

Everything You Ever Wanted To Know About The New York Lawyers Fund For Client Protection

BY LAZAR EMANUEL

NYPRR recently directed a series of questions to Frederick Miller, Executive Director and Counsel for the New York Lawyers Fund For Client Protection. The Fund was organized to protect clients against dishonesty by New York lawyers. Here are our questions and his answers:

■ *What is the New York Lawyers Fund for Client Protection?*

It's a government trust fund, financed by the legal profession in New York State, to protect legal consumers from dishonest conduct in the practice of law. The Lawyers Fund is administered by an independent Board of Trustees. The Trustees reimburse eligible client losses which result from a lawyer's dishonest conduct in the practice of law. Since 1982, the Trustees have restored upwards of \$70 million to 4,500 eligible clients and escrow beneficiaries. Those awards involve actual losses of nearly \$100 million, and dishonest conduct by 550 former lawyers. There are 165,000 licensed lawyers in the Empire State, including 16,000 retired practitioners and full time judges.

Under the relevant statute, section 468-b of the Judiciary Law, dishonest conduct means theft and fraud in the practice of law. The Fund has no jurisdiction in matters of neglect, malpractice or fee disputes. Client protection funds exist in 49 states and the District of Columbia.

■ *When was the Fund organized?*

The Fund was created by State Legislature in 1981. The Court of Appeals appointed a Board of Trustees, and the Lawyers Fund (then called the Clients' Security Fund) opened for business in April, 1982. The Board consists of five practicing attorneys and two business and community leaders who are not lawyers. The Trustees serve three-year terms, *pro bono publico* and without compensation.

■ *What is its source of funds?*

The biennial attorney registration fee is the principal source of revenue. The Fund receives the equivalent of \$100 from each lawyer's \$300 registration fee. Our assets are segregated in a special account in the State Treasury. Other revenues include interest, subrogation receipts, and sanctions imposed on lawyers for frivolous conduct in the course of litigation.

■ *How much does it take in every year?*

The Trustees budget approximately \$8 million for awards of reimbursement to eligible victims annually, and \$600,000 to administer the Fund as an agency of the State of New York.

- *How is its staff organized?*

The Fund is one of the smallest of all government organizations. We have a staff of seven people, which includes three clerical positions. By necessity, all seven of us deal with clients and lawyers first hand on a daily basis. Besides the routine administrative matters common to all organizations, it's the staff's job to investigate claims for reimbursement so that the Trustees can evaluate the merits of those claims at their quarterly meetings.

- *What are your duties?*

I'm the chief administrative officer, and responsible for the day-to-day operations of the Fund at its Albany offices, and the processing of claims and investigations. I also serve as the Trustees' Counsel, and I assist in developing and implementing programs to protect clients and legal consumers from dishonest conduct in the practice of law.

- *How is the staff chosen?*

The Trustees have full administrative authority over the Fund, which includes the appointment of staff. Fortunately, there's been precious little turnover since 1982.

- *What is the purpose of the Fund?*

To protect the integrity of the legal profession and its good name, and to protect law clients from dishonest conduct in the practice of law. Unlike many lawyer organizations, we face up to the unfortunate fact that there are a few bad apples among lawyers who have left victims in need of economic help. The elderly are especially vulnerable to a lawyer's breach of trust. Typical losses reimbursed include the misuse of estate and trust assets, personal injury settlements, down payments and proceeds in real estate transactions, and fraud with a client in an investment transaction,

- *How do you process a client's claim?*

We investigate the allegations in consultation with Attorney Grievance Committees in each of the judicial districts, and with the offices of District Attorneys. It's effective and economical for the Lawyers Fund to coordinate our efforts with these agencies within the state's justice system.

- *How does the public know how to initiate a claim?*

Attorney Grievance Committees, Bar Associations and District Attorneys routinely refer claimants to the Lawyers Fund. In the age of the consumer, it's the rare victim who doesn't complain to one of these authorities when there's a theft. We also have a Web site on the Internet with loads of helpful information for legal consumers, lawyers, judges and law students. The web site is www.nylawfund.org.

