

2022 CSB Decisions

January 20, 2022 Clients' Security Board Decisions:

- Awarded \$64,639.62 to a widow who in 2015 contacted Kirk Y. Griffin of Marblehead for assistance with her husband's estate. In February 2015, shortly after her husband's death, the widow met with Griffin. He advised the widow to give him a \$100,100.00 life insurance check, the primary estate asset, to hold in escrow and use to pay expenses on her behalf. Griffin did not tell the widow he had been temporarily suspended from practice since September 2013 and had recently filed an affidavit of resignation during bar disciplinary proceedings. On February 12, 2015, the widow met Griffin at a bank and signed over the insurance check to him for deposit to a claimed escrow account. On February 25, 2015, Griffin was disbarred for conduct including theft of other client funds. During the next two months, Griffin made four payments totaling \$35,460.38 on behalf of the widow for the funeral bill, a loan on her husband's vehicle, and the widow's living expenses. Despite repeated requests from the widow for her funds over the next seven years, Griffin never paid her the remaining \$64,639.62.
- Awarded \$5,000.00 to reimburse a client for the unearned retainer she had paid Paul George Kolesnikovas of Charlton in 2019. Kolesnikovas had agreed to prepare a special needs trust for the client's disabled brother and to seek court allowance of the trust. In October 2019, the client paid Kolesnikovas the full \$5,000.00 retainer. Between October 2019 and his temporary suspension effective February 18, 2020, Kolesnikovas did not prepare the trust or respond to any calls or emails from the client. After his disbarment in June 2020, Kolesnikovas did not return the unearned legal fee.
- Awarded \$800.00 to a client who in July 2018 engaged Neil J. DePaul of Cambridge to file a Chapter 7 bankruptcy for the client and her husband. The client made two cash payments of \$400.00 each to DePaul in July and September 2018, confirmed by receipts from DePaul. On July 16, 2019, DePaul wrote to the client and her husband stating that his office had filed a Chapter 7 petition in Massachusetts on their behalf. In fact, no bankruptcy action had been filed. This was the last time that the client or her husband heard from DePaul, who was disbarred in December 2020 and did not refund the unearned \$800.00 fee.

March 17, 2022 Clients' Security Board Decisions:

- Awarded \$219,673.97 to a former client of Kirk Y. Griffin of Marblehead. In 2001 and 2002, Griffin represented the client in his divorce. In February 2002, the client received a \$300,000.00 divorce settlement, which Griffin deposited to his client funds account. In 2002, Griffin disbursed \$80,126.03 on the client's behalf, and in 2004 he disbursed another \$200.00 for the client. Griffin advised the client to let him invest

the remaining funds totaling \$219,673.97 in a fund with him and some other friends and clients, assuring the client that the funds would be “safe.” The client trusted Griffin, who had been a close family friend for many years as well as his lawyer. For the next 15 years, Griffin repeatedly assured the client that the funds were secure although he never provided any documentation to confirm that the funds had been invested. Griffin continued to represent the client in legal matters, even after Griffin was temporarily suspended in 2013 and disbarred in 2015. In May 2017, the client demanded that Griffin return the funds, but after making repeated false promises Griffin failed to do so.

- Awarded \$9,000.00, \$10,000.00, \$6,400.00, and \$4,000.00, respectively, to four former criminal defense clients of Michelle Lee Brennan of Salisbury. Ms. Brennan collected advance flat fees from each of the clients; failed to complete the agreed representations; made multiple misrepresentations to her clients and others; and after she was discharged failed to return the unearned portions of the advance fees to her clients. In 2021, Ms. Brennan was suspended for one year and one day.

