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Arizona's Client Protection Fund

Redress for Victimized Clients

BY JOHN G. BALENTINE

Mr. and Mrs. A hired Arla Blasingim-Stenzel, a Glendale attorney, to assist them with the purchase of a home. The clients gave Blasingim-Stenzel \$72,614.57 to be applied to the purchase price, and she deposited the funds in her trust account. Substantial delays in completing the sale were encountered when the seller could not deliver clear title to the property. At the request of the clients, Blasingim-Stenzel paid \$30,364.57 of the trust monies to the clients for living expenses as they waited for the seller to obtain clear title. Blasingim-Stenzel then stole the remaining \$42,250 of client funds from her trust account. She was disbarred →



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on April 22, 2005, due to this theft and similar thefts from numerous other clients.

Mrs. B, the sole beneficiary under a will, hired a Phoenix attorney, Jesse Miranda, to probate the estate, which had substantial assets. Miranda had himself appointed as personal representative of the estate. He sold a condominium belonging to the estate to his son for \$67,000; from the sale proceeds he paid \$32,000 to B and kept the remaining \$35,000, claiming it was for attorney's fees. He disposed of the substantial personal property of the estate by giving it to Goodwill, claiming it had no real value, yet the property included valuable antiques and signed 19th-century first-edition books. He sold \$140,000 in stock belonging to the estate and never accounted for the sale. In correspondence with lawyers hired by B to complete the probate after she fired Miranda, he claimed that the estate's remaining assets were \$180,000, but only turned over \$125,000 to B. Miranda was disbarred on September 9, 2005, in part due to his theft from B.

Thefts such as these from clients are exceedingly rare, but when they occur they tarnish the image of our entire profession—a profession, with few exceptions, comprised of honest, ethical men and women who work diligently to serve the needs of their clients. Most often the attorneys who commit these thefts have no malpractice coverage, or coverage is excluded due to the intentional dishonest acts of the attorney leading to the loss. Not surprisingly, attorneys who steal from their clients typically have little or no financial resources with which to reimburse the clients when the theft is finally discovered.

The Arizona Supreme Court and the State Bar of Arizona have taken definitive action to help protect victimized clients by establishing the Client Protection Fund of the State Bar of Arizona. The fund was established by a Declaration of Trust “[t]o promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of [Arizona] lawyers ... occurring in the course of the client-lawyer or fiduciary relationship.”¹ No other profession has created and funded this type of reimbursement

mechanism, yet many Arizona attorneys are unaware of the fund, how it is administered and funded, and its role as a remedy of last resort for victimized clients.

History of Client Protection Funds

The first client protection fund was established in New Zealand in 1922 and was funded by an annual assessment on all solicitors in the country. By the 1950s, similar funds had been created in Australia, England, Canada, Scotland and Ireland. While stationed in New Zealand during World War II, a California attorney, Kenneth G. McGiluray, learned about New Zealand's fund and wrote an article about it for the *California State Bar Journal* in 1946.²

The American Bar Association undertook a study of client protection funds in 1955, and the first fund in the United States was established by the Vermont Bar Association in January 1959. The ABA Standing Committee on Clients' Security Fund was established in 1969 to promote the creation, maintenance and improvement of client protection funds; in 1984 the committee was reconstituted as the Standing Committee on Client Protection. In 1981, the ABA House of Delegates approved Model Rules for Clients' Security Funds, and in 1989 the rules were amended and renamed Model Rules for Lawyers' Funds for Client Protection (“Model Rules”). By 1976, 47 jurisdictions had created some type of client protection fund, and, by 1998, all jurisdictions in the United States and Canada had established funds.³

Arizona's fund was one of the earliest in the country. The Arizona Supreme Court promulgated a rule that required the creation of the original trust and gave the State Bar of Arizona Board of Governors authority to amend the trust as appropriate.⁴ Arizona's fund was authorized by the membership of the State Bar on April 19, 1960, and established by the Declaration of Trust adopted by the Board on January 7, 1961.⁵ The trust exists as a separate entity from the State Bar of Arizona.⁶

Administration & Funding

Arizona's fund is administered by five volunteer trustees who are appointed by the State Bar Board of Governors and can serve two five-year terms. Active or judicial mem-

bers must have practiced law or served in a judicial capacity for 10 years to be eligible for appointment. At the board's discretion, one of the trustees can be a layperson.⁷ The other trustees are Geoff Sturr, Phoenix (Secretary/Treasurer); Larry Suicu, Yuma; Chas Wirken, Phoenix; and Maria Hoffman (layperson), Phoenix.

