

OUR COLLECTIVE RESPONSIBILITY

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Recently, the Minnesota Supreme Court issued an order temporarily increasing the lawyer registration fee paid by most practicing Minnesota lawyers. [See “*By the Court*,” page 18 of this issue. Ed.] An additional \$100 per year is being required for each of the next two years in order to provide funding for the Board of Public Defense and the Legal Services Advisory Committee. The order was a 4–3 decision, the division based upon concerns over the court’s authority to require payment of the additional fee and whether as a matter of public policy attorneys—and only attorneys—should shoulder the burden of providing funds that until now have been provided by the legislature. Although the court made the order retroactive to October 2009, in fact collection of the increased fee will begin with the January 2010 cycle of attorneys.^{[Ftn 1](#)}

The fundamental underlying issue of this order is whose obligation it is to provide adequate funding for these entities. In this instance, it seems the entire supreme court was in agreement on it being the responsibility of the executive and legislative branches to fund constitutional mandates—that ensuring access to justice is an obligation of the people of the state, not just a segment of the people, even if the people at issue are lawyers. That may be, but what if, as here, the other branches of government do not provide sufficient funding? In the present situation, the court has reluctantly chosen to provide funding. Perhaps the more critical question is whether there exists a collective responsibility for lawyers to ensure a properly functioning judicial system. Should there be?

Monopoly: Not Just a Game

As lawyers, we hold a unique and exclusive privilege to practice law. While our monopoly on practicing law has been chipped and eroded somewhat in recent years, it is still largely a fact. Further, whether under the auspices of the state supreme court or, in mandatory bar states, the bar association, law is a self-regulating profession. Funds

for such regulation come from the annual licensing fees or bar dues paid by lawyers. In Minnesota, these fees go to fund the Office of Lawyers Professional Responsibility and the boards of Law Examiners, Continuing Legal Education and Legal Certification, all of which directly assist the court in its function of regulating the bar. No one seems to challenge the court's authority to assess such fees for such purposes, or to question our collective responsibility as lawyers to fund such essential tasks.

Lawyers also fund some law-related activities that are not as clearly "essential." For example, lawyer registration fees also fund the Minnesota Client Security Fund (and Board). This efficient entity reimburses the victims of lawyer dishonesty up to \$150,000 per claim, funded entirely by the lawyers of Minnesota. Are we as lawyers legally obligated to pay for the defalcations of some of our members? No; the dishonest attorneys who stole client money should be repaying their own victims. Usually, of course, they cannot or will not. So we as a profession collectively have stepped up and accepted responsibility to make these victims whole (or as close to whole as possible) as a "moral" obligation that we all share. We consider that, as a profession, we have failed these individuals and we as a whole therefore should make it right. The overwhelming majority of lawyers recognize the wisdom and necessity of this act.

We choose to employ lawyer registration fees to fund other activities for which no legal obligation exists as well. One such is a lawyer assistance program, principally Lawyers Concerned for Lawyers (LCL), which is funded in part by a portion of the lawyer registration fee that goes to the Lawyer Trust Account Board (IOLTA). Once again, is there some legal obligation to provide such a service to members of the profession struggling with chemical dependency or mental health issues? I'm not aware of any such legal obligation. Yet collectively we believe it is important to offer help to individual lawyers in order to protect clients and the profession, and because it simply is the right thing to do. The final portion of our lawyer registration fee is already going to help fund the Legal Services Advisory Committee in its efforts to provide legal services to people who cannot afford representation. While the recent increase in the amount designated for Legal Services may irk some, the basic choice to provide some level of funding was already made.Ftn 2

Thus, at least through the lawyer registration fee and court boards, we already collectively provide funds for a number of public services to help the work of the judicial system and the work of the legal system as a whole.

What the Rules Say

In determining that lawyers should provide emergency funding to assist public defenders and legal services agencies during the current economic downturn, the supreme court pointed to Rule 6.1, Minnesota Rules of Professional Conduct (MRPC) (*Voluntary Pro Bono Publico Services*), as an additional basis for affirming our collective responsibility. As Rule 6.1 indicates, the issue of funding is clearly one of professional responsibility. The rule provides that “Every lawyer has a professional responsibility to provide legal services to those unable to pay.” The court further noted that Comment [10] to Rule 6.1 includes the statement that “[e]very lawyer should financially support such programs, . . . making . . . financial contributions when *pro bono* service is not feasible.” In addition, the Professionalism Aspirations adopted by the Minnesota Supreme Court state that “we [as lawyers] will dedicate and commit ourselves to equal access to the legal system.” Without a public defender system at the trial and appellate court levels, plus an adequately funded legal services network, equal access for many would be an illusory promise.

Bad Timing?

The \$100 increase in the lawyer registration fee will no doubt impose limited economic hardship on a percentage of the bar. In fact, the added amount will be less than \$100 for many categories of lawyers: those on inactive status or full-time military duty, with an income less than \$25,000, or admitted less than three years; they will, however, still pay some amount greater than has been collected in the past. Still, in these difficult economic times, any increase will be difficult for some to absorb. Of course it is those same economic conditions that have triggered the current funding crisis. The court’s order will terminate in two years, with the hope that the legislature will have provided adequate funding by then. In the mean time, lawyers once again will step up and fulfill our collective professional responsibility to provide funding for important legal and judicial services.

Notes

1 Rule 2E, Rules of the Supreme Court on Lawyer Registration (RSCLR), divides lawyers subject to the annual fee into four groups whose fees are payable on or before the first day of January, April, July and October. The division is done alphabetically by last name. Since the October 2009 fees were already billed and paid prior to the order being issued, that group will first pay the additional fee in October 2010.

2 Lawyers currently pay \$50, \$25 or \$12.50 for Legal Services annually, depending on their fee category. Rule 2D, RSCLR.