonest conduct. Revenues from *pro hac vice* attorneys rose 3.4% to \$342,850. Revenues from in-house counsel, multi-jurisdictional practitioners, and foreign legal consultants totaled \$71,250, a 2% decrease. Late and reinstatement fees totaled \$415,074.

The importance of the assessment to the Fund's fiscal health can be gleaned from the extent to which the Fund has been self-endowed; that is, able to pay its expenses with revenues other than assessments. In 2011, such income was only 19.9% of the Fund's total expenses.

Claims Filed

The 181 claims filed in 2011 were 47 more than in 2010, a 35% increase, marking the fourth consecutive year of increases. When these are added to the 105 pending at the beginning of the year, a total of 286 claims were pending during 2011. Of those claims, dispositions were made on 156: 117 were approved, 27 rejected, and 12 discontinued. Five previously disposed claims were revived. At year-end, with a legal staff reduced by one full-time attorney for most of the year, 135 claims remained pending.

Claims Paid

The number of claims paid in 2011 almost doubled, from 60 in 2010 to 117 in 2011. The value of claims paid rose 35%, from \$1,931,265 to \$2,612,344. The average payment decreased 30.6%, from \$32,188 to \$22,328.

It remains appropriate to point out how *few* lawyers come within our jurisdiction as “dishonest”. Thirty-one former lawyers were responsible for the damage in 2011; only 17 of them were new to the system. *Eight* of the 31 accounted for 80% of 2011's payout:

Mark E. Gold	555,000.00
Vincenza Leonelli-Spina	323,738.46
Matthew J. Kirnan	295,000.00
Anthony L. Russo	260,346.19
James S. Weiss	200,000.00
Yong-Wook Kim	193,250.00
Gary P. Levin	153,445.02
Kenneth H. Brookman	118,016.57
	\$2,098,796.24

In the Fund’s 43 years, claims have been paid against a total of 669 respondents, well under 1% of the lawyers licensed in all those years. As mentioned above, there are over 90,000 lawyers currently admitted in New Jersey.

Conclusion

Client protection is a realm in which it is difficult to prove cause and effect as well as to gauge how much the Fund may be called upon to pay in any given year. We acknowledge that the Fund is a component of a larger plan set out by the Court and regulatory agencies to protect the public. Loss prevention mechanisms like the Random Audit Program, Overdraft Notification, and the Insurance Payee Notification Regulation save the Fund money as does the Lawyers Assistance Program when it saves a career before it becomes unsalvageable.

We know that the overwhelming majority of lawyers are honest even when confronted with difficult circumstances including a bad economy. Financial pressures do not necessarily translate

into stealing to make ends meet. Since most lawyers do the right thing, the Fund's work is truly to protect against aberrant conduct. As long as there is a sufficient reserve to cover victims' losses and the victims can realize the great value that the Court and the Bar place in their dealings with New Jersey Bar members, the Fund's mission is intact and is being fulfilled.

In the exercise of our discretion under *Rule* 1:28, we study, we observe, and we analyze in order to fulfill our mission. We study the law, the facts of the claims, and client protection policy as well as keep abreast of local and national trends. We analyze facts in matters in light of the law and Fund policy. We observe that precious opportunities to right wrongs visited upon trusting clients by dishonest lawyers can be lost when Funds are beholden to forces other than a supportive Supreme Court. We deeply appreciate the lawyers and judges of New Jersey who make the Fund's good work possible and the Supreme Court whose enlightened support has never been more important.

Respectfully submitted,

Jean M. Ramatowski, Chair

Tina E. Bernstein, Vice Chair

Alan L. Williams, Treasurer

Patrick J. Caserta

Lisa J. Rodriguez

Michael L. Rodburg