

**Collection Efforts by the Client Security Board:
What a Thief Won't Do to Stay Out of Jail**

by
**Martin A. Cole, Assistant Director
Minnesota Client Security Board**

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Obtaining repayment of the money paid out by a client protection fund on behalf of a lawyer thief is no easy matter. Each year, client protection agencies nationwide pay out millions of dollars on claims against attorneys who have misappropriated their clients' money, with little realistic hope of recovering these amounts from the attorney. Such attorneys are, almost without exception, disbarred or at least suspended from practice for many years. Many will be criminally convicted and serve time in a state or federal penitentiary. As a group, they make poor targets for collection efforts.

Like most client protection agencies, the Minnesota Client Security Board seeks to recover the money it pays out through enforcement of its subrogation rights obtained from claimants as a condition of payment. Over its history, the Board has averaged recovery of approximately \$24,000 each year, which represents about 6% of the total amount of all claims paid. Three general methods of collection are being used, with varying degrees of success.

The principal method of collection is through subrogation enforcement by the Attorney General's office. Steps taken by the Attorney General include: obtaining assignments of judgments from claimants; obtaining judgments if one doesn't already exist (which may include combining several such claims into one new action), usually by default; aggressively pursuing collection efforts on the judgment through discovery or garnishment; entering into payment agreements with the attorneys; and revenue recapture of tax refunds or any other state money. Repayment agreements have been common; consistent payments have not.

The second method is reinstatement proceedings. If a suspended or disbarred lawyer seeks reinstatement to the practice of law in Minnesota, he or she is required to repay the Client Security Fund for any amounts paid on the attorneys behalf as a precondition to reinstatement. Our Board has been quite insistent upon strict compliance with this requirement and, at least in the case of some attorneys who were only suspended for a relatively short period (and whose suspension often resulted in payment of several small unearned retainer-type claims by the Board), this has proven an effective method to achieve complete reimbursement. Unfortunately, the truly big money thieves rarely will be seeking reinstatement in the foreseeable future.

The third method of repayment has been through the criminal restitution process. Until quite recently, this approach has definitely been number three of three in effectiveness in Minnesota. At least one recent case has dramatically changed that perception, however.

Not all attorneys who misappropriate client or fiduciary funds are criminally prosecuted. The exact reasons for any inconsistency are unclear, but no doubt include varying workloads and priorities in different jurisdictions, the willingness of victims to seek prosecution and the precise nature of the method of the theft. Whatever the reasons for some lawyer thieves avoiding prosecution in the past, more recently local prosecutors have aggressively sought criminal penalties for lawyer misappropriation.

Of more particular interest to the Client Security Board have been the efforts of prosecutors to seek reimbursement to the Fund of any amounts paid out on behalf of these attorneys. For some time restitution orders have been included in sentencing or made a condition of probation, but the amounts actually received by the Board after conviction have been quite minimal. Recently, however, prosecutors have been making contact with the Board prior to conviction, or as part of negotiating any plea agreement. The Board can then provide information on the number of claims received, paid, or likely to be paid. Potential claims known, but not yet filed, can also be identified. At that point in the process, the incentive for an attorney-defendant to suddenly find the money necessary to repay the Client Security Board, with the hope that such an act will count towards a reduced sentence (less or possibly even no actual jail time), has proven remarkably effective. An attorney facing several years in prison recently paid \$150,000 to the Client Security Board to repay claims paid and pending, as part of a negotiated plea with federal prosecutors, in the hope of convincing the judge to impose a reduced sentence. This is money which likely would not have been recovered (certainly not in such an amount or without collection efforts) through any other means. It is remarkable what the fear of going to jail can do in some cases!

The Client Security Board is committed to aggressively seeking reimbursement for claims paid on behalf of dishonest lawyers. Although the success rate (dollarwise) may seem low, the effort is satisfying and serves to remind lawyer thieves that their conduct will not be forgotten.