

OFFICE OF
APPELLATE COURTS

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FILED

ANNUAL REPORT OF THE
MINNESOTA CLIENT SECURITY BOARD

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June 1993

MINNESOTA CLIENT SECURITY BOARD

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CHAIRMAN
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BAILEY W. BLETHEN
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APPEL

JUN 22 1993

June 22, 1993

Clerk of Appellate Courts
Suite 245
25 Constitution Avenue
St. Paul, MN 55155

Re: Client Security Board Annual Report

Dear Clerk:

Enclosed for filing are eight copies of the Annual Report of the Minnesota Client Security Board.

The Board approved the report at its May 24, 1993, Board meeting.

Very truly yours,

Marcia A. Johnson
Marcia A. Johnson
Director

cc: Honorable Sandra S. Gardebring (no enclosure)
Melvin I. Orenstein (no enclosure)

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APPENDIX

- Exhibit 1 - Claims and amounts pending and paid per attorney.
- Exhibit 2 - Tables summarizing claims by area of law.

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 sixth annual report of the Minnesota Client Security Board covers the Board's fiscal year, from July 1, 1992, through June 30, 1993.

A principal Client Security highlight this past year was the completion of the work of the Minnesota State Bar Association Client Protection Committee and the filing of its report with the MSBA. The Committee's report will be acted upon by the MSBA and the Board expects that recommendations for some changes may be made. The Committee's report was generally favorable to the present client protection system and to the Board's policies and procedures. The Committee's recommendation for regular and permanent funding, for a higher maximum payment per claim and an increased reserve balance in the fund were extremely well received by the Board. The Board looks forward to continuing its cooperation with the Bar Association and then with the Court in this review process.

Last year the Board was able to report a decline in the amount of valid claims approved. While the number of claims approved went down slightly this year, the dollar value will return to a level of approximately \$200,000, with several large claims being approved at or near the current maximum per claim of \$50,000. Early projections for claim payment next year indicate

that a similar (or possibly greater) amount will need to be approved. The Board's current budget was recently approved by the Court. The budget for next year projects \$239,000 for claims. The Board also is aware of several pending disciplinary matters which could affect that projection. The Board's budget could be amended upwards only with Court approval.

The leadership of the Board and its staff began a process of transition this past year which will continue into the next year as well. The Board hired a new Director this past year, Marcia Johnson, who is also Director of the Office of Lawyers Professional Responsibility. The Board added a new non-lawyer member, Sister Mary Madonna Ashton. In the coming year, two of the Board's founders and most experienced members, Chair Melvin Orenstein and James Vessey, will complete their final terms on the Board. Two new members will be appointed and the Board will elect a new Chair at its first meeting of the new year.

II. YEAR IN REVIEW.

As of May 25, 1993, the Board had met 6 times during this year and resolved 36 claims. Thirteen claims had been approved for payment. The approved amount of those claims was \$180,729.95. An additional \$18,750 was paid on a claim which had been partially resolved in a previous year. The claimant's request for additional payment had been on hold until civil litigation efforts were resolved. Thus, the total amount approved for payment so far this year is \$199,479.95. Twenty claims were rejected as not qualifying under the Board's rules. As usual, these claims were generally malpractice claims, simple fee disputes or old claims filed well beyond the Board's rule which requires claims to be filed within three years of the date the

claimant knew or should have known of the alleged dishonest conduct. Three claims were withdrawn at the claimants' request, one because the attorney made restitution voluntarily. In the six years of the Board's operation, the Board has approved 135 claims and paid \$1,554,695.77, against 41 different lawyers (Exhibit 1).

At the start of the year, 19 claims were pending before the Board. Thirty-four new claims were received during the year with 36 claims being resolved. Seventeen claims remain pending, with only two of them more than seven months old. Claims have been resolved by the Board, on average, within seven months of their filing. Claims filed while disciplinary, criminal or civil proceedings remain pending take longer to resolve only because the Board most often will wait for the completion of other proceedings before acting, because the Board usually will rely on the findings made in such proceedings.

