STATE OF MINNESOTA

IN SUPREME COURT

C0-85-2205

In re the Petition of the Minnesota State Client Security Board for Adoption of Proposed Rules

ORDER FOR PUBLIC HEARING

WHEREAS, the Supreme Court of the State of Minnesota, by its order dated April 15, 1986, established the Minnesota Client Security Board; and

WHEREAS, the Minnesota Client Security Board was charged with the responsibility for developing proposed rules for its operation for consideration and adoption by the court following a public hearing; and

WHEREAS, the said Board has petitioned this court for approval of proposed Rules of the Minnesota Client Security Board;

NOW, THEREFORE, it is hereby ordered that a public hearing concerning this petition be held at 9:00 a.m. on March 19, 1987, in the Supreme Court chambers in the State Capitol in St. Paul.

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 the hearing, but who do not desire to make an oral presentation at the hearing shall file 10 copies of such statement with the Clerk of the Appellate Courts, 230 State Capitol, St. Paul, Minn., 55155, on or before March 6, 1987, and

2. All persons, desiring to make an oral presentation at the hearing shall file 10 copies of the material to be so presented with the aforesaid clerk together with 10 copies of a request to make the oral presentation. Such statements shall be filed on or before March 6, 1987.

Dated: Dec 22, 1986 BY THE COURT

OFFICE OF
APPELLATE COURTS
FILED

DEC 22 1986

WAYNE TSCHIMPERLE
CLERK

Douglas K. Amdahl
Chief Justice

TIBOR M. GALLO
ATTORNEY AT LAW

1841 SARGENT AVENUE
ST. PAUL, MINNESOTA 55105

3-6-87

March 5, 1987

The Honorable Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
223 Capitol
St. Paul, MN 55155

C0-85-2205

RE: Proposed Rules, Client Security Board

Dear Mr. Chief Justice:

Please accept the following comments for your consideration in the matter of adoption of the client security fund rules. I was admitted to the bar in 1970 and have continuously practiced law in Minnesota as an attorney for a governmental agency. The views expressed herein are my own and are not in any way intended to represent the views of my employer, who is eminently capable of expressing himself.

After due consideration, I have serious reservations about the establishment and financing of the client security fund as it is now proposed. At the outset, it is not clear whether the purpose of the fund is to improve the image of our profession or to make whole those who have been cheated by lawyers. The proposed fund would do neither. In addition, the assessments to establish the fund are not fair to attorneys who do not handle clients' money.

A person who has been the victim of a lawyer's direct and calculated fraud will never really fully trust a lawyer again, even though his or her monetary claim has been repaid. The unavoidable questions that would return over and over again would be: how did this happen to me? - why was this person ever allowed to practice law? - why isn't that lawyer in jail? - or even, why aren't all lawyers in jail? Simply put, no low or fraudulent act of a lawyer will ever be wiped clean from the victim's or public's mind by showering money on the victim.

Likewise, it is unlikely that a lawyer's victim, even after full compensation, will ever feel that he or she has been made whole. Beyond the loss of countable dollars, there is no way to calculate and compensate the person for loss of time, sleepless nights, and the other mental anguish one must go through during such a personal disaster. At best, a claimant might conclude that he got some of his money back, but still feel that it is not

significant compared to what those "rich" lawyers make every year using their system.

Also, I fear that the profession would be more likely lulled into complacency about policing itself, knowing that there is a source of relief for a cheated client. That relief makes it a little less important to scrutinize the character of new bar applicants or aggressively insist on adherence to the highest ethical standards by admitted members of the bar. At worst, the prospect of his or her client being compensated by the fund may be the additional incentive for a wavering lawyer in a terrible jam to take the money and run.

Additionally, a pot of money waiting for distribution is certainly going to attract prospective distributees and generate litigation. Proposed rule 302 c. would require that claims against the fund be for a client loss caused by an intentional dishonest act, not negligence. An uninsured act of malpractice by an insolvent lawyer will certainly generate attempts to shake the fund's money tree by claiming that the hapless barrister was dumb on purpose. And, notwithstanding probability of success to the contrary, new and imaginative theories will probably have Board members defending themselves in federal court in actions brought pursuant to 42 U.S.C. § 1983.

By now I would expect that the $100 assessment proposed in rule 102 has received considerable commentary, and I would hope not to repeat earlier remarks. I should like to address this from my perspective as a public sector lawyer. I suspect that my point of view applies to most judges and attorneys who work for federal, state, and local governments, including public defenders, and possibly to some members of the private bar.

Many public sector attorneys have made careers of trying to enforce the law, often at significant financial sacrifice compared to their private sector counterparts. In addition to salary differentials, these attorneys usually are not in a position to get income tax advantages available to businesses and law firms; for example, it doesn't seem that a judge is often in a position to entertain clients at lunch and thereby deduct that lunch.

It is beyond irony, then, that those persons who have focused their careers on enforcing the law should fork over $100 to pay for the misdeeds of felons because at one time they all passed the bar examination. This is compounded by the fact that public attorneys normally never handle client funds. It is simply not fair to assess those attorneys who are not involved with client

money for the fraudulent acts of those who are in a position to commit them.

To make a determination on how to deal with this abuse of client funds, the total circumstances permitting the abuse ought to be examined, and the Board and Court ought to go beyond shutting the barn door after the horse is out.

