

OFFICE OF
APPELLATE COURTS

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ANNUAL REPORT OF
MINNESOTA CLIENT SECURITY BOARD

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June 1990

TABLE OF CONTENTS

	<u>Page</u>
I. OVERVIEW	2
II. SUMMARY OF ACTIVITIES AND PROCEDURES OF THE CLIENT SECURITY BOARD	5
III. GOALS AND OBJECTIVES	9

I. OVERVIEW.

Rule 1.10, Minnesota Rules of the Client Security Board, provides:

At least once a year and at such other times as the Supreme Court may order, the Board shall file with the Court a written report reviewing in detail the administration of the fund, its operation, its assets and liabilities.

This third annual report of the Minnesota Client Security Board covers the period July 1, 1989, through June 15, 1990.

Highlights. Major accomplishments for the third year of operation of the Client Security Board have been:

- (1) Continuing to resolve claims as promptly as possible, so that only five claims remain pending that were filed prior to 1990, and only one claim is more than seven months old. Disciplinary and civil proceedings have not been completed in three of the five claims and respondents are making some attempt at restitution in the other two. The Board's goal, as always remains to resolve claims promptly after disciplinary proceedings and related civil or criminal proceedings are completed.
- (2) Evaluating future client security funding needs and proposing a funding method which should provide a continued healthy fund as a means of public protection. The Board has petitioned the Court to add \$25 to the attorney registration fee and to allocate this addition to the Fund.
- (3) Pursuing subrogation rights against attorneys or third persons where appropriate. The Board recently settled

litigation against a lawyer and a bank, recovering \$35,000 on a claim of approximately \$57,000.

Claims. The Board has continued to act promptly to resolve nearly all claims for reimbursement which the Board received. As of June 15, 1990, 17 claims, alleging losses totalling \$982,167.66, are pending before the Board, only five of which were filed prior to 1990, and only one of which is more than seven months old. When the fiscal year began, there were 16 claims pending before the Board. All but one of those claims has been resolved. The Board received 37 new claims during the past year and in total resolved 36 claims in the past year. Twenty-three claims were approved in the total amount of \$256,661.46.

Thirteen claims were denied as not meeting the requirements for payment under the Board's rules. Almost all of the claims denied were either malpractice claims, fee disputes, or did not arise out of an attorney-client relationship or a fiduciary relationship closely related to an attorney-client relationship. Some claimants may be able to recover from the Real Estate Recovery Fund, since their attorney appeared to be acting as a real estate broker.

In its three years of operation, the Board has now paid 72 claims, totalling \$985,178.19. Fifty-four claims have been denied by the Board. Attachment 1.

The Board generally limits payment on any one claim to \$50,000. By adopting a maximum payment amount as a Board policy, rather than recommending a formal rule to the Court, the Board may award more than \$50,000 in cases of extreme hardship depending on the Fund's resources. In the past year, this maximum amount was applied to only one claim which would have

exceeded the maximum \$50,000. All other claims which met the Board's rules this year were paid in full.

Ten claims in the amount of \$176,119.60 were approved in the last year against a deceased attorney, who died leaving behind a sizeable trust account shortage. No claim was made or loss suffered in connection with the theft by James O'Hagan of approximately \$3 million. O'Hagan, who was disbarred and found guilty, restored the funds he took.

Funding. On June 8, 1990, the Board filed a petition in the Minnesota Supreme Court seeking an increase in the attorney registration fee in the amount of \$25.00 per attorney (practicing more than four years) per year in order to continue to provide an adequate funding mechanism for the Fund. As the petition and supporting statement point out, the Board anticipates a balance at the end of the next fiscal year (June 30, 1991) of \$489,639. The Board's budget for the period ending June 30, 1992, projects the Fund being reduced to only \$219,704 without the proposed fee increase. The Board expects that there will be a comment period concerning this issue and that the Court will hear and decide the matter in the fall of 1990.

