

The Client Security Board: Why Do We Care?

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What is the Connection Between the Client Security Board and the Public Law Section?

The members of the Client Security Board (CSB) are appointed to three year terms by the Minnesota Supreme Court. The Board consists of five attorney members and two public (non attorney) members. Three of the attorney members are nominated by the Minnesota State Bar Association (MSBA). Since 1993, based on a recommendation 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:

Michael T. Rengel – Chair (MSBA nominee)
Gary G. Fuchs
Robert T. Lund
Richard A. Nethercut (MSBA nominee)
Bonnie R. Russ (Public member)
Sally DeLaittre Sawyer (Public member)
Harriet J. Sims (MSBA nominee, PLS member)

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

Kim Mesun	1993-1999
Margaret Westin	1999-2005
Warren Sagstuen	2000
Harriet Sims	2005 to present

What are the Client Security Fund and the Client Security Board?

The Client Security Fund was created nearly 20 years ago in response to a situation involving a lawyer in private practice who stole client funds. The Fund was established to reimburse clients who are the victims of unscrupulous lawyers. Clients often have no other recourse or have been only partially compensated. In 1987 all attorneys practicing in Minnesota were assessed \$100 to repay the over \$430,000 stolen by one attorney. The Fund remains solvent through a portion of attorney registration fees. The exact amount that goes to the CSB has varied over the years. Currently \$12 of every attorney's registration fee goes to the Client Security Fund. The Fund's current resources are slightly over 2.5 million dollars. During the year ended June 30, 2006 the Fund paid out \$220,223.03 in claims against 16 attorneys. Since its inception in 1987 through June 30, 2006 the Fund has paid \$5,561,912.83 in 437 claims against 123 attorneys. While this seems like a lot of money, it is important to note that over half of that amount related to eleven attorneys.

The Client Security Board (CSB) meets approximately 4 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. Therefore some attorneys have had multiple claims filed against them. Claims must relate in some way to theft or dishonest conduct by a Minnesota

licensed attorney which results in a loss to the client. The matter must 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 for reconsideration.

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 Should Public Attorneys Care About the Dishonest Conduct of Private Attorneys?

The cynical answer is that part of our fees goes to fund payments to clients who have suffered losses due to the dishonest conduct of lawyers, a "follow the money" argument. Nearly twenty years ago when lawyers were assessed that first \$100, some public lawyers argued that because we do not have access to client funds we should not have to pay for thievery by lawyers in private practice. That argument did not prevail for good reasons. We are all attorneys, we all took the same oath, and we are bound by the same ethical principles as attorneys in private practice. There is a collective responsibility. The same duty to uphold the profession that comes with the privilege of practicing law falls equally on our shoulders regardless of whether we are personally in a position to stumble. It is also important that the legal profession in Minnesota remain as self-regulating as possible.

I consider membership on the CSB a way to give back to the profession by performing a public service. It is both a duty and a privilege. Serving on the CSB is also pretty interesting; one sees the seamy side of the profession. But it is also gratifying to know that lawyers in Minnesota can at least do something to clean up our own messes. The CSB rules state that the claim must arise "out of and during the course of a lawyer-client relationship of a matter in this state, or a fiduciary relationship between the lawyer and the claimant which arose out of a lawyer-client relationship in this state." CSB Rule 3.02.b. The Board has at times wrestled with whether the client's loss arose out of an attorney client relationship or whether acts committed in another state by an attorney licensed in Minnesota could form the basis of a claim, especially if the only relationship to Minnesota is the license. As law practices become more multijurisdictional this issue is bound to come up more and more.

Another issue that the CSB considers with some frequency is whether the loss is due to malpractice or a fee dispute. The

Fund does not compensate losses in those circumstances. In some cases clients file claims because they are not happy with the result. More troubling for the Board are situations where it is difficult to tell if the attorney's neglect of a case amounts to keeping a fee and then doing very little which is of value for the client. Is the neglect so egregious as to be considered theft of the client's money or simply a fee dispute? Or is it a case of malpractice to be dealt with in another arena? These and other interesting issues are part of the work of the CSB.

This past June I had the opportunity to attend the 22nd ABA National Forum on Client Protection in Vancouver B.C., Canada on behalf of the CSB. This gave me a chance to see how other states and provinces struggle with similar issues. I was glad to

see that Minnesota stacks up quite well against the other jurisdictions. Some states have smaller or larger funds, higher or lower caps or have different funding mechanisms but we all deal with the same issues.

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>.