

By SUSAN HUMISTON

Helping victims of lawyer dishonesty

Thirty years ago the Minnesota Supreme Court established the Client Security Fund to provide a funding source to pay victims of intentional lawyer dishonesty. It appears the genesis of the fund was the significant losses caused by two attorneys, Mark Sampson and John Flanagan, both of whom were disbarred in the late 1980s for misappropriation of client funds. The fund was initially created by a one-time \$100 assessment of all lawyers (and a \$145,000 gift from the Minnesota State Bar Association's then-client security fund), and proved somewhat controversial to the extent that some lawyers did not like being required to pay money to cover the misconduct of other lawyers.

As of April 16, 2017, the Client Security Board has paid the amazing sum of \$7,700,642.97 to 603 victims of lawyer dishonesty. While it is certainly

disheartening to know that more than 170 lawyers over the past 30 years have stolen so much money from so many clients, I am very glad that the fund exists to repair a portion of that harm. As the director of both the Office of Lawyers Professional Responsibility (OLPR) and the Client Security Board (CSB), I see firsthand the tremendous harm to the public and the profession caused by lawyers who steal money from clients.



SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Securities Board. She has more than 20 years of litigation experience, as well as a strong ethics and compliance background. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

Who administers the fund?

The fund currently receives \$12 from each attorney through the annual registration fee.¹ Thank you! While I can understand the concerns raised by the attorneys originally troubled by having to contribute to cover other's misconduct, I believe the value to the profession and the public at large from a dedicated fund to make reparations for the harm caused by a few very bad apples among us outweighs the nominal cost per year. The Client Security Board administers the fund, and is composed of five lawyers and two public members, all of whom serve without compensation. The Supreme Court appoints board members, and three of the five attorney members are nominated by the MSBA.² The current board members are Robert Bauer (chair and MSBA nominee), Apple Valley; Greg Bistram, Minneapolis; Daniel Tollefson (MSBA nominee), Becker; Stuart Williams (MSBA nominee), Minneapolis; Kathleen Clarke Anderson (public member), Minneapolis; and Nancy Helmich (public member), Minneapolis. There is currently an opening for an attorney member on the board.

These individuals meet quarterly to review and consider claims, and in between meetings review substantial information regarding the claims. Staff from the OLPR provide administrative assistance to the board—including the investigation and analysis of claims—and the Attorney General's Office (in particular Assistant Attorney General Scott Grosskreutz) provides litigation support to assist the board in pursuing its subrogation rights against the dishonest lawyers. Associate Justice David Stras is the Supreme Court liaison to the board.

What claims qualify?

The fund pays claims where a claimant has suffered a loss because of dishonest conduct on the part of a lawyer during the course of an attorney-client or client-lawyer fiduciary relationship in this state.³ The fund may reimburse

up to \$150,000 per claim for dishonest conduct committed by a Minnesota lawyer; there is no per-attorney claim cap. The fund only covers the loss of money or property resulting from lawyer dishonesty; it does not cover claims that arise because the lawyer acted incompetently, committed malpractice, or failed to resolve a fee dispute in satisfactory fashion. To qualify for reimbursement, an individual must show that the money or property actually came into the lawyer's possession and that the loss was caused by the lawyer's dishonest conduct. Claimants are expected to exhaust or attempt to exhaust collateral sources of reimbursement before looking to the fund. There is a three-year statute of limitations on claims; claims should be submitted within three years of the date a claimant knew or should have known of the dishonest conduct.⁴

As of April 16, 2017, there were 76 claims pending before the board. Many of the pending claims arise from two trusteeships the OLPR is administering relating to two lawyers who were misappropriating client funds prior to their deaths, although there are numerous other pending claims unrelated to those two trusteeships. The fund is financially healthy and has adequate funds on hand to pay claims, even if significant claims are made to the board.

Significant prior claims

For many years, the \$400,000 paid out to victims of Mr. Sampson represented the largest payments from the fund. Unfortunately, other lawyers now have the dubious distinction of surpassing Mr. Sampson. The individual who has caused the most losses covered by the fund is disbarred attorney Stephen J. Rondestvedt, who, over a three-year period—2000-2003—misappropriated hundreds of thousands of dollars by convincing his personal injury clients to invest their personal injury settlement proceeds into a non-existent financial institution, in addition to other dishonest conduct.

Professional Responsibility

Through 23 claims, the fund paid out more than \$850,000 to Mr. Rondestvedt's victims. More recently, in 2012, attorney Deno Berndt was disbarred for misappropriation of client funds. Through 15 claims, the fund reimbursed \$588,012.94 in losses, the second highest total paid from the fund. Three other lawyers also caused more losses than Mr. Sampson: Dennis Morgeson, Sr. (\$547,922); Gregory Engwall (\$474,262); and Peter Orlins (\$419,843). A complete list of all claims paid out and the attorney responsible for the misconduct can be found at the CSB website.⁵

Fortunately for the health of the fund, such large claims are clear aberrations. In fiscal year 2016 (ending June 30, 2016), the board approved 11 claims for a total of \$53,516.37. The current fiscal year, however, is on pace to see a significant number of payable claims in part due to the above-referenced trusteeships. Probate is the area of law that has given rise to the greatest number of fund payouts, with more than \$2,000,000 in claims paid out for matters arising in this area of law.

Each year, the members of the Client Security Board work very hard and carefully to be effective stewards of the fund. Oftentimes they are called upon to make tough decisions on whether a claim falls within the established rules set forth for reimbursement from the fund, and each year a number of claims are denied because they do not meet the criteria set forth in the rules. We are fortunate in Minnesota that we have such a healthy and well-administered fund. Many states cannot say the same. The public and profession are well-served by the fund and the board members charged with administering it. Thank you to everyone involved in doing the work of the fund, thank you to the Court for valuing this public service, and thank you to the members of the bar for providing the funds that give the board the ability to right some of the most egregious wrongs that occur within the profession. ▲

Notes

¹ Rule 2(D), Minnesota Rules of Lawyer Registration.

² Rule 1.01, Rules of Minnesota Client Security Board (RMCSB).

³ Rule 3.02, RMCSB.

⁴ Rule 3.02(g), RMCSB.

⁵ www.csb.mncourts.gov