The trustees review claims, usually on a quarterly basis, by clients who assert that their funds have been taken by the dishonest actions of their attorney.⁸ The trustees also manage and invest the fund's reserve in accordance with the State Bar's investment policy.⁹ A State Bar employee serves as a full-time administrator for the fund, helping claimants complete a claim form, and investigating and preparing claims for review by the trustees. Counsel and financial officers from the State Bar assist the trustees in the administration of the fund and its finances.

The fund receives revenue from an annual assessment on all active and inactive State Bar members (excluding judicial members) in an amount set by the board with the consent of the Supreme Court.¹⁰ From the fund's inception, the annual assessment on each bar member was \$10, paid in conjunction with the annual bar dues. In 2002, facing rising payouts and concerns about the adequacy of fund reserves to pay eligible claims, the trustees recommended that the board increase the annual assessment by \$5 a year to \$30 by 2005. The board approved the requested increases and obtained consent from the Court.

The annual attorney assessment for the fund remained at \$30 through 2008. In September, after determining that the fund had adequate reserves to meet its obligation to pay claims, the board proposed to the Supreme Court that the amount allocated to the fund from the \$30 be reduced to \$10, effective January 1, 2009; the remainder would be allocated to the Bar's operating fund. The Court approved the reallocation on September 12 (Admin. Order No. 2008-74).

In addition, as a condition of reimbursement by the fund, a claimant must sign a subrogation agreement in favor of the fund.¹¹ A lawyer whose dishonest conduct results in fund payment to a claimant must reimburse the fund for the amount paid,



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plus interest and any expenses incurred by the fund in connection with the claim.¹² In connection with any discipline associated with a claim, the Supreme Court typically orders that the attorney must reimburse the fund before being readmitted to practice.

Eligible Claims

The claimant's loss must be caused by the dishonest conduct of the lawyer arising out of a client-lawyer relationship or a fiduciary relationship related to the practice of law.¹³ For a claim to qualify for consideration, the lawyer must be suspended for more than six months, on interim suspension, disbarred, deceased, on disability inactive status, or convicted of a felony arising out of the facts that gave rise to the claim.¹⁴ "Dishonest conduct" means:

1. wrongful acts committed by a lawyer in the nature of theft, embezzlement or conversion;
2. failure to refund unearned fees already received as required by Rule 1.16(d) of the Arizona Rules of Professional

Conduct; or

3. a lawyer's act of intentional dishonesty proximately leading to the loss.¹⁵
- The following losses are not reimbursable:

1. claims based solely on malpractice, negligence or incompetence;
2. loss of client funds given to the lawyer for investment; and
3. claims for interest, attorneys' fees paid to other lawyers, and damages or other consequential losses.¹⁶ Other exclusions include claims by business or governmental entities, and claims by third parties against the lawyer.¹⁷

Reimbursement from the fund is not an entitlement but a "matter of grace," and the trustees have sole and absolute discretion in determining whether to pay a claim.¹⁸ The trustees also have discretion, in cases of "extreme hardship or special and unusual circumstances," to pay claims that are otherwise excluded under the terms of the trust.¹⁹ Claims are subject to a five-year statute of limitations, which can be waived in the discretion of the trustees.²⁰