Collections. In the past year, the Board had its first successes in recovering monies paid out by the Board on behalf of Minnesota lawyers. The Attorney General's office has handled several recovery matters, including a recent settlement against a bank and a lawyer's partner. In this matter, the Board had paid over \$57,000 on two claims against a deceased attorney. The surviving partner was unaware of his partner's misappropriation, but he was sued by the Board on a claim of partnership liability. Prior to trial, the matter was settled for \$35,000 from the two

defendants. This is the first sizeable recovery made by the Board to date. Two other attorneys have paid or are making payments to the Board on smaller claims.

II. SUMMARY OF ACTIVITIES AND PROCEDURES OF THE CLIENT SECURITY BOARD.

The Board has five lawyer members and two non-lawyer members, all volunteers, and is chaired by Minneapolis attorney Melvin Orenstein. The Office of Lawyers Professional Responsibility provides staff services to the Board for investigating claims and conducting Board meetings.

Board Members. The following individuals serve on the Board:

<u>Name</u>	<u>Term Expires</u>
Melvin I. Orenstein, Minneapolis	June 30, 1990
Gilbert W. Harries, Duluth	June 30, 1991
Jean L. King, St. Paul	June 30, 1992
Constance S. Otis, St. Paul	June 30, 1990
Ronald B. Sieloff, St. Paul	June 30, 1991
James B. Vessey, Minneapolis	June 30, 1990
Nancy B. Vollertsen, Rochester	June 30, 1992

Mr. Orenstein was elected chairman by the Client Security Board. Ms. King and Ms. Otis are public members. All other members are licensed attorneys. Mr. Orenstein and Mr. Vessey are eligible to reappointment to another three-year term. Ms. Otis, although eligible for another term, will not seek reappointment. A new public member will be appointed by the Court before July 1, 1990. The Board's liaison on the Minnesota Supreme Court is Justice A. M. Keith.

Rules of the Minnesota Client Security Board. The rules took effect on July 1, 1987. To date, there have been no amendments to the Board's rules. The Board's fiscal year runs from July 1 through June 30. The Board is required to meet at least annually. The Board will meet on eight occasions from July 1989, through the end of June 1990.

Funding and Budget Procedures. An assessment of all licensed Minnesota attorneys was authorized by the Court in April 1987. The first year, this assessment applied to all licensed attorneys, and raised approximately \$1.4 million. Now, the Board receives each year only \$50 payments from new attorneys and from those "graduating" from the "less-than-three-year" category. This year's assessment will generate approximately \$75,000 for the Fund. The Fund also received approximately \$67,000 in investment income this year. Pursuant to Minn. Stat. § 481.20 (1988), the Board receives the investment income earned on the balance of the Fund. The Department of Finance issues all payments upon authorization from the Board Chair. The Board does not handle any funds or the investment of the Fund. The assessment is collected through the Office of Attorney Registration and placed into a segregated fund within the state treasury.

Budgets are prepared annually, and filed publicly, for approval by the Minnesota Supreme Court. Budgeting amounts to be paid for losses not yet known depends in part on the assumption that the future will be like the past - only a little more so. Despite the inherent unpredictability of future dishonesty, budgetary projections have been reasonably accurate. The Board's FY'91 budget was approved recently by the Supreme Court.

Payment of claims is the Board's largest expense item, with approximately \$256,000 in claims approved this year. The Board projects payment of \$350,000 in claims for FY'91. Administrative expenses of approximately \$15,000 were incurred by the Board this year.

Administrative Staff. The Office of the Director of Lawyers Professional Responsibility provides staff services to the Client Security Board. William Wernz, Director of the Office of Lawyers Professional Responsibility, is also Director of the Client Security Board. Attorney Martin Cole and legal assistant Patricia Jorgensen handle the Client Security Board's investigations on approximately a quarter-time basis. The Office of the Director bills the Client Security Board for these services on an hourly basis.

The Minnesota Attorney General's office provides legal services to the Client Security Board in enforcing the Board's subrogation rights against respondent attorneys or against third parties from whom payment may be obtained. Martha J. Casserly, Special Assistant Attorney General, is the Board's attorney for civil litigation. The Board does not pay attorney's fees for the Attorney General's representation, but is responsible for direct costs of litigation. The Board has aggressively sought reimbursement where appropriate, and is hopeful of some continued success in this area. The Board obtains subrogation rights on all paid claims. Recovery of amounts paid out by the Board, however, is never expected to be a significant source of additional revenue to the Board.

