

A DECADE OF SECURITY

by

**Martin A. Cole, Assistant Director, Minnesota Client Security Board
and Senior Assistant Director Office of Lawyers Professional Responsibility**

Reprinted from *Bench & Bar of Minnesota* (May/June 1997)

The Minnesota Client Security Fund and Board will celebrate ten years of official operation on July 1, 1997. No gala party will be held; no politicians in formal attire will show up; *Bench & Bar* (or even *Law & Politics*) will not send a photographer. If not for this article, no one might take particular notice at all. This is exactly as it should be!

In its first Annual Report in June 1988, the Board wrote that "it can be reported with confidence that the crisis in client security that developed in the last few years has been met by good lawyer government." That remains true today. For the Client Security Board goes about its business quietly and efficiently and with a minimum of cost or fanfare. Over 200 paid claimants, each the victim of a former Minnesota attorney's dishonesty, are better off because the Board exists and because Minnesota lawyers have supported it.

HISTORY LESSON

A brief history lesson is perhaps in order at this point. With approximately 700 new lawyers joining Minnesota's ranks each year perhaps as many as 7,000 of you may not recall or know of the events of 1985-86, in particular the sagas of John Flanagan and Mark Sampson, two of the most notorious lawyer theft cases in Minnesota annals, and the two lawyers most "influential" in the creation and the form of the Client Security Fund and Board as they came to be.

In 1985, St. Paul attorney John Flanagan fled the state over the Fourth of July weekend with his destination unknown. Soon, clients and individuals who had "invested" considerable amounts of money with Flanagan were seeking him frantically. This was front page news, and a major "black eye" for the legal profession. It didn't take long to locate Flanagan in a hotel in Utah and to have him returned to Minnesota to face federal and state criminal charges, events which merely served to keep the story highly newsworthy. A term in Leavenworth was Flanagan's ultimate fate, as was disbarment.

In 1985, there wasn't a court-operated client security fund. Instead, the Minnesota State Bar Association maintained a Client Security Fund, which was funded through voluntary contributions from members. Claims involving Flanagan soon arrived, seeking amounts well in excess of the approximately \$150,000 in the Fund. Faced with the totally inadequate prospect of paying minimal awards to Flanagan's victims, the MSBA petitioned the Supreme Court to create a new Fund, to which the MSBA offered to turn over the amount in its account. Thus the new Fund and Board were established by Court order in April 1986.

Around that same time, Minnesota lawyer Mark Sampson, of Fridley, fled the state following a referee's recommendation for discipline. His departure was immediately followed by claims that

almost \$500,000 was missing from his trust account. More front page news; another "black eye." Sampson was not located for several years, before his eventual return to Minnesota and federal incarceration. Sampson too was disbarred.

The Fund and Board already had been created when this story unfolded, but the Sampson saga did influence the amount the new Board asked the Court to collect from each Minnesota lawyer. That initial \$100 assessment occasionally rankles some people even today! It generated \$1.4 million, however, which allowed the new Board to quickly deal with the Flanagan and Sampson claimants. This in turn generated some needed positive news coverage for the profession, as several articles appeared in the media praising the actions of the Court, the Bar, and the Board.

The Board eventually paid over \$400,000 to Sampson's victims, and over \$110,000 to Flanagan's. (Banks which honored checks over forged endorsements picked up the rest). To fully appreciate the magnitude of those losses, bear in mind that since that time claims paid against an attorney have reached six figures in only four other cases. The 20 claims approved against Sampson still represents the largest number involving any one attorney in the Board's history.

GOOD LAWYER GOVERNMENT

Good lawyer government requires good people doing the governing. The Board has had the great good fortune to have been chaired by three outstanding members: Minneapolis lawyer Melvin Orenstein (1987-93), Rochester lawyer Nancy Vollertsen (1993-95), and Mankato lawyer Bailey Blethen (1995-97), the current chair, whose term expires at the end of June. Each has been dedicated to prompt resolution of claims, as complete a restitution to the victim as possible, and a minimum of administrative costs (thus, the lack of any gala celebration as alluded to earlier). The remainder of the Board's members, both lawyers and nonlawyers, have been uniformly outstanding: hardworking and caring. The public interest especially has been protected through the nonlawyer members and through the diverse backgrounds of the Board's members over the years.

The Board met several times during its first year to draft the original rules. Following a Court hearing, the rules took effect on July 1, 1987, and the Board approved its first three claims at its inaugural meeting on August 6, 1987. As of the end of April 1997, the Board has now paid 205 claims in the total amount of just over \$2.6 million. Claims have been paid against 65 lawyers, all of whom were either disbarred, suspended, or on rare occasions transferred to disability status or deceased. Almost all of those claimants were paid the full amount of their loss.

The Board has worked hard over the years to be consistent and fair in its decisions and in the application of its own rules. This has meant that the Board has dedicated many hours of meeting time to carefully discussing particular cases or meeting personally with claimants before reaching consensus or vote. Such efforts still once or twice have resulted in decisions which seemed unsympathetic to a particular victim. The goals of consistency and fairness are also served by volunteers who regularly put in extra time and effort to review the rules and procedures of the Board. Periodically they recommend changes to the Supreme Court, often to codify prior Board decisions in a manner that will ensure future consistency and help claimants to better understand what the Board will, or will not, pay and why. Many potential claims which

might end up being denied and causing ill will have been avoided through this process. Some claimants would benefit from having counsel to help them review the rules and properly formulate their claims. An opportunity for lawyers to provide *pro bono* services in this regard is listed with the MSBA *Pro Bono* Directory.

Of particular concern to the Board is spending the bar's money efficiently. In an average year, almost 90 percent of the Board's annual budget goes to claims payment, with only 9-10 percent for administration. According to the ABA, the national average for client security funds is about double that, especially in states that maintain client security systems separate from the disciplinary office. By having the Office of Lawyers Professional Responsibility handle the Client Security Board investigations on a part-time basis, there is a considerable savings.

Finally, the Board has aggressively sought reimbursement from lawyers on whose behalf claims are paid. Minnesota annually ranks in the ABA's top ten list of state funds in this regard. The Attorney General's Office provides free legal work for the Board, which is only responsible for direct costs of collection or litigation.

The Board monitors activity by other states' client security funds to keep up with any new trends and has willingly been reviewed by an MSBA committee to help assure the bar that its money is wellspent. Minnesota's \$100,000 maximum payment per claim is among the highest in the nation, and the present Fund balance of over \$1.7 million ensures continued good health. Because of that healthy balance, the Board has been able, without seeking additional funding, to weather such major cases as the claims against attorneys John Morgeson and Bruce Wyant (jointly), which in 1995-96 resulted in payments of almost \$550,000, the largest amount in Board history.

Ten years after it began operation, the Minnesota Client Security Board has proven itself a strong part of the overall lawyer discipline/client protection system, even if it rarely receives much publicity for its actions any more. The occasional heartfelt "thank you" from a claimant who has received his or her money back because of the Board will have to suffice for now. It is truly scary to contemplate the hostile voices which would have been heard about the legal profession, however, if not for the existence of this quiet Board.