

Client Security Board Deals With Some Difficult Claims

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Among the duties performed by the Office of Lawyers Professional Responsibility is to act as staff to the Minnesota Client Security Board. That board's function is to make restitution to the victims of dishonest conduct committed by Minnesota lawyers in an attorney-client relationship, and in some closely related fiduciary capacities.

Many of the claims paid by the board involve serious acts of dishonesty such as settlements negotiated without a client's knowledge or consent, forged endorsements, forged powers of attorney, or direct misappropriation of client money from an attorney's trust account.

Despite the seriousness of such claims, they are comparatively easy for the board to resolve and usually result in prompt payment to the claimant, often of substantial amounts of money. For the respondent attorneys, such conduct results in disbarment or lengthy suspension, in addition to the possibility of criminal prosecution.

On the opposite end of the spectrum, the board does not pay claims based on negligence, or claims for items such as loss of profit or consequential damages.

Some other types of claims with which the Client Security Board deals are more difficult, however, and can result in lengthy debate before resolution. Two such types of claims are those involving investments or loans, and claims seeking a refund of an unearned retainer from a disbarred or suspended lawyer.

Even though the Supreme Court amended the Client Security Board's rules in 1995 to help clarify how such claims are to be resolved (Rule 3.02(i), RMCSB), these claims can still present difficult fact situations and determinations for the board.

Lawyers are not necessarily trained investment advisors. Nevertheless, many lawyers perform this task for their clients, and no doubt most of those provide sound financial guidance and insightful investment advice. Investments that do not produce as well as hoped do not automatically indicate any dishonesty on the attorney's part. Even the best stockbrokers in the country provide some bad investment advice occasionally.

So when do investment claims involve dishonesty and become recoverable? While there is no absolute answer to the above question, claims that have been paid most often involve attorneys who advise their clients to invest money in a business owned or controlled by the attorney, and the company is a sham operation or perhaps near bankruptcy and only being propped up through unsafe investments. The attorney may have made misrepresentations or provided worthless personal guarantees to the clients, who, because of the trust placed in the attorney, invest their funds without adequate investigation. Even then, not all such claims are payable, and the distinctions between claims are often difficult for the board to draw.

A key fact in these matters is whether the investor was indeed a client, especially before he or she began investing his or her money, and whether the funds involved were the product of legal representation by the attorney.

Loans to a lawyer are treated similarly and may be payable by the board if it appears that the lawyer had no real intention or ability to ever repay the amount received, such that dishonesty can be inferred. Again, a pre-existing attorney-client relationship is often critical to being able to pay such claims.

Unearned retainer claims are the other major type of difficult claim faced by the Client Security Board. The easiest situation is when an attorney, already facing imminent suspension or disbarment in a pending disciplinary proceeding, accepts a large advance fee from an unsuspecting client, and then performs no work before the court takes his license. When the attorney fails to refund the advance fee, the Client Security Board usually will do so.

Many other situations are far less clear, however. The board does not resolve simple fee disputes, but when is it not a fee dispute? When does the conduct become dishonesty? All successful unearned retainer claims to date have involved attorneys who have been publicly disciplined, transferred to disability status or are deceased. Beyond that, the board's rules indicate the lawyer must have performed no work or an insignificant amount of work, and refused to refund the advance fee. Because many of these claims involve lawyers who refuse to cooperate with the investigation, there is often limited direct proof of whether any services were performed and so remain difficult to resolve.

The volunteer members of the Client Security Board meet regularly to unravel such difficult claims. Since its creation in 1987, the board has paid approximately \$4 million in claims against almost 90 former Minnesota lawyers. These 90 are a very small percentage of the thousands of lawyers licensed in Minnesota during these years, but they have done considerable damage to their victims and to the profession's prestige. The board has helped restore lost funds and, hopefully, some of that prestige for over 300 victims of lawyer dishonesty.