Claims Procedures. Claims are initiated by submitting the claim on forms approved by the Board to the Director's Office.

The respondent attorney is given an opportunity to respond to the claim in writing. A member of the Director's staff meets personally with the claimant in many cases, unless the claim clearly can be decided solely on the information in the claim or from any documents submitted by the claimant.

Claimants are normally required to pursue reasonably available civil remedies, including obtaining default judgments against the attorney. In most cases, attorney disciplinary proceedings will have been completed before Client Security payment can be made.

If a claim is denied, the claimant is notified in writing of the Board's determination and provided its reasoning. The claimant has the right to request reconsideration and a meeting with the full Board, so that the claimant will have full opportunity to present the merits of the claim before any denial is final. The Board believes that all claimants are provided a full opportunity to be heard and to present all documents and evidence in their favor before claims are finally resolved.

Education and Information. In addition to claims resolution, the Board also has an educational obligation. A brochure explaining Board procedures is provided to claimants along with claim forms. Attachment 2. The Board also provides speakers to explain the Client Security Board's operation and procedures to law firms or at CLE seminars. The Board's Director served this year on an MSBA-sponsored committee which proposed the recently adopted trust account overdraft notification rule, which is seen as a means to detect and to help reduce the amount of lawyer defalcations.

As the Board has been in operation almost three years it has begun to compile sufficient statistical data to begin to categorize claims paid by areas of law. Attachment 3. In the future the Board hopes to expand its record-keeping and more thoroughly analyze the information to determine if any patterns of defalcations emerge.

III. GOALS AND OBJECTIVES.

1. Claim Resolution.

The Board will continue to monitor matters where disciplinary or civil litigation is pending, so that resolution of these claims will occur promptly upon the completion of the related case. In FY'91, the Board intends to continue to pay all valid claims in full up to the \$50,000 limitation, despite the declining balance of the Fund. The Board believes full payment is vital to maintain public confidence in the system. The Board has budgeted approximately \$350,000 for claim payment next year.

2. Funding.

The Board will discuss the petition for a \$25 fee increase with the MSBA and other interested groups. The Board hopes that suggestions from the bar and the public will produce a healthy and well-funded client security system.

3. Rules.

The Board's rules have been in effect for three years without any change. The Board hopes to undertake an examination of the Rules to determine if any changes may result in an even more effective system.

4. Education and Publicity.

The Office of Lawyers Professional Responsibility will continue to notify prospective claimants of the existence of the

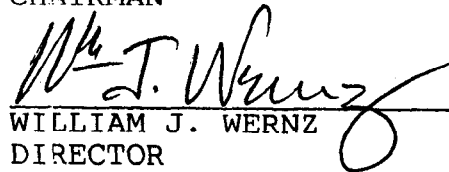
Fund during disciplinary investigations and help to provide claim forms to potential claimants. Groups are encouraged to contact the Board about speaking opportunities. The Board hopes to expand its efforts in these areas to fulfill its educational obligation.

The Board's first three years of operation have been successful. The Board continues to receive favorable responses from most members of the bar and the public. The Board hopes to remain a vital part of the overall protection of the public from the relatively small number of unethical and dishonest attorneys.

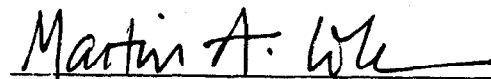
Respectfully submitted,



MELVIN I. GRENSTEIN
CHAIRMAN



WILLIAM J. WERNZ
DIRECTOR



MARTIN A. COLE
ASSISTANT DIRECTOR

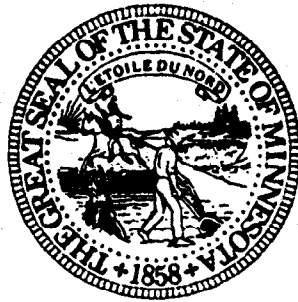
CLAIMS AND AMOUNTS PER ATTORNEY
as of June 15, 1990

