Tightening The Purse Strings In Minnesota

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Ken Bossong's commentary in the January 1998 issue of ***The Client Protection Webb*** ("Assessing Without Apology") is a powerful argument for an adequately financed client protection fund. The editorial closed with the warning that: "few funds have reduced their assessments without an eventual regret for the decision." We here in Minnesota hope this prophesy allows for an exception or two.

In May, 1998, the Minnesota Supreme Court ordered that the annual assessment for the Minnesota Client Security Fund be reduced from $20 to $17. Remarkably, perhaps, this reduction came after the fund's trustees proposed to the court a reduction to $15. Why? Perhaps our unique situation and history will prove instructive.

When the Minnesota client protection fund was established in 1986, there was no annual assessment; but a one-time $100 surcharge on the 1987 attorney registration fee. This generated $1.4 million for the payment of pending claims, but promised no ongoing source of revenue. Four years later, the fund's assets hovered near the $500,000 level.

Following a bar committee's recommendation, and despite objections of many attorneys, the Supreme Court in 1992 imposed an annual assessment of $20. The fund has been healthy and growing since, and was even able to absorb a record payout of more than $700,000 in 1996. To quote the Bossong editorial: "It's not a crime for a fund to be financially healthy."

When the annual assessment was debated, there was healthy debate about how much money the fund needed to be considered "healthy." The state bar association proposed that the fund aim for $2.5 million; others said that $1.0 million was enough. The Supreme Court ordered that the fund report to it whenever there was a projected balance in the fund in excess of $1.5 million.

In 1997, the fund reported a projected balance of nearly $2.0 million, and indicated that it was planning to study the fund's revenue needs to determine whether a reduction in the annual assessment was feasible.

Instead, the court "reallocated" $7 of the $20 assessment, on a one-year basis, to the Minnesota Board of Continuing Legal Education for a much-needed computer project.

The court also requested the fund to expedite its revenue study. In response, the trustees recommended that the court "only" cut the fund's annual allocation by $5.

Was there a downside risk to this action? Of course. The trustees carefully studied various budget projections before making their recommendation to the court. Indeed, while the matter was pending, a major defalcation case came to light, from which it appears likely that approximately $500,000 or more in unanticipated and valid claims may result.

Situations like this every other year or so could still be handled by the fund, but more could prove difficult. And frankly, beginning a new fiscal year with less money coming in and one such major case already known is scary indeed. Perhaps in recognizing of this risk, the Supreme Court reduced the fund's allocation by only $3, thus retaining more than what the trustees were prepared to accept.

Assessing without apology is a valid aspiration for those of us working in the client protection field, for if we are not advocates for healthy funds, how can we expect others to advocate for us? Nevertheless, the reality in many states is that "healthy" is a very relative term, and maintaining good health sometimes requires short-term compromise. Time, of course, will tell.