May 19, 2022 Clients’ Security Board Decisions:

- Awarded \$129,312.99 to a former client of Arthur J. McCabe of Andover. Between 2008 and 2011, McCabe represented the client in the sale of her home and received \$712,233.62 in real estate proceeds for the client, which he deposited to his IOLTA account. McCabe disbursed \$580,339.87 on behalf of the client, leaving \$131,893.75 unaccounted for. After McCabe resigned from the Massachusetts bar as a disciplinary sanction on June 21, 2010, he continued to represent the client until she retained new counsel in 2011. New counsel learned that between December 2008 and June 2009, McCabe paid \$62,800.00 to himself or his firm for claimed legal fees. The client challenged these payments as McCabe had been paid from the closing proceeds at the time of the sale and did not have a written fee agreement, maintain time or billing records, or send the client notice of the alleged fee payments. McCabe used an additional \$40,000.00 of client’s funds to make a loan to a Trust for which he was trustee for the use of a beneficiary who was another long-term client. He did not fully disclose the terms of the loan in writing or otherwise to the client in advance of the payment; the loan terms were not fair and reasonable; and the client did not consent to the transaction in writing after full disclosure. No loan funds were returned to the client. McCabe used the remaining \$26,512.99 of the client’s funds for his own personal or business expenses. Between 2011 and 2021, the client actively sought to recover her funds from McCabe through litigation. By 2021, McCabe had been through bankruptcy and had insufficient assets to repay the client. After a hearing at which the client and her counsel and McCabe all testified, the Board unanimously voted to award the client \$129,312.99.
- Awarded \$750.00 to a client who had engaged Paul G. Kolesnikovas of Charlton to file a Medicaid application for her mother. The client paid Kolesnikovas \$750.00 in

April 2019 and provided him with the financial documents he requested in October 2019. Kolesnikovas did not prepare the application and stopped returning the client's calls. In January 2020, he returned the file but not the unearned advance fee. In June 2020, Kolesnikovas resigned and was disbarred. The client filed a small claims action against Kolesnikovas and obtained a judgment for \$750.00 but was unable to collect from Kolesnikovas because he filed for bankruptcy. After the bankruptcy was closed, the Board found a reimbursable loss and awarded the client \$750.00.

- Awarded \$2,500.00 to a former client of Richard G. Barry of Cotuit, who died in September 2021. The client engaged Barry in July 2021 and paid him a \$3,500.00 flat fee to represent the client against criminal charges in Orleans District Court. Barry filed a one-paragraph motion to dismiss in August 2021, which was heard and denied. Barry passed away before he took any further action on the matter. At his death, Barry was not holding sufficient funds to reimburse the client for his unearned fee. The Board found a reimbursable loss and awarded the client \$2,500.00. Barry was in good standing with the bar at the time of his death.
- Dismissed a client's claim for \$5,000.00 when the lawyer, Gregory D. Oberhauser of Tyngsboro, repaid the client in full after receiving notice of the CSB claim. The client had paid Oberhauser a \$5,000.00 flat fee to represent him in a District Court criminal matter shortly before Oberhauser was suspended for two years effective August 14, 2021.

June 16, 2022 Clients' Security Board Decisions:

- Awarded \$344,306.00 to the successor trustee of a supplemental needs trust to reimburse the trust for funds that had been misappropriated by Paul George Kolesnikovas of Charlton. Kolesnikovas misappropriated the trust funds between 2013 and 2019, while he was serving as sole trustee and lawyer to the trust. Kolesnikovas used the trust funds for his own benefit and to reimburse another unrelated client whose funds he had previously stolen. On June 23, 2020, the Court accepted Kolesnikovas's resignation and disbarred him.
- Awarded \$14,600.00 to a former client whose lawyer had passed away in November 2020 without distributing the client's full share of a settlement. Edward J. McCormick, III of Norfolk had represented the minor client in a personal injury claim that settled in August 2015 for \$100,000.00. In August 2015, McCormick compromised the medical lien for \$50,000.00 and agreed to reduce his fee from \$33,333.00 to \$16,000.00 so that the client would receive \$34,000.00. The client and his mother agreed to settle the claim for this amount. After receiving the settlement funds, McCormick advised the client and his mother that they should let him hold the client's funds while he sought appointment of a conservator and an increase in Social Security benefits for the client. Over the next five years, McCormick repeatedly assured the client that he would act on both matters but failed to do so. During this

period, McCormick paid the client \$1,400.00 in cash for his immediate needs. McCormick died in November 2020 without sufficient funds to pay the client the balance of the settlement funds. After McCormick's death, his wife and former law partner paid the client \$18,000.00 from her own funds. The Board found a reimbursable loss and paid the client the remaining \$14,600.00. McCormick was in good standing with the bar at the time of his death.

