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Ernest Teitell: Connecticut's Legal Community Fights Back

By Ashley Cisneros Published Dec 13, 2009

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As in many other states, Connecticut law makers were facing tremendous budget deficits in 2009. After finding a \$2 million surplus in the Client Security Fund, the Connecticut General Assembly voted to take the money to use toward reducing the deficit. Gov. M. Jodi Rell signed the bill following the vote. But this was a specific kind of fund.

The foundation for the present-day Client Security Fund started from a voluntary fund created by the Connecticut Bar Association (CBA) to protect clients. In 1999, the judicial branch started administering the fund. Presently, each licensed lawyer and judge in Connecticut is mandated to pay a \$110 Client Security Fund fee each year. Part of the fee, \$75, supports a protection fund for clients. The money compensates clients affected by attorney malfeasance. The remaining \$35 finances a treatment assistance program for attorneys with mental health and/or substance abuse problems.



In 2008, the fund's committee received 129 claims alleging \$8 million in client losses. The fund's committee approved 67 claims and paid \$2.6 million in 2008. In 2009, the fund had a \$7.8 million balance, with \$5.8 million in pending claims.

Livia DeFilippis Barndollar of Marvin, Ferro, Barndollar & Roberts, LLC, was serving as president of the CBA at the time.

"The government made a general assumption when it saw that there was \$2 million left after the claims," Barndollar

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says. "But it was wrong to look at it frozen in time."

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A transfer of money from the fund would be a violation of separation of powers. The response from the legal community was deafening.

Quick Reaction

Connecticut Supreme Court Associate Justice Joette Katz, who serves as the chair of the Client Security Fund, found out about the Governor's plan and called longtime friend Ernest F. Teitell of Silver Golub & Teitell, LLP.

"I was deeply concerned about the legal issues," Katz says. "As chair, I was concerned about the fund, which exists to make people whole. The depletion would have put the fund in significant risk."

Teitell says that he was dumbfounded when he heard the news.

"This was not a taxation issue. It's one thing if you create a sales tax or some other tax and designate it for other purposes," Teitell says. "This was a trust to protect clients and the profession."

Teitell called Steven D. Ecker of Cowdery, Ecker & Murphy, LLC, for help. Together Teitell and Ecker recruited 12 attorneys to serve as the plaintiffs in a class action suit. Meanwhile, Barn-dollar found out about the issue after receiving an e-mail with a link to the bill. After an emergency meeting about the issue, the CBA announced that it would also serve as a plaintiff on the suit.

Teitell says that having the CBA's support and having prominent lawyers listed as plaintiffs made a big statement. It was hard to ignore the voices of prominent attorneys including lead plaintiff Jacob D. Zeldes, a well-respected senior lawyer.

Teitell and Ecker filed a suit on March 30, 2009 against the governor, state treasurer and the comptroller. Teitell and Ecker argued that a transfer of money from the Client Security Fund was a separation of powers violation in that a fund controlled by the judicial branch should be inaccessible to the other branches.

"It's not every day that you sue the governor."

A Legislative Solution

Responding to the public outcry, the legislators in the Judiciary Committee passed an emergency bill to amend the statute and reverse the plan to transfer the \$2 million on April 3, 2009. The money had not yet been taken from the Client Security Fund. Gov. Rell also signed a statute to protect the fund in the future.

The lawsuit was withdrawn before the trial was scheduled to begin on May 25, 2009.

Teitell says that he was pleased that Gov. Rell consented to have the statute amended.

"This case impacted citizens of Connecticut because this fund protects those who have been victimized and those who may be victimized in the future," Teitell says. "In every profession, a very small percentage of people do bad things. This case allowed people to understand the importance of the fund. It raised awareness about this system, and we praised the people who created it."

Barndollar and the CBA were honored with the Isaac Hecht Law Client Protection Award at the American Bar Association's 25th National Forum on Client Protection on May 29, 2009.

"There isn't any better award to get than an award that acknowledges your professionalism," Barndollar says. "I was proud of our united effort. These attorneys involved put in hours and hours into this case, for altruistic reasons."

Katz had the opportunity to present the 2009 Connecticut Law Tribune Publisher's Award to Teitell, Ecker and the group of plaintiffs. These include: Jacob B. Zeldes, William R. Davis, Charles A. Deluca, William F. Dow III, Kathryn Emmett, William F. Gallagher, Hugh F. Keefe, Kathleen L. Nastri, Hubert J. Santos, Hope C. Seeley, Matthew Shafner, and Frederic S. Ury.

Every lawyer who signed on as a plaintiff represented the best of the Connecticut bar, Katz says.

"The legal community fought back, and we were successful," Katz says. "It's not every day that you sue the governor."

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