

CLIENT SECURITY BOARD UPDATE

By

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Minnesota Client Security Board

Reprinted from *Bench & Bar of Minnesota* (September 1994)

Conflicting potential headlines leap out of the Minnesota Client Security Board's annual report, which was recently filed with the Minnesota Supreme Court:

**"Client Security Board
Pays Out Record Low!"**
**"Client Security Board
Budgets for Record High!"**

Both statements are true and reflect the precarious path that any client security fund must follow. After all, predicting lawyer theft is not an exact science. The amount of money taken, and the reasons for it, vary widely from case to case and year to year.

The dollar value of claims paid by the board this past year (the board's fiscal year runs from July 1 to June 30) was an all-time low of approximately \$123,000. The board approved 24 claims this year with only three awards of over \$10,000 and the largest award being \$35,638. In all other recent years, there have been at least one to three claims at or near the board's former \$50,000 "cap;" or maximum payment per claim. This year, most claims were much smaller. Eleven of the claims paid by the board were for less than \$1,000.

Another reason that claim payment was down is that several potentially large claims remain pending, awaiting completion of related disciplinary or civil proceedings. The board usually will wait for completion of proceedings in other forums so the board can rely on any findings made there. The potential value of these pending claims is why the board has budgeted a record \$525,000 for claims this coming year. The apparent good news of last year could be just a temporary blip.

A HEALTHY FUND

Last December, the Supreme Court approved several changes to the Client Security Board rules. These changes followed a report by the MSBA's Client Protection Committee and a petition from the MSBA based on the committee's recommendations. The principal change was that the Court raised the board's maximum payment per claim to \$100,000. This will allow the board to more fully compensate victims in the most egregious cases of lawyer theft. Since its beginning in 1987, the board has paid eight claimants the former maximum of \$50,000 where the claimant's actual loss was in excess of that amount. Five of those eight claims would have exceeded the new \$100,000 cap as well. Raising the maximum payment will result in a greater strain on the fund, however. The Court also authorized the board to award interest on claim awards.

Fortunately, Minnesota's Client Security Fund remains one of the healthiest in the nation. The fund contained approximately \$1.3 million at the start of this year. Another of the Court's changes was to make permanent the fund's current \$20.00 per year per lawyer assessment, at least until the fund reaches \$1.5 million. The Office of Lawyers Professional Responsibility provides administrative and investigative staff to the board on a part-time basis, so that costs are kept to a minimum.

Several states, such as Illinois, have struggled to maintain a viable client security fund at all. Many states have inadequate payment limits per claim or aggregates per attorney, which greatly reduce victim payment and satisfaction. An underfunded client security fund may be little better than no fund at all.

CURRENT ISSUES

While resolving claims is the board's overriding focus, the board has also set aside a portion of each of its recent meetings to conduct its own rules review. This process is nearly complete and a board-sponsored petition for several additional rule changes is expected this year. For example, there is a concern that too few people, especially outside the bar, are aware of the board's activities. Thus, a request for change in the board's publicity rules likely will be among the proposals. To date, the board has not publicized its awards but hopes in the future to inform the public on how much it has paid and on behalf of the what attorney. It will not publicize information about the victims.

Another area in which the board takes particular pride is its efforts to enforce its subrogation rights against suspended or disbarred lawyers on whose behalf claims have been paid. The Attorney General's Office provides outstanding representation to the board in this area. Payments from 13 former lawyers were received last year. The amount received and degree of voluntariness varies widely, and the total amount obtained (about \$10,000 last year) will never be a major source of revenue. Still, the board believes it is important for lawyers who steal their client's money to know that they are not forgotten.

MONEY WELL SPENT

The Supreme Court appoints the board's members. The seven board members' backgrounds and places of residence are diverse. The board is currently chaired by Rochester attorney Nancy Vollertsen. The other board members are: attorneys Bailey Blethen (Mankato), Kim Buechel Mesun (St. Paul), Earle Kyle IV (Minneapolis), and Daniel Bowles (Bloomington). All are in private practice except Ms. Mesun, who is a public lawyer. Ms. Vollertsen, Ms. Mesun and Mr. Bowles are MSBA nominees. The board also has two public members: Sandra Brown (Minnetonka) and Sister Mary Madonna Ashton (St. Paul). The board members serve as volunteers and put in many hours each year reviewing and unraveling often difficult claims.

The board has paid out \$1.7 million to 160 claimants since the board's inception in 1987. It is our hope that the bar recognizes this as money well spent to reimburse the victims of lawyer theft and to maintain the public's confidence in the profession. Lawyer thieves are but a minute fraction of the total number of licensed attorneys, just a few "bad apples in the barrel," but it is important that our profession help the victims of those few bad apples. A healthy client security fund is one way to ensure that the public believes that.