- Dismissed a client's claim for \$20,000.00. Timothy M. Mauser of Ipswich had represented the client in multiple bankruptcy and foreclosure prevention matters between January 2012 and August 2019. After Mauser was suspended in September 2019, the client filed a claim seeking reimbursement for a portion of the fees he had paid Mauser for work performed before the suspension. The Board found the claim to be a fee dispute and not a reimbursable loss.

July 21, 2022 Clients' Security Board Decisions:

- Awarded \$31,740.00 to eight former clients of Gary A. Ensor of South Hadley who died in February 2021. The clients each paid Ensor advance retainers for work which was not fully performed at the time of his death. At his death, there were insufficient funds in Ensor's IOLTA accounts or in his estate to fully compensate the clients for their unearned fees. After review, the Board made awards ranging from \$1,000.00 to \$6,000.00 to eight clients and dismissed a claim from a ninth client after determining that there was no reimbursable loss. Pursuant to *Matter of Olchowski*, 485 Mass. 807 (2020), the personal representative will be transferring the unidentified funds in Ensor's IOLTA accounts to the IOLTA Committee, where they will be available to partially reimburse the Fund for the awards to his former clients. Ensor was in good standing with the bar at the time of his death.
- Awarded \$4,000.00 to a former client of Timothy J. Teehan of Bellingham. On November 18, 2015, the client paid Teehan a \$5,000.00 retainer to represent her in her divorce. They agreed that Teehan would charge a \$150.00 hourly fee. At their next meeting in March 2016, the client provided Teehan with the documentation he had requested to begin her case. On August 29, 2016, Teehan prepared a petition for divorce and wrote to the client's husband. One week later, the client wrote to Teehan and asked him to put the divorce case on hold while she and her husband attended marriage counseling. Teehan confirmed that he would hold off doing any further work until he heard from the client. On May 1, 2017, Teehan was temporarily suspended and on June 21, 2018, he was suspended for three years. The suspension orders required Teehan to notify his clients, close his IOLTA accounts, and return the unearned portions of client fees. Teehan, who had never billed the client, failed to notify her of his suspension or return her unearned fee. The Board unanimously found a reimbursable loss and awarded the client \$4,000.00.

- Awarded \$2,960.00 to a client whose immigration lawyer died in April 2020. The client engaged A. Priscilla Angenor of Boston in June 2018 to represent her in seeking a green card and a divorce. The client paid Angenor a total of \$3,960.00 for legal services and filing fees. Angenor filed papers and appeared with the client in September 2019 for a preliminary hearing in the Immigration Court, but she performed no additional work for the client. At her death, Angenor was not holding sufficient funds to reimburse the client for her unearned fee. The Board found a reimbursable loss and awarded the client \$2,960.00. Angenor was in good standing with the bar at the time of her death.
- Dismissed a client's claim for \$7,075.00. The lawyer, Juliette H. Montague of North Chelmsford, had represented the client as mother and next friend of her minor son in a personal injury claim. In July 2010, the Superior Court approved the minor's settlement that provided for purchase of an annuity for the minor and an upfront payment which was to cover legal fees and costs, medical liens, and payment of \$10,075.00 to the client. At the client's request, Montague paid the client three IOLTA checks in the amounts of \$3,000.00, \$3,000.00, and \$4,075.00 on August 5, 2010. The client cashed one \$3,000.00 check but had not negotiated the other two checks before Montague was indefinitely suspended on August 31, 2010. Montague stopped payment on the two outstanding IOLTA checks and procured two certified bank checks in the amounts of \$3,000.00 and \$4,075.00, which she sent to the client by certified mail. Montague filed the returned receipt card from the client with her compliance affidavit after closing the IOLTA account. In 2022, the client found the two original uncashed IOLTA checks which were no longer valid and filed a claim with the Board. The client denied receiving the certified mail letter with the two replacement checks and questioned whether a third party might have stolen the two bank checks. The Board unanimously concluded there was no reimbursable loss.

