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Client Security Board Year End Report and Reflections

By Harriet Sims

The Minnesota Client Security Board's (The Board) year ended June 30, 2011. This was also the end of my tenure on the Board as an MSBA nominated member. Having served two 3- year terms, the last two years as Chair, I am not eligible to serve another term. The Board administers the Client Security Fund (the Fund) established by the Minnesota Supreme Court. Currently, twelve dollars of each attorney's license fee goes to support the Fund. Clients whose money or property has been stolen or otherwise misappropriated through the dishonest act of a Minnesota-licensed attorney during the course of an attorney client relationship may petition the Board for reimbursement. It is the task of the Board to review each claim and determine whether payment should be made and in what amount. There is a limit of \$150, 000 per claim but no limit on the number of claims per attorney that may be paid. The Board seeks reimbursement from the attorneys on whose behalf we have paid claims. Sometimes they pay up. Sometimes claims are referred to the Minnesota Department of Revenue which has authority to collect non-tax debts from other agencies.

The Board consists of five attorneys and two non-attorney, or public, members appointed by the Supreme Court. All serve without pay. The MSBA nominates three of the five attorney members and historically since 1993, at least one of those members nominated has been a public lawyer.

The following public lawyers have served on the Board since 1993:

Kim Buechel Mesun	1993-1999 (Chair: 1998 & 1999)
Margaret Westin	1999-2005 (Chair 2004 & 2005)
Warren Sagstuen	2000
Harriet Sims	2005-2011 (Chair 2010 & 2011)

The Board members as of June 30, 2011 were:

Harriet J. Sims, Chair (MSBA nominee)
 Kathleen Clarke Anderson (public member)
 Kenneth D. Butler (Supreme Court nominee)
 Mary L. Medved (public member)
 Richard A. Nethercut (MSBA nominee)
 Timothy O'Brien (MSBA nominee)
 Paul C. Peterson (Supreme Court nominee)

The MSBA nominated and the Supreme Court has approved Dana Banwer as the new MSBA nominated public attorney to serve beginning July 1, 2011. Kathleen Clarke Anderson completed the term vacated by Sheldyn Himle and was appointed to her first full term beginning July 1, 2011. The Court also appointed Kenneth D. Butler to serve his second term on the Board. The Board meets approximately four times per year. Additional information concerning the Board, its bylaws, operating procedures, claims history and a wealth of other information is found at its newly updated website, <http://csb.mncourts.gov>.

During the year ending June 30, 2011 the Board approved 22 claims totaling \$57,555.69. Fourteen claims were denied. Thirty-nine new claims were filed this year and 34 claims were carried over from the previous year. Thirty-seven claims against nineteen attorneys were pending before the board at year end. In its 24 years of paying claims, the Board has paid a total of \$6,350,546.65 on 490 claims against 139 attorneys. The Board projects a Fiscal Year 2011 balance at the end of the year of \$3.3 million and \$3.5 million at the end of June 2012. In 1988 the Supreme Court recommended informal parameters of \$1.5 - \$2.5 million. The Board reports to the Court whenever the Fund drops below or exceeds these figures. The Court approved the Board's Fiscal Year 2012 budget including collection of the board's portion of attorney registration fees. The Board's portion of attorney

registration fees was suspended beginning with attorneys whose licenses were renewed October 2008 and resumed for Fiscal Year 2011. In 2012 the Board will review its claims history and reevaluate the size of the fund vis-à-vis anticipated payouts and expenses.

Reflections

When I began my first term on the Board in July of 2005 I wondered what kind of attorneys steal from their clients? How does this happen? How frequently does this happen? I learned that there are many ways to steal from a client. The good news is that very few attorneys engage in this sort of behavior. In my opinion, very few even think of it. It is common for the Board to consider multiple claims against the same attorney. Substance abuse or mental illness is often involved. Small firms sometimes do not have the kinds of controls or record keeping that could avert a problem. These factors may provide an explanation but not an excuse. It is the Board's job to make sure that as much as possible an attorney's problem does not become a problem for the client.

I have truly enjoyed my tenure on the Board. It has shown me a part of the legal profession to which I might not have ordinarily been exposed. I am only partly referring to the attorneys who have stolen clients' funds. The other side of the equation is the chance to work with fine, intelligent and ethical Board members as we struggle with the hard questions.

One of those hard questions that generate discussion among the Board members is whether the attorney has stolen money from a client or whether the matter is a fee dispute. The Board does not compensate fee disputes. This most often arises where an attorney takes a fee from a client and then does very little legal work. If the attorney had done no legal work at all and does not refund the fee, the issue is clear that this amounts to a theft. Where the attorney has done some work, the line drawing begins. How much work is enough to characterize the claim as a fee dispute? The Board has approved claims where the attorney's activity has been so minimal and of no benefit to the client so as to constitute a theft. But how do we define "minimal"? These are always hard cases and there are often good arguments on each side. I think that the Board will continue to

wrestle with this issue.

Finally I must circle back to the question I posed a few years ago regarding why public attorneys should even pay into the fund or be involved in the process of determining the payment of claims. We do not charge fees or handle client funds. Aren't we being asked to take responsibility for the actions of dishonest attorneys with which we have nothing in common? Of course we are and so are the overwhelming majority of private attorneys. Only a small fraction of attorneys in private practice steal client funds and yet they are charged to make clients whole who have been wronged by another lawyer's dishonesty. Is this really so different from the public attorney's situation? We are not somehow above the fray. It appears that the only difference between "us" and "them" is that we have not been tempted. We all must follow the same ethical principles and it is in the interest of all of us to uphold the legal profession by cleaning up our own messes. It is a matter of self-regulation.

This is what I like about the concept of the Client Security Fund and the Board. I am not aware of other professions that effectively compensate victims of misconduct by their members out of their own pockets. In addition public lawyers have just as much interest in upholding the image of the legal profession as any other lawyer. Every time an attorney steals from a client the reputation of all attorneys is besmirched. The public cares little whether an individual is in private practice or not when discussing dishonest attorneys.

There is also another reason why many public attorneys care about compensating clients of private attorneys. Whether one is a private or public attorney, the reason for supporting and if you are lucky enough, participating on the Board is all about public service and giving back to the profession. As with all other forms of public service, it's not about you, it's about the public.
