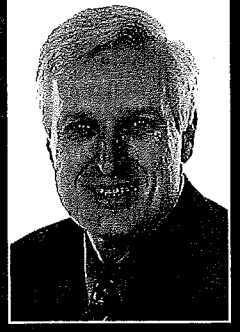
Helping Victims of Lawyer Dishonesty: Minnesota's Client Security Board

When an attorney steals funds from clients, neither criminal nor civil proceedings may be sufficient to make the client whole; when the attorney has already spent the money, a judgment or order for restitution may be worthless. That is when the Minnesota Client Security Board steps in to attempt to make things right for people who have suffered a loss due to the dishonest conduct by a Minnesota lawyer related to an attorney-client relationship.

Twenty-seven years ago this July, the Minnesota Client Security Board began meeting to consider claims for payment made by victims of lawyer dishonesty—clients who had their funds misappropriated by their attorneys. As of March 2014, 549 such victims have been paid by the Board, in the total amount of $6,947,787.80. Claims have been paid against 150 Minnesota lawyers, almost all of whom were disbarred or suspended, or in some instances had died or were transferred to disability inactive status. The board is a remarkable example of how Minnesota's lawyers, despite having no legal obligation to do so, stepped forward to help those harmed by a fellow lawyer.

Prior to 1986, the Minnesota State Bar Association had maintained a client security fund using voluntary contributions of bar association members. The MSBA's fund had a limit on claim payout of only $5,000, which even in 1985 dollars was woefully inadequate. Board members investigated the claims themselves without the benefit of professional staff. The one time in that fund's history that a relatively major act of misappropriation occurred, the fund could only pay a small fraction of the loss, literally pennies on the dollar.

In 1985, St. Paul attorney John Flanagan made headlines by disappearing from the state at about the same time that claims started to surface that he had misappropriated substantial amounts of client funds. It appeared likely that more than $250,000 was missing from at least twenty or more victims. Even before Flanagan was captured in Utah and returned to Minnesota to face criminal charges which ultimately led to his imprisonment, the MSBA, foreseeing that their fund could not possibly fully reimburse Flanagan's victims, petitioned the Minnesota Supreme Court to create a new court-supervised client security fund into which all Minnesota-licensed attorneys would pay. The MSBA further offered to transfer the balance in their existing fund, approximately $150,000, to help jump start the new fund. The Supreme Court accepted and approved the petition, thus creating the current Client Security Fund. But it still needed to adopt rules and



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procedures before it would have the ability to pay anyone.

Around the time the Supreme Court was establishing the court-supervised fund, a second Minnesota lawyer, Fridley's Mark Sampson, absconded from the state, also leaving behind a trail of claims of missing client money. Sampson's total misappropriations appeared even larger than those of Flanagan, in the neighborhood of $400,000 or more. More bad headlines about lawyers covered the local papers. The Supreme Court became concerned that the new fund could be swamped even before it got started.

In response, the Supreme Court determined that all Minnesota lawyers would be required to make a one-time payment of $100 to quickly build up a fund that could handle the anticipated barrage of claims. Thus, approximately $1.7 million was raised in the first year of the Board's existence. Rules were adopted and the first claims were considered in July 1987. The victims of Flanagan and Sampson, who also were eventually captured and returned to Minnesota to face criminal charges, had their claims considered and more than $500,000 was paid to victims of those two by-then disbarred lawyers.

Because of the fiscally responsible decision made by the Supreme Court to make certain the Client Security Fund was adequately funded from its inception, the fund remains healthy and vibrant. Since the beginning of the fund, as part of maintaining the fiscal stability of the fund, the Supreme Court has dedicated a portion of the annual lawyer registration fees to the fund. The amount has varied over time but currently twelve dollars of each lawyer's fee is dedicated to the fund. The fund currently has a balance of approximately $3.7 million dollars which ensures the fund is able to continue to pay eligible claims even if a lawyer misappropriates large amounts. Currently, at $150,000, the fund has one of the highest per claim limits in the country.

Over the life of the fund, the board has been able to fully compensate most of the eligible claimants because of the generous per claim limit. Also, because of the health of the fund, the fund does not have to place a per lawyer limit on claims. Many states stop considering claims against a lawyer once they meet the lawyer limit. This means that clients who learned of the lawyer's dishonest conduct later may not be compensated for their loss. Other states wait until they have received all claims against a lawyer and then apportion the money under the per lawyer cap which sometimes result in claimants receiving only a portion of their claimed amount. In Minnesota, we do not have this problem and are able to entertain all eligible claims against one lawyer.

Since its inception, the board has consisted of seven members. Of the seven members, five are lawyers and two are non-lawyers. Three of the lawyer members are nominated by the Minnesota State Bar Association for approval by the Supreme Court while the other two are appointed directly by the Supreme Court. The two non-lawyers are directly appointed by the Supreme Court. Over the years the lawyer members have come from various areas of the law, have been from around the state, have been from big firms and solo practice, and have represented both the private and public sectors of the legal profession. The non-lawyer members also come from widely varying backgrounds including business, accountancy, community organizations, and human resources–even a Catholic nun served on the board at one time. The board members receive no compensation for their service but can be reimbursed for their board-related expenses. All members take their roles seriously and enjoy the part they play in restoring trust in the legal system.

The day-to-day operations for the board are handled by two members of the staff of the Office of Lawyers Professional Responsibility. The staff members conduct investigations of the claims and also answer inquiries regarding the claims process.

