

STATE OF MINNESOTA

IN SUPREME COURT

C9-81-1206

ORDER FOR HEARING TO CONSIDER PROPOSED  
AMENDMENTS TO THE RULES OF THE SUPREME COURT  
FOR REGISTRATION OF ATTORNEYS

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on April 14, 1998 at 2:00 p.m., to consider the recommendations of the Minnesota Client Security Board to amend the Rules of the Supreme Court For Registration of Attorneys and to have the Court establish new parameters for the balance of the Client Security Fund. A copy of the board's report is annexed to this order and is available at the Court's Website at [www.courts.state.mn.us](http://www.courts.state.mn.us) for review.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before April 10, 1998, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before April 10, 1998.

Dated: January 22, 1998

BY THE COURT:



A.M. Keith  
Chief Justice

OFFICE OF  
APPELLATE COURTS

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STATE OF MINNESOTA

IN SUPREME COURT

C9-81-1206

Promulgation of Amendments to  
The Rules of the Supreme Court  
For Registration of Attorneys

**REPORT OF THE  
CLIENT SECURITY BOARD**

BACKGROUND

The Minnesota Client Security Board (CSB) currently receives \$20 per year per attorney as part of the attorney registration fee. This assessment began in 1993, following a recommendation from the MSBA Client Protection Committee and a subsequent petition from the MSBA. Exhibits 1 and 2. As part of the Court's December 3, 1993, Order, the Board was instructed to report to the Court when the balance in the Fund reached \$1.5 million. Exhibit 3. This amount was projected to be achieved at the end of FY97 (the Board's fiscal year runs from July 1 to June 30, so FY97 ran through June 30, 1997). This was reported to the Court. Exhibit 4. No action was taken at that time. When the Board prepared its budget for FY98, which was presented to the Court in May 1997, the Board again reported that the balance in the Fund exceeded \$1.5 million, Exhibit 5, and also orally informed the court that projections through FY99 indicated that the balance may reach \$2 million by that time. The Board informed the Court that it intended to conduct a complete review of the assessment and the Board's financial needs, and to report to the Court with any recommendations for change when next year's budget is presented in March 1998.

The Court, on August 6, 1997, reallocated \$7 per attorney from the CSB to the Board on Continuing Legal Education on a one-year basis, in order to assist that Board with a temporary financial need. Exhibit 6. In a subsequent meeting with the Chief Justice, the CSB agreed to

accelerate its review of its assessment needs in order to present this report to the Court before January 1998.

The Board has reviewed carefully various budget proposals for the upcoming two years, based upon various possible annual assessment amounts (i.e., \$10 per attorney per year, \$13, \$15 and \$20), using identical average expenditures (based upon five-year averages for claims paid and administrative expenses). The Board also compared Minnesota's Client Security Fund assessment, claims procedures and history with that of several other states' client protection funds (basically from three types of states: states with large client protection programs such as New York and California, neighboring states such as Wisconsin and Iowa, and states with similar lawyer populations such as Virginia and Missouri) to ensure itself that our Fund balance, maximum payment per claim, annual assessment and claims experience are not inconsistent with those of other states.

Based upon this review, the Board makes to the Court the following:

#### RECOMMENDATIONS

The portion of the attorney registration fee, or annual assessment, which the Board receives, should be set at \$15 per attorney per year, beginning July 1, 1998.

The Court should establish parameters for the Fund balance of \$1.5 million and \$2.5 million. If the Fund balance remains within those parameters, the \$15 assessment would remain in effect from year-to-year without any further action or order from the Court or Board;

If the Fund balance goes below \$1.5 million or above \$2.5 million, then the Board will make recommendations for change.

If the Fund remains within the established parameters, the Board nevertheless will review the assessment in five years to ensure its continued appropriateness.

If the current \$100,000 maximum award per claim is amended, the Board would review

whether a \$15 assessment remains appropriate.

### DISCUSSION

The Board is keenly aware of its obligations to maintain a balance between the competing policies of maintaining a fund sufficient to ensure the public that any major defalcations could be covered by the Board without delay (such as would be necessary should additional funds be needed), and not unnecessarily charging the lawyers of Minnesota through an ever-increasing attorney registration fee. The Board has tried to create a middle ground with this current proposal.

The concept and amount of the parameters were decided following careful discussion. The MSBA's Client Protection Committee report in 1993 recommended a Fund balance of \$2.5 million as being appropriate. The Court's subsequent Order indicated that \$1.5 million was also an appropriate Fund balance. Thus, although these numbers have not been linked as high/low parameters before, both numbers have been supported previously by sources outside the Board as being reasonable balances for the Fund. With the Fund's current balance being approximately halfway between these two figures, the Board believes they represent an equal and reasonable standard deviation from where the Fund is currently. The Board does not believe it is wise to constantly revisit the issue of funding unless absolutely necessary, thus the idea of not reconsidering funding levels to see if the assessment and the parameters remain valid until after five years.

The Board then tried to determine what level of assessment would best keep the Fund balance approximately where it is at present: roughly half-way between the two parameters. Based upon an "average" year (which does not, in fact, ever occur in the area of lawyer theft; but here using five-year averages for amount of claims paid and administrative expenses), the Board determined that \$15 per attorney per year will most likely establish and maintain that balance. If it does not, due to a larger or smaller than anticipated number of claims, or a change in the Board's maximum payment, then the Board retains the ability to make recommendations to the Court even before the five-year

period expires.

The Client Security Board does not believe the above recommendations require a hearing before the Supreme Court. If the Court prefers a formal petition, followed by a comment period and hearing, then the Board will do so. Otherwise, it shall await further direction from the Court.

Dated: December 30, 1997

Respectfully submitted,

MINNESOTA CLIENT SECURITY BOARD

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April 8, 1998

OFFICE OF  
APPELLATE COURTS

APR 08 1998

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Office of Appellate Courts  
25 Constitution Avenue  
Room 305  
St. Paul, MN 55155

Re: In Re Order for Hearing to Consider Proposed Amendments  
to the Rules of the Supreme Court for Registration of Attorneys  
Supreme Court File No. C9-81-1206

Dear Clerk:

This letter is to inform the Court that Kim Buechel Mesun, Client Security Board Chair, will speak on behalf of the Client Security Board at the above hearing on Tuesday, April 14, 1998. Ms. Mesun will speak in support of the report of the Client Security Board.

If there is any additional information you need from the Board prior to the hearing, you may contact Ms. Mesun or me.

Very truly yours,

Minnesota Client Security Board

By   
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Martin A. Cole  
Assistant Director

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Enclosures

cc: Hon. Edward C. Stringer  
Kim Buechel Mesun  
Edward J. Cleary