The Board aggressively sought reimbursement from attorneys on whose behalf claims were paid through the Attorney General's Office this year. \$10,479.00 has been collected so far this year. While collection on subrogation claims is never expected to be a major source of income to the Board, Minnesota lawyers should be aware that the Board actively seeks recovery from those who should be responsible.

The second year of the Board's current assessments will produce \$252,00 in income this year. Due to falling interest rates, only \$46,000 in interest income will be received. Still, the Board expects to have approximately \$1,033,000 in reserve at the end of this fiscal year.

III. PROCEDURES OF THE CLIENT SECURITY BOARD.

The Board has been chaired by Minneapolis attorney Melvin Orenstein since its inception in 1986. The Board's liaison on the Minnesota Supreme Court is Justice Sandra Gardebring. The Office of Lawyers Professional Responsibility provides staff services to the Board for investigating claims and conducting Board meetings.

Board Members. The following individuals currently serve on the Board:

<u>Name</u>	<u>Term Expires</u>
Melvin I. Orenstein, Minneapolis	June 30, 1993
Sister Mary Madonna Ashton, St. Paul	June 30, 1995
Bailey W. Blethen, Mankato	June 30, 1994
Sandra M. Brown, Minneapolis	June 30, 1993
Ronald B. Sieloff, St. Paul	June 30, 1994
James B. Vessey, Minneapolis	June 30, 1993
Nancy B. Vollertsen, Rochester	June 30, 1995

Sister Mary Madonna Ashton and Ms. Brown are public members. All other members are licensed attorneys. Ms. Brown is eligible for re-appointment to another three-year term and has expressed her willingness to serve another term. Mr. Orenstein and Mr. Vessey, as indicated above, are not eligible to be re-appointed to another term. The Court will soon appoint two new lawyer members to the Board, one of whom will be recommended by the MSBA. The MSRA's client protection committee has suggested that a public lawyer be one of the new appointees.

Mr. Orenstein's and Mr. Vessey's leadership and experience will be an incalculable loss to the Board. Both individuals served on the prior MSBA-funded client security fund, were

instrumental in the MSBA's request to the Minnesota Supreme Court to create the current Board structure and have served for the Board's initial six years of operation. Mr. Orenstein has chaired the Board throughout that period of time as well. The Board will need to elect a new chair as the first order of business at its first meeting of the new year.

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 began the process of reviewing its rules for possible amendment during this past year. The Board devoted its entire September (1992) meeting to that subject and reviewed several of the rules thoroughly. The Board has not yet reached sufficient consensus on necessary rule changes to warrant a petition to the Court at this time. The process of studying the rules for possible amendment will continue in the coming year. The Board also is aware that the MSBA committee may recommend certain minor changes in the rules. If that occurs, the Board will be an active participant in that process.

Funding and Budget Procedures. The Supreme Court approved a \$20 per year assessment on all attorneys in practice more than four years, which took effect on July 1, 1991. This year the assessment will raise approximately \$252,000. At the end of this fiscal year, the Fund is projected to have a balance of approximately \$1,033,000. In FY93 (ending June 30, 1993), the Fund also will receive approximately \$65,000 from the continuing assessment of new attorneys, who remain obligated to pay the original \$100 assessment. The Fund will also receive approximately \$46,000 in investment income this year. 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.

The Board's budget is prepared and filed publicly in March each year, for approval by the Minnesota Supreme Court. The Board's FY'94 budget recently was approved by the Court. The Board budgets amounts to be paid in future for valid claims, most of which are not yet known, on the assumption that lawyer theft will continue on average as in the past. Despite the unpredictability of future dishonesty, budgetary projections continue to be reasonably accurate.