September 22, 2022 Clients' Security Board Decisions:

- Awarded \$485,345.47 to the trustees of a family trust established for the benefit of an elderly beneficiary who was previously a client of Kevin M. Brill of Winchester. In 2004, Brill began serving as co-trustee of three separate trusts for the beneficiary. In 2010, Brill's co-trustee resigned. Before the new co-trustee's appointment was finalized, Brill began reassigning custody of one trust's assets to an investment advisor in North Carolina and opened two new trust bank accounts under his control. Brill then converted \$863,426.00 from the trust. In about 2017, Brill's thefts were discovered by the beneficiary's daughter. In 2018, the trust began efforts to seek repayment from Brill. Between 2018 and 2020, Brill repaid \$378,080.53 to the trust, leaving an unreimbursed loss of \$485,345.47. On October 1, 2019, the Supreme Judicial Court accepted Brill's resignation and disbarred him. On May 7, 2021, Brill was sentenced to 24 months of incarceration in federal prison. In July 2019, the trust filed a civil action against Brill to attempt to recover its unreimbursed losses. On March 9, 2022, the parties filed an agreement for judgment in the amount of

\$211,815.81, plus statutory pre-judgment and post-judgment interest, but to date the trust has not been able to collect on the judgment. Before the CSB, the successor trustees sought an award of \$485,345.47 plus \$215,750.00 for the capital gains liability the trust incurred by reason of Brill's actions. The claimants did not seek reimbursement for more than \$350,000.00 in legal fees charged by Brill, although they questioned the validity of the fees. After a hearing at which the successor trustees and their counsel, the beneficiary, and Brill all participated, the Board awarded \$485,345.47 to the trust.

- Awarded \$11,571.40 to a former client of James N. Ellis, Sr., formerly of Worcester. In 2013, Ellis received \$17,965.90 from the defendant in payment of a judgment and execution entered for his client following the trial of the client's wage claim. The judgment included \$6,394.50 in fees and costs due to Ellis. Ellis never paid the client his portion of the proceeds from the wage claim in the amount of \$11,571.40, despite multiple demands from the client and his successor counsel. On March 23, 2016, Ellis was suspended for six months for his conduct in six unrelated matters. The Court ordered that his suspension be suspended for two years and be subject to required continuing education. Ellis died on October 21, 2020, while the suspension order was still in effect, and without ever paying his client the funds due to him from the wage claim. The Board voted to award the client \$11,571.40 to compensate him for his share of the wage claim proceeds that Ellis received but had never paid him.
- Awarded \$5,000.00 to a former client of Daniel M. Kelly of Longmeadow. The client, who was in his eighties, engaged Kelly in 2017 to represent him on a contingent fee basis to pursue a Lemon Law claim against the manufacturer and dealer of a van he purchased in 2015. Kelly asked the client to pay an advance retainer of \$5,000.00, which the client paid in July 2017. Kelly did not have his client sign a written contingent fee agreement, and an unexecuted draft agreement in respondent's file did not refer to any advance retainer. Kelly promptly paid the \$5,000.00 advance retainer to himself without notice to the client and before he earned the money, and intentionally used the funds to pay his personal and business expenses. In February 2018, Kelly sent demand letters to the manufacturer and dealer. He received a \$7,000.00 settlement offer from the manufacturer, but failed to follow up after his client accepted the offer. Kelly performed no further work on the matter. In March 2021, bar counsel filed a four-count petition for discipline against Kelly, in part charging him with intentional misuse of the client's \$5,000.00 retainer. On September 30, 2021, the Supreme Judicial Court allowed Kelly's petition to transfer to disability inactive status and stayed the disciplinary proceeding. The Court ordered Kelly to withdraw from all legal matters, notify his clients that he was disqualified from practicing law, and refund all unearned fees. Respondent failed to return the client's \$5,000.00 unearned fee. The Board voted to reimburse the client \$5,000.00 for the unearned fee.