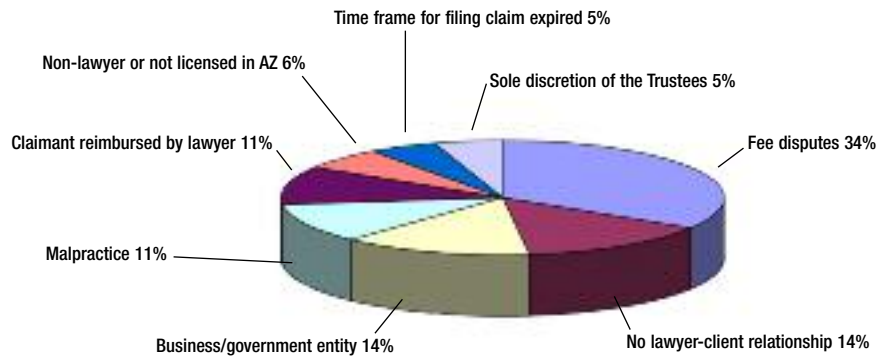
Payment Limitations

Although the Model Rules do not limit the amount that may be paid per claimant, or in

CLAIMS PAID IN 2006

Edward P. Bolding	\$75,000
Matthew C. Bower	1,250
George R. Brown	3,300
Carroll A. Clark (3 claims)	7,600
Sean M. Coe (3 claims)	11,200
Arthur J. Frost	4,400
James F. Miller (3 claims)	5,217
Jesse R. Miranda (2 claims)	83,800
Barry G. Nelson (7 claims)	11,110
Edmund Y. Nomura (2 claims)	4,000
Christopher H. Reed (2 claims)	2,700
John Daniel Rolph	2,000
John P. Silkey	750
David Son (3 claims)	2,150
Kenneth J. Whitehead (3 claims)	15,590
TOTAL AMOUNT PAID	\$230,067

WHY CLAIMS WERE DENIED



1996-2006 HISTORICAL CLAIMS DATA

Year	Number of Claims Filed	Number of Claims Approved*	Number of Claims Denied*	Number of Claims Paid	Amounts Sought	Amounts Paid
1996	50	24	19	14	\$1,562,667	\$74,741
1997	100	40	35	23	1,715,826	94,264
1998	79	43	60	39	2,006,942	202,742
1999	131	48	47	66	1,767,075	192,038
2000	96	56	72	67	4,530,053	297,245
2001	94	37	58	41	1,470,246	177,699
2002	77	27	85	27	927,419	95,980
2003	132	28	36	16	2,003,189	29,346
2004	57	25	23	46	864,057	305,792
2005	56	14	62	13	2,703,164	43,737
2006	66	32	18	34	2,629,111	230,067

*The aggregate of the claims approved and denied do not equal the claims filed in a given year because not all claims were resolved during that calendar year.



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the aggregate per attorney, they provide that: "The board [of trustees] may from time to time fix a maximum amount on reimbursement that is payable by the Fund."²¹ The comment to the rule illustrates the tension between the aspirational goal of a fund to provide full compensation for victims and the practical constraints imposed by a fund's resource limitations. It notes that a maximum reimbursement cap protects a fund from catastrophic losses, but per-attorney limitations are not encouraged as they have potential for unfairness, denying compensation to otherwise eligible claimants. The comment suggests that maximum limitations, whether aggregate or individual, should be reviewed periodically in view of a fund's history of claims paid.²²

In Arizona's original trust, payment limitations, or caps, of \$25,000 per claimant and \$50,000 per attorney were included—no one claimant could be paid more than \$25,000 on a claim, and no more than \$50,000 in the aggregate could be paid by the fund for losses due to the dishonest acts of a single attorney. In 1988, the board raised the caps to \$50,000 per claimant and \$100,000 per attorney.

Acting on the trustees' recommendation, and after considering a letter from Arizona Supreme Court Chief Justice Ruth McGregor expressing the Court's support for increasing the caps, the board raised the per-attorney cap from \$100,000 to \$150,000 on November 18, 2005, and the per-claimant cap from \$50,000 to \$75,000 on January 20, 2006. On May 30, 2008, based in part on the trustees' recommendations, the board raised the caps to \$100,000 per claimant, \$200,000 per attorney in 2008,²³ and \$250,000 per attorney in 2009.