Administrative Staff. The Office of Lawyers Professional Responsibility provides staff services to the Client Security Board. During the past year, a search committee recommended to the Court a new Director for the Office of Lawyers Professional Responsibility and the Client Security Board. Justice Gardebring and Mr. Orenstein were members of that search committee. Marcia Johnson became the Board's new Director in September 1992.

Assistant Director Martin Cole and legal assistant Patricia Jorgensen continue to handle the Board's day-to-day operation and investigations on approximately a quarter-time basis. Administrative expenses of approximately \$18,000 will be incurred by the Board this year. As in the past, payment of claims accounts for just over 90 percent of the Board's expenses. The Board and its staff keep non-claim expenses to a minimum.

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, remains the Board's attorney for all civil matters. The Board pays no attorney's fees for the Attorney General's representation, but is responsible for direct costs of litigation. Several attorneys are making regular, albeit small, payments to the Board on their total obligations. In addition, attorneys seeking reinstatement are required to reimburse the Client Security Fund for all claims paid on their behalf. This year it is expected that almost \$11,000 will be recovered.

Claims Procedures. Claims are initiated by submitting the claim on forms approved by the Board to the Director's Office. Claimants are provided forms and a brochure to help explain the process. The respondent attorney is given an opportunity to respond to the claim in writing. A member of the staff may meet personally with the claimant, unless the claim clearly can be decided solely on the information in the claim or from documents submitted by the claimant or obtained from the disciplinary proceeding.

The rules provide that claimants are expected to pursue reasonably available civil remedies. In order to avoid hardship, the Board frequently exercises its discretion by waiving this requirement where the Attorney General will be pursuing litigation against an attorney under the Board's subrogation rights. In almost all cases, attorney disciplinary proceedings will have been completed before Client Security payment is made. The Board generally will rely on findings made in a related

lawyer disciplinary action concerning misappropriation, or related civil or criminal matters where possible.

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. Because the Board desires that all claimants be provided a full opportunity to be heard and to present all documents and evidence in their favor before claims are finally resolved, the Board again this past year spent considerable time meeting with claimants and a respondent attorney on some particularly difficult claims.

The Board has developed some guidelines for consistently applying its rules to particular types of claims. If a claim fits into one of these categories, claimants are advised of the Board's general approach to their type of claim and offered the opportunity to present evidence to meet the Board's standards. At least one Board member or staff person also attends the ABA's annual client security forum to keep current on national trends and to ensure that the Board is analyzing claims consistent with other states' funds. Mr. Blethen and Ms. Vollertsen recently attended the ABA's annual forum in Chicago.

Education and Information. A brochure explaining Board procedures is provided to claimants along with claim forms. As noted, Ms. Vollertsen and Mr. Blethen recently attended the ABA conference on client security to gain and exchange information. Ms. Vollertsen also was a member of a faculty presentation on handling multi-victim catastrophic claims.

Nationally, Minnesota is viewed as an emerging leader in the client protection area.

The Board and the MSBA have been studying an insurance check notification rule which would require insurers to notify insureds directly when issuing a check to their attorney. It appears that the MSBA will recommend adoption of such a rule in Minnesota. This study will continue this coming year. The Board fully cooperated with the MSBA's committee, particularly on the issue of exploring funding options for the future. Former Director William Wernz, Ms. Johnson and Mr. Cole all spoke to the committee and the Director's Office provided considerable statistical data to the committee.

IV. GOALS AND OBJECTIVES.

In FY'94, the Board will continue to pay all valid claims in full up to the \$50,000 limitation. The Board has budgeted \$239,000 for claim payment next year. The current case load of the Board is manageable. There are only four claims that are more than six months old.

As indicated previously, the Board will be electing a new chair at its first meeting. The new Board chair, along with two new Board members, will no doubt play an active role in shaping any policy changes which the Board may undertake. It is not presently anticipated that major changes will occur.

The Board will continue to cooperate with the MSBA and the Court in the finalization of its review of the client protection system. In general, the Board believes the system is working

satisfactorily in Minnesota and will continue to do so if adequate funding remains in place.