Potential claimants are able to obtain claim forms from the board's office or from the board's website: *http://csb.mncourts.gov.* The claim forms currently are available in English and Spanish. For a claim to be considered, claimants must sign a subrogation agreement that allows the board to pursue the claimant's potential legal claims against the attorney. Once a claim is submitted, staff gathers information relevant to the claim for the board's review. The gathering of information includes looking at files from the Office of Lawyers Professional Responsibility as well as obtaining additional documentation. The board generally meets quarterly to make decisions about whether or not to pay and how much to pay on an approved claim. On rare occasions, the board will table a claim and ask staff to provide further information on a particular issue. The staff attempts to gather that requested information in time for the board's next meeting. If a claim is denied, the claimant is able to request reconsideration within thirty days of the letter notifying them of the claim's denial. With few exceptions, the claims to be reconsidered are discussed at the next meeting of the board.

For a claim to be paid, it must be established that a loss of property occurred due to a lawyer's dishonesty related to an attorney-client relationship. It must be shown that the property was in the possession of the lawyer and that the lawyer caused the loss of the property through dishonest conduct. A claim solely about the quality of a lawyer's work is not payable. Similarly, claims that are purely about the amount of a lawyer's fees are not payable. The board also does not pay for the consequences of the loss of the property, such as attorney fees from any collection action brought by the claimant against the lawyer, but only for the loss of property itself.

The most common type of claim paid by the board is a claim for an unearned retainer. In these claims, the lawyer takes money to address a legal problem for the claimant and then does no work or an insignificant amount of work on behalf of the client. Although the unearned retainer claims are more frequent, the larger value claims involve a lawyer receiving funds on behalf of the client but converts those funds to the lawyer's own use.

Since its inception, the Board's volunteer members, both lawyers and nonlawyers, have unraveled hundreds of difficult claims against many of Minnesota's most notorious lawyer thieves. Former Minneapolis lawyer Stephen J. Rondestvedt, who pleaded guilty to mail fraud in 2003, still tops the list of lawyers as having the most claim money paid out on his behalf.[1] Former Edina

lawyer Norman J. Gurstel, who in 1998 also pleaded guilty to mail fraud, holds the record for the most claims paid against him, with a total of thirty-three claims.[2] The lawyers against whom the largest amounts have been approved by the Client Security Board are:

- **Stephen J. Rondestvedt**
  $853,189.12, 23 claims
- **Dennis J. Morgeson/Bruce P. Wyant**
  $547,922.67, 8 claims
- **Gregory Engwall**
  $474,262.18, 6 claims
- **Deno W. Berndt**
  $438,012.94, 14 claims (thus far)
- **Peter I. Orlins**
  $419,843.39, 11 claims
- **Mark A. Sampson**
  $404,742.04, 20 claims
- **Steve Samorski**
  $231,829.50, 23 claims
- **Bruce C. Douglas**
  $225,309.60, 11 claims
- **Gerald McNabb**
  $147,866.06, 13 claims
- **Norman K. Gurstel**
  $147,270.05, 33 claims
- **Glenn L. Smith**
  $139,391.05, 3 claims
- **John J. Flanagan**
  $113,626.59, 6 claims

Of the nearly $7 million paid out by the fund, the payouts on claims against these attorneys account for $4,143,265.19—nearly 60 percent—of that total. None of these individuals remain in practice. Rondestvedt, Wyant, Berndt, Orlins, Sampson, Samborski, McNabb, Gurstel, Smith, and Flanagan were all disbarred. Engwall and Douglas passed away prior to the decisions on the claims, and Morgeson was transferred to disability inactive status. In addition to losing their Minnesota law licenses, many of them have served prison time for their dishonest conduct.

The only thing lawyers who have had claims paid against them seem to have in common is the access to someone else's property and their dishonest conduct which led to the loss of property. The lawyers have worked in various areas of the law, including but not limited to, personal injury, family, collections, bankruptcy, estate administration, estate planning, and real estate. The dishonest lawyers have come from all over the state from Annandale to Winthrop.

The work of the board is not complete upon the payment of a claim. The board works with the office of the Attorney General and the Minnesota Department of Revenue to recover the money paid out on behalf of dishonest lawyers. The Attorney General will negotiate payment plans which include confessions of judgments or obtain judgments against the offending attorneys. Once a judgment is obtained, the board uses the Minnesota Department of Revenue to collect the debts. Additionally, lawyers who wish to be reinstated to active practice generally must satisfy their debt to the fund before they can be reinstated. Of the total paid, the board has been able to recover approximately one-third of the monies paid out and continues to collect on the debts.

Approximately forty-eight lawyers have completed their restitution obligations to the board. Of the lawyers identified above, only Gerald McNabb and Norman K. Gurstel have made complete restitution of the amounts which were paid on their behalf. Several others are making consistent payments on the debt they owe, and still others make occasional payments.

While in an ideal world, the fund would not be needed, reality makes it necessary. Even though very few lawyers steal from their clients, every time a lawyer steals money from a client, the profession as a whole is impacted. As a self-regulating profession, the existence of the Minnesota Client Security Board improves the perception of the profession because it is our attempt to make it right.

[1] *See* U.S. v. Rondestvedt, No. 03:CR-00323 (JRT) (D. Minn. 2003).

[2] *See* U.S. v. Gurstel, No. 98:CR-00204 (ADM/FLN) (D. Minn. 1998).