Attorney	Pending	Amount	Paid	Amount	Denied
A.					1
B.	2	2,947.93			
B.			1	\$50,000.00	
B.	1	200,000.00			
B.					1
C.	1	277,000.00			7
D.			3	62,875.00	
D.					1
D.	1	157,569.01	10	175,309.60	
E.					1
E.	1	50,000.00			1
F.			2	12,954.00	1
F.			6	113,626.59	6
F.	1	23,363.84			
F.					1
G.					1
H.	1	192,000.00			
H.					1
H.	3	29,050.00			
H.	1	1,000.00			1
I.	1	535.78			
J.					1
L.			1	368.00	
L.	1	24,951.10			

CLAIMS AND AMOUNTS PER ATTORNEY
as of June 15, 1990

Attorney	Pending	Amount	Paid	Amount	Denied
L.			3	560.00	
M.					1
M.			7	24,170.00	3
M.					1
O.			3	15,297.73	
P.			2	39,000.00	
P.					1
P.			3	17,090.02	2
P.	1	19,250.00			
S.	1	600.00	20	404,678.55	13
S.					1
S.			2	57,821.34	
S.					1
S.					1
S.			1	2,360.23	
S.	1	2,900.00	5	2,349.26	
S.			1	557.87	
S.					1
T.					1
T.					1
T.			2	6,160.00	
T.					2
W.					1
TOTAL	16	\$982,167.66	72	\$985,178.19	54

Minnesota
Client
Security
Fund



Minnesota Client Security Board
520 Lafayette Road, 1st Floor
St. Paul, MN 55155-4196
(612) 296-3952

Attachment 2

What is the Client Security Fund?

The Client Security Fund is a fund established by the Minnesota Supreme Court to reimburse clients who suffer loss of money or other property from the dishonest conduct of their attorney. The Fund is a remedy of last resort for clients who cannot be repaid from other sources, such as from insurance or from the attorney involved. Claimants are expected to make reasonable efforts to collect from these other sources first.

Why was the Client Security Fund Established?

The legal profession depends upon the trust of clients. When a lawyer betrays that trust by taking client funds, it is important that the victims be fairly compensated.

How is the Fund Financed?

All active Minnesota lawyers pay for the Client Security Fund. None of the money in the Fund comes from clients' fees. No tax dollars are used.

Who Administers the Client Security Fund?

The Fund is administered by a Board appointed by the Minnesota Supreme Court. The Board has five lawyer members and two non-lawyer members. All serve without compensation as a public service. The Office of Lawyers Professional Responsibility provides staff services for the Board.

How Does the Client Security Board Operate and Make Decisions?

The Minnesota Supreme Court has adopted written rules for the Client Security Board. The Board follows these rules in its procedures and decisions. The Board is allowed a good deal of discretion in deciding what claims to pay and deny, and the amount of payment. A copy of the rules is available on request.

What Kinds of Losses are Covered?

The Client Security Fund covers most situations in which lawyers have stolen clients' money or other property entrusted to them. The attorney in question must be a Minnesota lawyer, and 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. The Board generally limits payment to \$50,000 per claim. Payment by the Board is a matter of grace, not of right.

What Kinds of Losses are Not Covered?

The Fund does not cover losses resulting from the malpractice or negligence of lawyers. The Board does not have the authority to discipline attorneys for misconduct, to resolve fee disputes, or to determine legal malpractice claims. Such matters should be reported to the Office of Lawyers Professional Responsibility or may be the subject of civil lawsuits.

***What Happens When a Claim is
Filed?***

Each claim is reviewed to determine eligibility for payment. If a claim is denied, the claimant will be advised of the reasons for denial. The Board determines the merit of all claims, and the amount of any reimbursement. In most instances, claimants meet personally with someone from the Board's staff.

How is a Claim Filed?

A claim form or other information or assistance may be obtained by writing to:

Minnesota Client Security Board

520 Lafayette Road, 1st Floor

St. Paul, MN 55155-4196

Telephone: (612) 296-3952

Reported Client Losses

July 1, 1987 through June 15, 1990

Table 1. This table summarizes, by area of law, all claims for reimbursement filed since July 1, 1987 (including claims carried on from MSBA Client Security Fund).