Respectfully submitted,

Dated: May 29, 1993

Melvin I. Orenstein
MELVIN I. ORENSTEIN
CHAIRMAN

Dated: May 28, 1993

Marcia A. Johnson
MARCIA A. JOHNSON
DIRECTOR

Dated: May 28, 1993

Martin A. Cole
MARTIN A. COLE
ASSISTANT DIRECTOR

CLAIMS AND AMOUNTS PER ATTORNEY
as of May 25, 1993

Attorney	Pending	Amount	Paid	Amount	Denied	W/Drawn (Paid)	Crim. Pros.
H.A.			2	\$ 39,258.97			No
T.A.					1		
J.A.			2	100,000.00			No
L.B.			2	3,947.93			Yes
T.B.					1		Yes
T.B.			1	50,000.00			Yes
J.B.	1	20,816.87					No
J.B.			1	50,000.00			Yes
A.B.					2		Yes
J.B.					1		
C.C.					1		
M.C.					9		Yes
A.D.			3	62,875.00			Yes
D.D.	2	44,900.00					No
J.D.						1	No
B.D.			11	226,119.60	1		Deceased
J.D.						1	No
B.E.					1		
R.E.					2		
J.F.			2	12,954.00	1		No
R.F.			6	4,062.50	3	1	No
S.F.					1		
J.F.			6	113,626.59	6		Yes
P.F.					1		

CLAIMS AND AMOUNTS PER ATTORNEY
as of May 25, 1993

Attorney	Pending	Amount	Paid	Amount	Denied	W/Drawn (Paid)	Crim. Pros.
N.F.					1		
T.G.					1		
C.G.					1		
T.G.			2	1,257.98			Yes
S.H.					1		
T.H.					2		
S.H.	1	1,500.00	2	12,800.00	3		No
H.H.			1	14,500.00			No
D.H.			1	1,000.00			No
G.H.					6		
J.H.	1	50,000.00	5	21,900.00	1		Yes
C.I.			1	535.78			No
D.J.					1		
L.J.					1		
A.J.					1		
R.J. & J.S.					1		
J.K.					1		
S.K.	1	510.00					
A.L.	1	10,000.00	1	10,000.00	1		No**
W.L.	1	500.00	13	49,542.60	4		No**
D.L.			1	40,000.00			Yes
E.L.			1	368.00			No
M.L.					1		
D.L.			3	560.00			No
D.M. & B.W.	2	640,000.00					No

CLAIMS AND AMOUNTS PER ATTORNEY
as of May 25, 1993

Attorney	Pending	Amount	Paid	Amount	Denied	W/Drawn (Paid)	Crim. Pros.
P.M.					1		
G.M.			7	24,170.00	3		No
F.M.			1	1,128.00			No
R.M.					5		
W.M.			3	425.00	6		No
G.M.	5	23,746.43					No**
N. Law Firm					1		
D.O.	1	20,000.00					
L.O.			1	50,000.00			No
B.O.			3	15,297.72			Yes
K.O.					1		
K.P.			2	39,000.00	1		No
W.P.						1	No
W.P.					1		
D.P.					2		
R.P.					1		
R.P.					2		
G.P.			1	22,388.70			
W.P.					1		
T.P.			3	17,082.02	2		No
T.P.					1		
J.P.					1		
D.P.			1	16,450.00			No
M.R.			3	7,500.00	2		No
P.R.	1	181,129.00					