- Awarded \$6,500.00 to a former client of Samuel B. Goldberg of Salem, who died in January 2022. The client engaged Goldberg in June 2021 and paid him \$8,000.00 toward a \$10,000.00 flat fee to represent the client in a criminal matter in the West Roxbury division of the Boston Municipal Court. Goldberg appeared at several pre-trial hearings that were continued. Goldberg passed away before the representation could be completed. At his death, Goldberg was not holding sufficient funds to reimburse the client for his unearned fee. The Board found a reimbursable loss and awarded the client \$6,500.00. Goldberg was in good standing with the bar at the time of his death.

October 20, 2022 Clients' Security Board Decisions:

- Awarded \$151,839.73 to the trustee of a special needs trust for the benefit of a former client of Harland L. Smith, Jr. of East Brookfield. In 2014, Smith acted as counsel to the client and her mother and received the net proceeds from the sale of real property that they jointly owned. Smith used the real estate proceeds to reimburse another unrelated client whose funds he had previously stolen, and to pay himself unearned and excessive fees. Smith was disbarred in 2019 and never reimbursed the client and her mother for the stolen funds. The Board in September 2020 awarded the mother's estate \$32,025.68 for the value of her life interest in the property. The client's share of the stolen proceeds was \$151,839.73, the value of her remainder interest in the property. In June 2022, the Probate and Family Court appointed a temporary conservator for the client with authority to pursue a claim with the Board and to transfer any award to the trustee of a special needs trust for the benefit of the client. With the consent of the temporary conservator, the award was paid to the trustee of the sub-trust for the claimant under the special needs trust.
- Awarded \$2,215.00 and \$11,585.00, respectively, to two former clients of Daniel Patrick Morrissey of Springfield. The first client retained Morrissey in June 2020 to file and pursue an uncontested joint petition for divorce against her husband. The client paid Morrissey \$2,215.00 for his flat fee and filing fees for the divorce. After receiving the advance fee payments, Morrissey stopped responding to his client, performed no services on her behalf, and did not advise her that he was administratively suspended from practice in April 2021. Morrissey did not return the unearned fee to the client when she discharged him. In August 2021 the client filed a divorce petition on her own and paid the filing fees from her own funds. The second client engaged Morrissey to handle an immigration matter in June 2021. Morrissey did not inform the client he was already suspended and dishonestly accepted \$11,585.00 from the client for the immigration matter. Morrissey did not file any immigration documents on behalf of the client or his family. In January 2020, the client learned Morrissey was suspended and engaged new counsel who demanded that Morrissey return the unearned fee, to no avail. In June 2022, Morrissey was suspended for eighteen months and failed to reimburse his clients for their unearned fees.

- Awarded \$2,000.00 to a former client of David Paul Cortese of Douglas, who died in July 2022. The client engaged Cortese in June 2022 to represent her son at a probation violation hearing in Salem District Court and paid him a \$2,000.00 flat fee. Cortese was unable to attend the hearing due to illness, and the Court appointed counsel to represent the son. With the assistance of appointed counsel, the probation violation was resolved and the son's probation was terminated. The client was unable to obtain a refund from Cortese's estate after his death. The Board found a reimbursable loss and awarded the client \$2,000.00. Cortese was in good standing with the bar at the time of his death.

November 17, 2022 Clients' Security Board Decisions:

- Awarded \$11,000.00 to a former client of Daniel Patrick Morrissey of Springfield. In July 2020, the client retained Morrissey to represent him in his criminal case in the Hampden Superior Court for a \$15,000.00 flat fee. Between July 2020 and March 2021, the client's mother paid Morrissey \$12,300.00 in installments. Morrissey filed an appearance for the client in October 2020, and attended a bail hearing and a pre-trial hearing before he was administratively suspended from practice in April 2021. After Morrissey failed to appear for the client at three scheduled hearings, the Court dismissed Morrissey as private counsel and appointed public counsel to represent the client. Morrissey did not return the client's file or unearned fee after his dismissal. In June 2022, Morrissey was suspended for eighteen months. The Board found a reimbursable loss, and awarded the client \$11,000.00, payable to the client's mother.
- Awarded \$3,500.00, 5,000.00, and \$17,000.00 respectively to three former clients of George C. Maroun, Jr., currently of Amherst, New Hampshire. The clients had each engaged Maroun to represent them in immigration matters. Two of the clients had no immigration enforcement matters pending when they retained Maroun. One client was in deportation proceedings when he first sought assistance from Maroun. At the initial meetings with Maroun or his paralegal, the clients were asked to sign flat fee agreements that were not explained to them. After collecting advance fees from each client, Maroun filed asylum applications for the clients without explaining the steps he intended to take on their behalf and the associated significant risks, including deportation. None of the clients qualified for asylum, and the asylum applications and client affidavits cited bases for asylum that did not satisfy the immigration law criteria. Maroun also filed the applications more than one year after each client last arrived in the United States, and the stated explanation that the clients did not know they could apply for asylum earlier was not an exception to the statutory one-year requirement. In addition, Maroun did not have information that was likely to support cancellation of removal requests on behalf of the clients. In all three cases, the affidavits filed by Maroun with the asylum applications had been completed by Maroun or his staff without the clients' knowledge and contained false statements. In 2018, the Massachusetts Attorney General filed a consumer protection action against

Maroun for unfair and deceptive practices in his immigration practice. The clients were witnesses who testified against Maroun in the civil action. In March 2022, after concluding that Maroun engaged in false and deceptive conduct, the Court ordered Maroun to pay restitution to each client for excessive and unearned fees. To date, Maroun has not reimbursed his former clients for their unearned fees. After Maroun was suspended for two years in September 2022, the clients sought compensation from the CSB. The Board found reimbursable losses and made awards to each client.

December 15, 2022 Clients' Security Board Decisions:

- Awarded \$31,855.00 to the successor trustee of a supplemental needs trust, to reimburse the trust for funds that had been misappropriated by Paul G. Kolesnikovas of Charlton while he was serving as trustee and lawyer to the trust. The successor trustee had submitted a prior claim to the Board in June 2022 resulting in an award of \$344,306.00. Newly obtained documentation showed that Kolesnikovas misappropriated the additional funds in April 2015, when he requested that a brokerage firm transfer \$36,355.00 from the trust's brokerage account. After depositing a check in that amount from the brokerage firm to his IOLTA account on April 11, 2015, Kolesnikovas transferred \$4,500.00 to the supplemental needs trust account, but never paid the balance of \$31,855.00 to or for the benefit of the disabled beneficiary. Kolesnikovas was disbarred on June 30, 2020.
- Awarded \$7,000.00 and \$1,500.00 respectively to two former clients of Robert Schneiders of Quincy who passed away in May 2022. The first client had paid Schneiders a flat fee of \$7,700.00 in November 2019 to pursue a civil action against her ex-boyfriend seeking repayment of a loan. Schneiders filed the complaint in December 2019, and represented the client at a remote deposition in September 2020. Schneiders thereafter took no further action of substance on the case, which was dismissed without prejudice in December 2020. Schneiders did not inform his client of the dismissal or seek to revive the case before his death in May 2022. The second client paid Schneiders \$1,500.00 in February 2022 to file a guardianship petition for the benefit of the client's mother. Schneiders took no action on the matter prior to his death. Both clients unsuccessfully sought reimbursement from Schneiders' estate. The Board found reimbursable losses, and awarded \$7,000.00 to the first client and \$1,500.00 to the second client. Schneiders was in good standing with the bar at the time of his death.
- Dismissed a client's claim for \$100,000.00, after concluding that the client's former lawyer, Christopher J. Brown of West Springfield, had not misappropriated settlement funds from the client during his representation of the client in a personal injury matter. In June 2022, Brown was suspended for six months based in part on his neglect of the client's personal injury case, and his improper agreement to settle the case without the client's knowledge or consent. With the assistance of successor counsel, the client successfully opposed a motion to enforce the settlement, and went

on to settle the underlying claim. The client also settled a subsequent malpractice claim against Brown. The Board concluded there was no reimbursable loss and dismissed the claim.