

**OFFICE PROFILE:
MINNESOTA CLIENT SECURITY FUND
TURNS 10 ON JULY 1, 1997!**

By

Kim Buechel Mesun, Chair
Minnesota Client Security Board

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Approximately ten years ago, a Fridley, Minnesota attorney named Mark Sampson left Minnesota in the dead of the night leaving behind his family, large debts and many questioning clients. When the dust settled and the clients gathered their records, they discovered that Sampson had stolen over \$430,000 from them. Where were they to turn to recover their loses? The answer was the Minnesota Client Security Fund.

Many attorneys practicing at that time will recall Sampson as the attorney who, together with another miscreant attorney named John Flanagan, caused the Minnesota Supreme Court to impose a onetime \$100 licensing fee surcharge on all attorneys licensed in the state. From this assessment, the current Client Security Fund, under the jurisdiction of the Minnesota Supreme Court, was born.

In the almost ten years since its existence (July 1, 1987 through April 28, 1997), the Client Security Fund has paid out 204 claims worth \$2,564,440. These claims resulted from the dishonest acts of 64 attorneys. During that same time period, 405 total claims were filed with the fund. Of those total claims, 169 were denied, 16 withdrawn and 16 are pending review.

The decision to pay or deny a claim is made by the Client Security Board. The Board consists of seven unpaid volunteer members; five attorneys and two nonattorney public members. The current members of the Client Security Board are: Chair: *Bailey W. Blethen*, partner with the Mankato law firm of Blethen, Gage and Krause, appointed July 1, 1991; *Sister Mary Madonna Ashton*, public member, former Commissioner of the Minnesota Department of Health, appointed July 1, 1992; *Daniel L. Bowles*, partner with the Bloomington law firm of Larkin, Hoffman, Daly & Lindgren, appointed July 1, 1994; *Timothy J. Kuntz*, partner with the South St. Paul law firm of LeVander, Gillen & Miller, appointed July 1, 1996; *Beverly K. McKinnell*, public member, former President of the Minnesota League of Women Voters, appointed December 9, 1996; *Kim Buechel Mesun*, Assistant Attorney General, appointed July 1, 1993; and *Daniel L. Rust*, partner with the Crookston law firm of Johansson, Taylor, Rust, Tye & Fagerlund, appointed February 8, 1996.

Though all seven members of the Board are appointed by the Minnesota Supreme Court, three of these appointments (Bowles, Mesun and Rust) are based on Minnesota State Bar Association (MSBA) nominations. In 1993, based on the recommendation of a MSBA-appointed committee created to review Client Security Fund issues, the MSBA designated one of its three nominated positions to be for a public lawyer. Kim Buechel Mesun is currently in her fourth year in that position. Each Board member is appointed for a three-year term and can serve a maximum of two terms (six years). Bailey Blethen is finishing his second outstanding year as chair and his sixth year on the Board. When his term expires on July 1, 1997, his replacement will be appointed by the Supreme Court and a new Chair elected by the Board. The Board's current liaison to the Supreme Court is justice Kathleen Blatz.

The Acting Director of the Client Security Fund is Marty Cole. Cole has been the Assistant Director of the Fund since its inception. The Board relies heavily on his experience and institutional memory in reviewing its claims.

The rules of the Client Security Board are published and can be found in the court rules volume of the Minnesota Statutes. They also can be obtained via the internet at <<http://www.courts.state.mn.us/csb/csb.html>>. Basically, the Client Security Fund covers most situations in which Minnesota-licensed lawyers, through their dishonest acts, have stolen clients' money or other property entrusted to them. The attorney must have served the client as an attorney, in a fiduciary capacity (as administrator, executor, trustee of an express trust, guardian, or conservator), or as an escrow agent arising from an attorney-client relationship. There is a cap of \$100,000 per claim, but no limit on the total amount paid for claims filed against any one attorney. Though many times presented to the Board, attorney malpractice claims and fee disputes are not covered by the fund. Claim forms can be obtained by calling the Client Security Board at 612/296-3952 or toll-free at 1-800-657-3601 or through the Board's website.

Claims paid out by the fund on behalf of an attorney can, if financially possible, be collected from that attorney. The Minnesota Attorney General's Office attempts to collect these moneys for the fund. Since 1990, \$165,019 in restitution has been recovered by the AG's office for the fund. A disciplined attorney cannot be readmitted to fully active status unless he/she has made full restitution to the fund.

The administrative costs of the fund are low. In the first nine months of fiscal year '97 (July 1, 1996 - March 31, 1997) administrative costs totaled \$19,446. This includes payment for the Director's time and that of a Legal Assistant (Patricia M. Jorgensen) when they are working on Client Security Fund matters. Because the fund relies heavily on the disciplinary process for its claim investigations and factual findings, it is able to keep down its investigative costs.

The actual total claims payouts for the last nine years are:

FY 88	\$489,656
FY 89	\$236,016
FY 90	\$260,561
FY 91	\$235,316
FY 92	\$150,180
FY 93	\$200,681
FY 94	\$123,600
FY 95	\$ 62,421
FY 96	\$705,524

The abnormally large payout in FY '96 was due mainly to the eight claims paid for attorneys John D. Morgeson and Bruce P. Wyant totaling \$547,922, the bulk of which was paid in FY '96.

Currently, each licensed attorney is assessed \$20 annually for the Client Security Fund as part of his/her license fee, for an average yearly total contribution to the fund of \$360,000. The current fund balance is projected to be approximately \$1,800,000 at the end of FY '97.

In addition to its claims activity, the Client Security Board sees as part of its charge researching measures that can be put in place to prevent lawyer theft before it occurs. From the perspective of client protection and lawyer reputation it would be much more cost effective to spend fund money on preventative measures rather than after-the-fact restitution. Measures considered by the Board in the past have been: trust account overdraft notification, random audits of trust accounts, and a rule requiring direct notification of insureds when an insurance company issues a check to their attorney. Of these measures, the overdraft notification rule has been put in place. *See* Minn. R. Prof. Conduct 1.15(i)-(j)

The Client Security Fund is in the process of updating its computer capabilities. With this update, it will be easier to obtain statistical data and detect any patterns of attorney theft. Such information will assist the Board in considering other available avenues to limit attorney theft, with the ultimate "dream" to eliminate attorney theft altogether.