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The Client Security Board: One More Time

By Harriet Sims, Minnesota Department of Revenue and Member of the Client Security Board

Here I am again, starting my second and final term as a member of the Client Security Board (CSB). The last time I shared my thoughts about my work on the CSB I focused on the connection between the CSB and the Public Law Section, explained a bit about the work of the CSB and opined about why public attorneys should care about the dishonest conduct of private attorneys. This article is a short update about the work of the CSB and a bit more opining about how public attorneys add value to the process (hopefully, without sounding too self-important).

Client Security Board fee suspended for one year!!

If your attorney registration renewal is payable October 1, you may notice that the CSB fee is missing. Don't worry, the work of the Board will continue (the fee is only suspended for one year). Since its inception in 1987 through June 30, 2008 the Fund has paid $5,866,235.08 in 448 claims against 126 attorneys. Due to assiduous management of the Fund's assets the Fund has grown. Even with these payouts the Fund projects that its fiscal year balances will be $3.3 million at the end of fiscal years 2008 and 2009. The Supreme Court's recommended parameters for the Fund are between $1.5 Million and $2.5 Million. Therefore, the CSB recommended and the Supreme Court agreed that the $12 fee collected from attorney licenses be suspended for one year. This will begin with attorneys whose licenses come due in October 1, 2008 and will continue through July 1, 2009.

A bit of background about the Board

The members of the CSB are appointed to three-year terms by the Minnesota Supreme Court. Each member may be reelected to one additional term. The Board consists of five attorney members and two public (non-attorney) members. Two attorney members are nominated by the Minnesota Supreme Court. The other three are nominated by the Minnesota State Bar Association (MSBA). Attorney representation on the CSB has typically included attorneys from large and smaller firms, who practice in the metro area and in Greater Minnesota. Since 1993, based on one of the recommendations of an MSBA-appointed committee created to review Client Security Fund issues, one of the attorney members nominated by the MSBA has been a member of the Public Law Section (PLS).

The current Board members are:

Robert T. Lund – Chair (MSBA nominee)
Michael T. Rengel (Supreme Court nominee)
Richard A. Nethercut (MSBA nominee)
Bonnie R. Russ (Public member)
Sally DeLaittre Sawyer (Public member)
Kenneth D. Butler (Supreme Court nominee)
Harriet J. Sims (MSBA nominee, PLS member)

PLS members who have served on the CSB in the past are:

Kim Buechel Mesun Chair 1998 & 1999	1993-1999
Margaret Westin Chair 2004 & 2005	1999-2005
Warren Sagstuen	2000
Harriet Sims	2005 to present

Payments are made from the Client Security Fund, which was established to reimburse clients who are the victims of unscrupulous lawyers. Clients often have no other recourse or have been only partially compensated. Money initially comes to the Fund through attorney fees. The exact amount that goes to the CSB has varied over the years. The most recent fee amount was $12 per attorney. The CSB also aggressively seeks reimbursement from the attorneys on whose behalf we have paid a claim. During the year ended June 30, 2008 the Fund paid out $168,905.16 in claims against six attorneys.

The Client Security Board (CSB) meets approximately four times a year to review claims

filed by clients and determine which claims should be paid and the amount paid. There is a $150,000 limit per claim but no limit per attorney. In contrast, some states have a per attorney limit on the amount of claims paid. Many states have lower per claim limits. Minnesota's limits are among the most generous. As of 2007, only New York and New Jersey with $300,000 and $400,000 respectively have higher per claim limits than Minnesota. Claims must relate in some way to theft or dishonest conduct by a Minnesota licensed attorney which results in a monetary loss to the client. Consequential damages are not reimbursable by the Fund. The matter must also arise out of the attorney-client or fiduciary relationship. Decisions of the CSB are discretionary and there is no appeal for denied claims, although claimants may ask the CSB for reconsideration. This gives the CSB a great deal of autonomy but also a responsibility to exercise its discretion in a fair and thoughtful manner.

The CSB uses the administrative services of the Office of Lawyers Professional Responsibility to receive, investigate and handle claims filed with the Client Security Fund. Martin A. Cole is Director. The Director is appointed by the Supreme Court and serves at its pleasure. Julie Bennett is the Assistant Director. The Minnesota Attorney General's Office provides legal services to the CSB in enforcing subrogation rights against attorneys on whose behalf the CSB has paid claims or against third parties. The Board is billed for direct costs of collection efforts and litigation expenses. Some claims against attorneys may also be referred to the Minnesota Department of Revenue's Collection Division which has the authority to collect non-tax debts for other agencies.

Why Do I Do This?

It's a way to give back to the profession. Public lawyers have a long history of service. Is it a way to right wrongs and make the world cleaner and safer for clients? Well, we do our best. But seriously, one of the things that continues to impress me about the CSB is the fact that it is a living example of how the profession can effectively police itself. Some other professions do not have that luxury.

As public lawyers we do not handle client funds and some would argue that we should not concern ourselves with attempting to rectify a problem that we are not in a position to cause. Except that we are all members of the legal profession and equally charged with upholding the ethics of the profession. I am an attorney first and a public attorney second. When members of the public refer to the bad apples in our profession I have never heard them limit their comments to the private bar. Attorneys who steal their client's funds drag our names in the mud as much as they do the private bar so we have as much interest in cleaning up our image as the rest of the profession.

On a lighter note, there is also somewhat of a voyeuristic aspect to reading the allegations against fellow lawyers. Some of the factual backgrounds are almost as interesting as a racy novel. There have been more than one "makes you wonder" moment as well. More important is the hard work of sifting through the facts of each case to determine what really occurred, did this misconduct arise out of an attorney client relationship? Is this a fee dispute (which is not reimbursable), malpractice (also not within the purview of the CSB) or a true instance of a lawyer stealing his or her clients' funds. Sometimes it's a fine line and sometimes it is not.

For more information about the Client Security Board, including a complete history of all claims paid, Client Security Board Rules, annual reports and other information, visit their website at: http://www.courts.state.mn.us/csb/csb.html.