The board also amended the trust to provide that the trustees may exceed the caps in extraordinary circumstances by unanimous vote and board approval.²⁴

Trust Amendments

The terms of the trust have been amended nine times since 1961. The most recent changes, adopted this May by the board based on recommendations by the trustees, seek to align the trust provisions more closely with the Model Rules. Most notable among the changes are the following:

1. Allowing claims by clients where the lawyer was recently suspended or disbarred, but the clients reasonably believed that the attorney was licensed to practice when the dishonest conduct occurred;²⁵
2. Changing the standard for determining when the failure to refund unearned fees constitutes dishonesty so that it tracks the language in Rule 1.16(d) of the Arizona Rules of Professional Conduct;²⁶
3. Providing that the trustees shall consider discipline findings, and restitution orders in discipline cases, but are not bound by them in determining claims;²⁷
4. Declaring that it is the responsibility of the trustees to ensure that the fund maintains sufficient reserves to pay present and future claims;²⁸ and
5. Increasing the statute of limitations for claims from three years to five years.²⁹

Claims History

The charts on page 38 display the fund's historical claims data through 2006 and are taken from the Supreme Court of Arizona Client Protection Fund 2006 Annual Report.³⁰

More About the Fund

More information about the fund, including how a client can make a claim, can be found at the State Bar Web site (www.azbar.org/cpf). The site contains the amended Declaration of Trust, the 2006 Annual Report of the Fund, answers to commonly asked questions about the fund, and a copy of the fund's claim form. The phone number and e-mail address for Karen Weigand, the Fund administrator, are also listed. Pamphlets describing the operation of the fund are available from the fund's administrator or on the Web site. Summaries of each claim paid by the fund can now be found quarterly in ARIZONA ATTORNEY magazine.

Conclusion

The claim by Mr. and Mrs. A against Blasingim-Stenzel was considered by the trustees, and the claimants were awarded \$42,250 to compensate them for their loss due to her dishonest conduct. After consideration of Mrs. B's claim, the trustees determined her loss due to Miranda's theft was in excess of \$75,000; the trustees awarded her that amount, the maximum allowed under the per-claimant cap in effect when the claim was decided.

The trustees routinely receive letters from clients whose claims have been paid thanking the fund for covering losses suffered due to attorney dishonesty, and saying the actions of the fund help to restore their faith in lawyers and our legal system. Funding and administering Arizona's Client Protection Fund is one of the best things we do collectively as lawyers in the service of our clients and our profession. Pass the word. **BT**

endnotes

1. The Client Protection Fund of the State Bar of Arizona, Declaration of Trust, April 9, 1960 ("Trust"), Rule 1A.
2. *A History of the Client Protection Rules*, American Bar Association, Center for Professional Responsibility. Available at www.abnet.org/cpr/clientpro/history.html.
3. *Id.*
4. Rule 32(d)8, ARIZ.R.S.CT.
5. Trust, Introduction.

6. *Id.*, Rule 2B.
7. *Id.*, 7A.-C.
8. *Id.*, 8A.
9. *Id.*, 9C.
10. Rule 32(c)6-8, ARIZ.R.S.CT.
11. Trust, Rule 15C.
12. *Id.*, 15A., B.
13. *Id.*, 3A.
14. *Id.*, 3C.
15. *Id.*, 3D.
16. *Id.*, 3E.
17. *Id.*, 3F.
18. *Id.*, 14.
19. *Id.*, 3I.

20. *Id.*, 3B.
21. American Bar Association, Model Rules for Lawyers' Funds for Client Protection, Rule 14A. Available at www.abnet.org/cpr/clientpro/rules.html.
22. *Id.*, Comment to Rule 14.
23. Trust, Rule 13A.
24. *Id.*
25. *Id.*, 1B(6).
26. *Id.*, 3D.
27. *Id.*, 12C.
28. *Id.*, 9D.

29. *Id.*, 3B.
30. The 2007 annual report could not be prepared until the financial audit of the fund was completed. That audit was recently received, and the 2007 annual report is being prepared now, and will be sent to the Board, the Supreme Court and posted on the fund's Web site.