Area of Law	# of Claims	% of Claims	Amount of Loss Alleged	% of Alleged Losses
Personal injury	10	7	\$431,177.20	6
Tax	8	6	\$97,212.71	1
Litigation	19	14	\$3,517,825.20	47
Settlement	8	6	\$121,356.66	2
Real Estate	15	11	\$529,633.71	7
Probate	13	9	\$548,027.34	7
Dissolution	15	11	\$155,766.87	2
Bankruptcy	17	12	\$633,758.56	9
Criminal	9	6	\$159,431.47	2
Investment	10	7	\$564,911.36	8
Other	15	11	\$656,936.55	9
	139	100	\$7,416,037.63	100

Reported Client Losses

July 1, 1989 through June 15, 1990

Table 2. This table summarizes, by area of law, all reported losses in claims filed for reimbursement filed during fiscal year 1990.

Area of Law	# of Claims	% of Claims	Amount of Loss Alleged	% of Alleged Losses
Tax	1	3	\$7,934.10	1
Litigation	8	22	\$288,369.00	25
Settlement	2	5	\$25,285.78	2
Real Estate	3	8	\$211,850.00	19
Probate	2	5	\$25,568.70	2
Dissolution	4	11	\$3,406.26	1
Bankruptcy	7	19	\$8,225.80	1
Criminal	1	3	\$1,000.00	1
Investment	7	19	\$523,883.51	46
Other	2	5	\$25,863.04	2
	37	100	\$1,121,386.19	100

Awards Of Reimbursement

July 1, 1987 through June 15, 1990

Table 3. This table summarizes, by area of law, all awards of reimbursement approved by the Board since 1987.

Area of Law	#of Awards	% of all Awards	Amount of All Awards	Alleged Loss Involved	% of All Losses	% of Loss Reimbursed
Personal Injury	4	6	\$117,923.30	\$263,113.00	14	45
Tax	7	9	\$38,120.29	\$96,452.71	5	40
Litigation	12	17	\$214,846.60	\$277,723.60	15	90
Settlement	2	3	\$13,975.00	\$69,565.15	4	20
Real Estate	8	11	\$162,861.71	\$173,229.71	9	94
Probate	11	15	\$230,898.66	\$522,165.96	29	44
Dissolution	13	18	\$117,858.68	\$145,416.87	8	81
Bankruptcy	10	14	\$23,957.87	\$24,963.87	1	96
Criminal	3	4	\$60,821.69	\$71,031.47	4	85
Investment	0	0	\$0.00	\$184,342.35	10	0
Other	2	3	\$3,914.39	\$4,264.39	1	91
	<u>72</u>	<u>100</u>	<u>\$985,178.19</u>	<u>\$1,831,805.00</u>	<u>100</u>	

Awards Of Reimbursement

July 1, 1989 through June 15, 1990

Table 4. This table summarizes, by area of law, all claims for reimbursement approved by the Board during fiscal year 1990.

Category of Loss	#of Awards	% of all Awards	Amount of All Awards	Alleged Loss Involved	% of All Losses	% of Loss Reimbursed
Tax	3	13	\$15,569.73	\$71,264.81	9	21.8
Litigation	7	30	\$128,692.00	\$128,692.00	17	100
Settlement	1	4	\$12,475.00	\$67,716.81	9	18.4
Probate	2	9	\$50,617.60	\$243,280.24	34	20
Dissolution	5	22	\$3,019.26	\$3,444.26	2	87.7
Bankruptcy	4	18	\$1,287.87	\$1,377.87	2	93.5
Criminal	1	4	\$45,000.00	\$45,000.00	6	100
Investment	0	0	\$0.00	\$169,324.55	22	0
	<u>23</u>	<u>100</u>	<u>\$256,661.46*</u>	<u>\$740,001.54</u>	<u>101**</u>	

*Does not include additional \$3010, approved on reconsideration of claim paid in previous year.

**Total percentage exceeds 100% due to rounding of individual figures.