

CLIENT SECURITY BOARD REPORT

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“Have you caught up with that guy from Fridley yet?”

Minnesota lawyers who may be unaware that the “canons” no longer exist or that trust accounts must be interest-bearing, want to know about “that guy from Fridley” — Mark Sampson. They care because about \$25 of the \$100 each attorney has had to contribute to the Client Security Fund went to pay for the misdeeds of Mr. Sampson.

The creation of the Client Security Board in 1986 was controversial because many thought it was unfair that all attorneys, even those who did not handle client funds, should pay for the sins of a few. One attorney even commenced a federal suit, which was ultimately dismissed, challenging the board’s funding. The crises the board was created to address, the flights of Sampson and John Flanagan with large sums of client funds, heightened the atmosphere of controversy.

In the board’s three years of existence, it has quietly and industriously gone about addressing the problems it was created to resolve. Rules and funding procedures were proposed to the Court and adopted. Each Minnesota lawyer pays a one-time \$100 assessment for the fund. The fund also received over \$145,000 from the fund formerly maintained for client security by the Minnesota State Bar Association. The key criterion for paying claims under the rules is whether the client suffered a loss as a result of the lawyer’s “intentional dishonesty.”

The board has considered nearly 100 compensation claims. On May 31, 1989, only 11 claims were pending, just two of which were more than five months old.

The board has paid 51 claims totaling approximately \$720,000. Thirty-eight claims have been denied, usually because they were malpractice claims or fee disputes. Several claimants have had personal hearings before the board.

Nearly half the funds paid out were paid to Sampson’s victims. Most of the victims of John Flanagan were able to recover from other sources, such as banks and insurers. The board generally limits payment on any one claim to \$50,000, although in case of extreme hardship more may be awarded, depending on the fund’s resources. The \$50,000 limit has been applied to only two Minnesota claims to date. Many states apply a similar limit.

The board has been developing guidelines and policies for dealing with difficult claims and issues. For example, an individual investing funds with an attorney generally may not be compensated for a loss, but when the investment is a result of a continuing attorney-client relationship and the “investment” is really a direct transfer to the attorney’s pocket, compensation may be available. Another difficult issue

involves identification of principal and interest in situations involving transfer of client funds to an attorney followed by periodic payments by the attorney to the client; the board has been disposed to regard such payments as being allocated to principal first. Claims for repayment of unearned retainers have generally been rejected, but when it appears that the attorney accepted a retainer for future services knowing that they would not be performed, payment may be made.

Claimants are required to exhaust reasonably available alternate sources of recovery before the board will consider claims. The board receives subrogation rights after it pays claims. In several cases attorneys convicted of theft of client funds are subject to court restitution orders.

Although the Director's Office supplies staff services and the attorney general represents the board on subrogation claims, the volunteer members of the board carry the main burden of the board's work. They have met for several hours nearly every month for the last three years, without compensation and largely without recognition. The attorney board members are: Melvin Orenstein (Minneapolis, chair), Gilbert Harries (Duluth), Ronald Sieloff (St. Paul), James Vessey (Minneapolis), and Nancy Vollertsen (Rochester). The public members, both from St. Paul, are Jean King and Constance Otis.

The board expects to have a fund balance of approximately \$850,000 on June 30, 1989, and \$690,000 in June 1990. However, projecting budgets for future thefts is difficult at best. In the next year or two, the board and Court will have to consider the long-range funding basis for the board's activities. The board's staff and administrative expenses are about \$15,000 a year.

Self-regulation of the profession was at stake when the board was created. Legislative proposals, which would have been more expensive and less effective, were being considered if the Court and bar did not act. Paying \$100 for Sampson and his ilk may have seemed a high price, but the price of compromising self-regulation is still higher. In California, where a crisis in the professional responsibility system provoked substantial legislative and public action, each lawyer now pays over \$200 annually for the attorney discipline system and \$25 a year for client security.

In the years before Flanagan, large-scale lawyer thefts were relatively infrequent. Since Flanagan and Sampson, several other attorneys — Batdorf, Benson, and Danna — have taken \$200,000 or more. All five of these attorneys have been convicted and disbarred. The board and bar have been considering various theft-prevention programs, and the automatic trust account overdraft notice program may soon be implemented. However, no program can prevent thefts very effectively.

Several media accounts of Sampson and other thieves have ignored or scanted the profession's attempt to repair its good name through the Client Security Board. A bit of recognition is due the board and the profession for this effort. Next time they ask about that guy from Fridley, tell them about the board. Next time you see one of the board members, thank him or her for the effort.