CLAIMS AND AMOUNTS PER ATTORNEY
as of May 25, 1993

Attorney	Pending	Amount	Paid	Amount	Denied	W/Drawn (Paid)	Crim. Pros.
M.S.			20	404,672.02	11		Yes
W.S.					1		
W.S.					1		
J.S.			2	57,821.34			Deceased
A.S.					1		
I.S.					1		
W.S.			5	50,391.66			Yes
P.S.			1	2,360.23			No
J.S.			5	2,349.26	1		No
J.S.			1	557.87			No
W.S.						1	
H.S.						1	
R.S.					1		
D.S.			1	1,197.00			No
M.S.					1		
K.S.			1	500.00			
M.T.					1		
D.T.					1		
J.T.			2	6,160.00			No
N.T.					2		
S.W.			5	19,945.00	2		No
D.W.					1		
J.W.					1		
M.W.					1		
TOTAL	17	\$ 993,102.30	135	\$1,554,695.77	116	6	

Reported Client Losses

July 1, 1987 through May 31, 1993

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
Bankruptcy	20	7	\$659,931.06	4
Business	10	4	\$2,037,005.83	13
Criminal	14	5	\$124,015.12	1
Family	51	19	\$1,039,924.17	7
Investment	23	8	\$1,518,224.27	10
Litigation	30	11	\$3,677,777.05	24
Personal Injury	17	6	\$989,869.60	7
Probate	36	13	\$2,491,792.53	17
Real Estate	23	8	\$1,488,098.71	10
Settlement	13	5	\$161,282.26	1
Tax	8	3	\$97,212.71	1
Worker's Comp	1	1	\$750.00	0
Other	28	10	\$768,653.42	5
	274	100	\$15,054,536.73	100

Reported Client Losses

July 1, 1992 through May 31, 1993

Table 2. This table summarizes, by area of law, all claims for reimbursement filed during fiscal year 1993.

Area of Law	# of Claims	% of Claims	Amount of Loss Alleged	% of Alleged Losses
Business	4	12	\$208,670.00	7
Family	8	23	\$842,904.30	28
Investment	4	12	\$695,816.87	23
Litigation	4	12	\$17,904.53	1
Personal Injury	1	3	\$50,000.00	1
Probate	5	14	\$984,121.23	33
Real Estate	3	9	\$190,354.00	6
Other	5	15	\$22,160.00	1
	34	100	\$3,011,930.93	100

Awards of Reimbursement

July 1, 1987 through May 31, 1993

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 Alleged Loss Reimbursed
Bankruptcy	14	10	\$39,908.30	\$48,584.30	2	82
Business	4	3	\$51,634.00	\$224,126.74	8	23
Criminal	7	5	\$82,649.69	\$93,609.47	3	88
Family	28	21	\$140,307.29	\$182,249.87	6	77
Investment	2	2	\$100,000.00	\$222,569.01	8	45
Litigation	15	11	\$219,247.75	\$284,887.52	10	77
Personal Injury	8	6	\$125,573.30	\$270,763.00	10	46
Probate	23	16	\$456,045.26	\$1,002,914.93	36	45
Real Estate	11	9	\$180,896.71	\$190,196.90	7	95
Settlement	7	5	\$60,856.75	\$111,196.90	4	54
Tax	7	5	\$38,112.28	\$96,452.71	3	40
Worker's Comp	1	1	\$750.00	\$750.00	0	100
Other	8	6	\$58,714.44	\$91,658.66	3	64
	135	100	\$1,554,695.77	\$2,819,960.01	100	

Awards of Reimbursement

July 1, 1992, through May 31, 1993

Table 4. This table summarizes, by area of law, all claims for reimbursement approved by the Board during fiscal year 1993.

Area of Law	# Of Awards	% of all Awards	Amount of All Awards	Alleged Loss Involved	% of All Losses	% of Alleged Loss Reimbursed
Business	2	15	\$51,197.00	\$223,289.74	38	23
Criminal	2	15	\$5,928.00	\$23,581.00	4	25
Family	2	15	\$17,758.97	\$20,500.00	4	87
Investment	1	8	\$50,000.00	\$157,569.01	27	32
Litigation	2	16	\$10,200.00	\$10,500.00	2	97
Probate	4	31	\$45,645.98	\$146,885.93	25	31
	13	100	\$180,729.95	\$582,325.80	100	