

The Client Security Fund: Celebrating 20 Years of Client Protection

by

Julie E. Bennett, Assistant Director

Minnesota Client Security Board

and

Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Minnesota Lawyer* (April 2, 2007)

On July 1, 2007, the Client Security Fund and its administering body, the Client Security Board, will celebrate their 20th year of operation.

The Minnesota Supreme Court created the fund and board in response to the highly publicized theft of client funds by St. Paul attorney John Flanagan.

Looking at the potential claims created by Flanagan's misconduct, the Minnesota State Bar Association petitioned the Supreme Court to establish a fund. Part of the MSBA's impetus for petitioning the court was the realization that the bar association's small fund, which was funded through voluntary contributions by MSBA members, was not adequate to handle the type of losses created by Flanagan. The Flanagan case was followed closely in time by the equally high-profile case of Fridley lawyer Mark Sampson.[Ftn 1](#)

The purpose of the fund is to compensate clients who have suffered a loss due to the intentional actions of their lawyers. Claims are submitted for determination to the board, which consists of five attorney members and two public members.[Ftn 2](#) The members of the board are volunteers appointed by the Supreme Court.

In considering whether a claim is payable, the board looks at whether the attorney is licensed in Minnesota, whether there was a loss and whether that loss is caused by the dishonest conduct of the attorney in a lawyer-client relationship. The fund will not compensate if a matter is strictly a dispute over attorney fees or if the issue is purely malpractice.

If the respondent has disciplinary and/or criminal proceedings pending, the board almost always will wait until the completion of those proceedings to determine whether or not a claim is payable. If the board determines a claim is payable, it will also determine the amount to be paid. Currently the fund has a maximum payout of \$150,000 per claim.[Ftn 3](#)

As the fund approaches its 20th anniversary, it has paid 438 claims against 123 attorneys for a total of \$5,630,212.50. The good news for our profession is that a relatively small percentage of the attorneys licensed in Minnesota are responsible for the type of client losses for which the fund reimburses. Payments made to clients of former attorneys Stephen Rondestvedt, Dennis Morgeson, Sr., Bruce P. Wyant, Peter

Orlins, Mark Sampson, John Nelson, Steve Samborski, Bruce Douglas, Gerald McNabb, Glenn Smith and Norman Gurstel account for \$3,211,146.80, which is more than half of the payments made by the fund.[Ftn 4](#) Many of the attorneys listed were also criminally prosecuted and served prison time for their misdeeds.

The work of the board does not end with the payment of claims. The board also actively pursues restitution for the claims paid. The board, through representation by the Attorney General's Office, advocates for inclusion in criminal restitution orders, actively pursues civil remedies and negotiates payment plans. Through these efforts, the board has successfully recovered \$844,211.58. In fiscal year 2006, the board recovered \$86,852.66.

Approximately 30 attorneys have reimbursed the fund for the full amounts the board paid out on claims against them, and several others are actively making payments according to a payment plan.

While it is unfortunate that the Client Security Fund has to exist, it is an important cog in the lawyer discipline and public protection system. The ability to help victims of attorney theft not only helps the claimant but also helps erase the stain on our profession by demonstrating that we do not approve of lawyer theft.

¹ The fund paid out more than \$500,000 in response to Flanagan's and Sampson's thievery.

² Current Board members are Michael T. Rengel, Chair; Gary G. Fuchs, Robert T. Lund, Richard Nethercut, Bonnie R. Russ, Sally DeLaitre Sawyer and Harriet Sims. Russ and Sawyer serve as public members.

³ Originally the fund had a cap of \$50,000 per claim, which was raised to \$100,000 in 1993. The current cap of \$150,000 has been in place since 2001.

⁴ All of the attorneys but Morgeson and Douglas were disbarred. Morgeson was transferred to disability status and Douglas died prior to the completion of the disciplinary proceedings.