- *At what point do you recognize a claim?*

Awards of reimbursement are made by the Trustees promptly following a dishonest lawyer's disbarment or criminal conviction — provided, of course, that the dishonest lawyer is unable to make restitution.

- *Are claims paid in full? How are they valued?*

As required by law, there is a maximum reimbursement on awards: \$100,000 per loss, which is among the highest in the nation. Losses are paid in full within that limit. The typical loss is about \$15,000. Ninety-five percent of all eligible claimants receive full reimbursement of their losses from the Fund. We do not pay interest or consequential damages.

- *What is a claimant required to produce in the way of proof?*

A claimant is required to provide “satisfactory evidence” of a reimbursable loss. We need the documents that were involved in the transaction that led to the claimant’s loss. More than half of all claims for reimbursement are rejected. And about half of all eligible victims come to the Fund with the help of lawyers, who contribute this unique professional service without charge to the claimants.

- *How many claims were processed in 1997? How many in 1998?*

There were 1,245 final determinations on claims during 1997, and 1,128 claim filings. Midway through 1998, we’ve received 535 new claims.

- *How much money did you pay out in 1997? How much in 1998?*

The Trustees approved 625 awards last year, for a total of \$6.9 million. I expect a similar total payout in 1998 — upwards of \$8 million.

- *What efforts do you make to obtain payment or restitution from the attorney involved?*

We rely heavily on the criminal justice system to secure restitution. It’s a fact, however, that most disbarred lawyers are financially ruined. Most are middle-aged males. Most were sole practitioners. They are frequently beset with personal, family and professional problems requiring treatment. That’s one reason why the legal profession maintains these client protection funds. Their clients have nowhere else to go for the money they’ve lost. We seek restitution where its likely to be available. As a public service, the New York State Attorney General provides the Lawyers Fund with necessary legal counsel to prosecute subrogation claims and defend legal challenges to the Trustees’ rejection of claims.

- *Do you refer all losses to a grievance committee? If so, do you do this formally?*

Yes. We require claimants who allege the theft of client and escrow funds to report their losses to Attorney Grievance Committees and District Attorneys, and cooperate in their investigations. After all, this is a complaint of criminal conduct which is also professional misconduct.

- *Do you report claims to the Appellate Division?*

We work closely with Attorney Grievance Committees, which are the disciplinary agencies of the Appellate Divisions. We oppose all applications to be reinstated to practice unless a lawyer’s restitution obligations to the Fund are satisfied.

- *Does a recognized claim lead to automatic disbarment?*

The usual sanction for the theft of law client and escrow funds in New York State is disbarment. It usually occurs by resignation rather than after a contested disciplinary trial. Of course, a felony conviction for grand larceny results in an automatic disbarment. The Appellate Divisions can also suspend lawyers, almost summarily, where there's solid evidence of misconduct that threatens the public. -

- *Is the Fund the body to which an overdraft in a lawyer's trust account is referred?*

Yes. We serve as a central clearing house for notices from New York banks when a lawyer's trust or escrow check bounces. Unless there's bank error, we forward these notices to the appropriate Attorney Grievance Committee for investigation.

- *To what Court is the Fund responsible?*

All of them. Lawyers collectively are "officers of the court". But our principal allegiance is to the Court of Appeals, which appoints the Trustees to manage the Fund on behalf of the Court and the legal profession. We work closely with the Appellate Divisions' Attorney Grievance Committees. We also have excellent relationships with bar associations throughout the State.

- *Is there anything else about the Fund you wish to tell our readers?*

I risk being immodest, but the New York Lawyers Fund is regarded in the field of lawyer regulation as the leading client protection fund in the United States. One reason is that our Trustees construe the words "client protection" both seriously and broadly. They have crafted numerous proposals for court rules and statutes, many of which have become law, to reduce the opportunity for client losses. We also prepare and publish practical guides for lawyers and consumers, including "Avoiding Grief with a Lawyer", "Know Your Escrow Rights", "What's a Power of Attorney" and the "Practical Guide to Attorney Trust Accounts and Recordkeeping". I also hope your readers access the Lawyers Fund on the Internet: www.nylawfund.org. With our links to other Web sites, the home page is fast becoming a "favorite" for people in the fields of lawyer regulation and discipline.