

When Suspension is a Good Thing

by

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Over the 20-plus years of its existence, the Minnesota Client Security Board has diligently assessed the viability of the Minnesota Client Security Fund and made recommendations to the Minnesota Supreme Court regarding the board's portion of lawyer registration fees.

At times during the fund's history, the board has recommended to the Supreme Court that the amount of the fund's allotment be reduced. Based on the board's recommendation, the Supreme Court reduced the fund's allotment from \$20 to \$17 in 1998, and later reduced the allotment to the current \$12 amount in 2002.

At its meeting in April 2008, the board voted to recommend to the Supreme Court that the lawyer registration allotment dedicated to the fund be suspended for a year. The Supreme Court accepted the board's recommendation and will implement the year suspension of the board's allotment.

What does that mean for you?

It means you will not pay the \$12 of your lawyer registration fees allotted to the board—or you'll be able to buy three more gallons of gasoline.

Why the suspension?

The fund currently has a projected balance of approximately \$3.3 million. While there is no perfect prognosticator, the board looked at the history of claims paid, the payment of restitution and the anticipated growth of the fund. Based on their review, the board determined the fund was in a healthy position and would remain so even if there were more thefts of the size committed by Stephen Rondestvedt.^{Ftn}

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It was because of the solidity of the fund that the board voted unanimously to recommend to the Supreme Court a one-year suspension of the portion of the lawyer registration fee that is allotted to the fund. Beginning with registration fees due on

Oct. 1, 2008, and continuing through July 1, 2009, the \$12 allotted to the fund will be suspended.

How is this possible?

The fund has been managed very well since its inception. Because of a wise, if somewhat initially unpopular, decision made at the inception, the fund has remained viable. The decision was to require every attorney in the state to pay \$100 in order to establish the fund.^{Ftn 2} Those of you who were licensed back in 1986 no doubt will cringe and recall the “Flanagan tax.”

However you view the inception, the influx of money created a \$1.4 million stable base for the fund. This base allowed the fund to withstand the discovery of Mark Sampson’s thievery shortly after Flanagan’s and still maintain a viable fund.

Since then, the board has been able to provide compensation of more than \$5 million to victims of lawyer theft. The existence of the fund has allowed the board to repair damage done to the public’s perception of our self-regulated profession.

Each claimant signs a subrogation agreement that allows the board to pursue collection for amounts paid to claimants by the board on behalf of thieving attorneys. The board has actively pursued restitution of the amounts paid out.

The Attorney General’s Office is the board’s attorney and has actively pursued judgments against lawyer thieves, fought to keep the thieves from discharging the debts through bankruptcy and arranged payment agreements.

The board also uses the services of the collection division of the Minnesota Department of Revenue to collect restitution. Additionally, criminal authorities have included restitution as part of their sentencing orders. There are also those rare occasions where the attorneys determine to pay their debt to the fund in full. During its just-completed fiscal year, the board received more than \$90,000 from attorneys wishing to retire their debt to the board.

As a result of all of these efforts, so far the board has been able to recover more than \$1 million of the amount paid out.

At the end of this one-year grace period, the board will reassess its funding needs. Until then, drive somewhere on the board.

¹ In 2004, the board reimbursed more than \$840,000 to victims of former attorney Stephen Rondestvedt.

² Prior to 1986, the Minnesota State Bar Association maintained a voluntary contribution fund to deal with lawyer theft. But the highly publicized case involving John Flanagan highlighted the need for there to be a well-established fund to compensate victims of lawyer theft.