The main reason why attorneys handle client funds is the attorney's lien, which requires that payments to clients be funnelled through the attorney. This, of course, is the most effective built-in collection device for attorneys fees that could be imagined. Of course, such liens are open to criticism every time a client loses money, whether by fraud or negligence. It is small wonder that large segments of the private bar would happily pay $100 in order to ensure the continuance of such an effective collection tool by pointing to this fund as a remedy for abuse of the lien. Unfortunately, the proposed rule would have many lawyers financing the public safety of a lien they never use.

There are alternatives to protect clients without assessing all lawyers. One such protection is the trust account certificate on the back of the attorney registration statement, which is probably not enough. But there are other ways to keep clients' funds safe without overhauling the attorneys lien.

I respectfully suggest that those attorneys who are required to maintain trust accounts also be required to be bonded as fiduciaries for all their clients' funds. The bonds could be stepped in proportion to the money handled and the Client Security Board could establish rules, procedures, and reporting requirements to ensure that bonds are adequate and in force. It should be no more complicated than continuing legal education reporting and it would properly place the burden of securing client funds on those lawyers who deal with client funds. If this does not seem like enough protection, the Court could require insurance pools or surcharge bond premiums to cover other eventualities.

While this may be a little more complicated than the present proposal, it should provide adequate protection and certainly be more fair to those lawyers who do not handle client funds. And it would do this without adding the administrative burden of resolving claims to the Board's list of problems.

Thank you for your consideration.

Very truly yours,

TIBOR M. GALLO
Attorney at Law

TMG:dd

The undersigned attorney admitted to practice law in Minnesota substantially supports the views expressed in the letter of Tibor M. Gallo to which this paper is attached.

Name	Address
A. W. Clapp III	631 Goodrich, St. Paul, MN 55105
D A Kamras	433 So 7th ST, Minneapolis 55415
Gail I Lewellen	4853 15th Ave So. Minneapolis, Mn 55417
Philip Offelt	3429-46th Ave. South, Minneapolis, Minn. 55406

I am willing to pay $100 to help to attempt to make innocent people whole. However, I wish to endorse and emphasize Mr. Gallo's discussion on page 4 that the existing collection guarantee system, based on the lawyers' lien law, is one of the roots of the present problem.

Andrew J. Tomille, Jr.	2289 Caulfield Plaza, Woodbury, Minn. 55125
Beverly Conerton	3542 14th Ave. So., Mpls, Mn. 55407

3687

February 12, 1987

The Honorable Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, Minn. 55155

Re: Proposed Rules for Minnesota State Client Security Fund
CO-85-2205

Dear Chief Justice Amdahl:

I am in complete agreement with the sentiments of Gary P. Mesna expressed in his letter to you dated February 8, 1987 concerning the Client Security Fund proposed rules. I object to the proposal to charge government attorneys and judges for the malpractice of the private bar. I am employed by the state Department of Labor and Industry and do not handle client funds.

While I support the compensation of victims by a program such as this,. it is inequitable to charge those who are not at risk of causing such a loss for the misconduct of those who are at risk, those who handle client funds.

The attached petition contains signatures of other government attorneys and judges who agree that government attorneys and judges should be exempt from the assessment.

Thank you for your consideration of this suggested amendment.

Sincerely,

Penny D. Johnson

Penny D. Johnson
Attorney License No. 142700

1251 Roma Avenue
Roseville, Minnesota 55113
February 8, 1987

The Honorable Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

Re: Proposed Rules for Minnesota State Client Security Fund

Dear Chief Justice Amdahl:

I commend the court for taking action in this area. Certainly the good name of all lawyers will be protected by a client security fund and I totally support the establishment of such a fund.

I am opposed, however, to assessing all attorneys for this program.

The program is nothing but a mandatory insurance program, insurance being a sharing of risk among a group. Only those attorneys with a risk to insure should be assessed for this fund. I have been employed by the State of Minnesota for over ten years and as with all government lawyers (and Judges), I do not handle client funds. Certainly, I should not be required to insure a risk that I do not have.

By requiring attorneys who do not handle client funds to contribute to this fund, you are requiring us to subsidize attorneys in private practice. Private attorneys can and should buy their own insurance. It is a cost of doing business. Moreover, every survey I have ever seen has shown that attorneys in private practice make considerably more money than government lawyers (and judges, for that matter). I find it grossly unfair that we should be required to subsidize our more wealthy brothers and sisters.

I strongly urge the court to modify the rules to exclude government lawyers and judges from the mandatory assessment.

Sincerely,

Gary P. Mesna
License #72242

Signature and Printed Name of Attorney or Judge	Address and License No
Harlan G Sundem HARLAN G SUNDEM	Apt 1112 111 E. Kellogg St Paul Mn 55101 #107281
Richard Walzer Richard Walzer	Apt. 134 265 E. Viking Dr. St. Paul, MN 55117 #114364
Jerome J. Sicora JEROME J. SICORA	876 COBB ROAD ST. PAUL, MN 55126 # 100766
Lance R. Staricha LANCE R. STARICHA	5516 - 46th Ave South Minneapolis, MN 55417 (LN 161780)
Gregory J. Heck GREGORY J. HECK	9209 HYLAND CREEK ROAD BLOOMINGTON, MN. 55437 # 77321 - # 43084
John E. Streff John E. Streff	2089 E. Ivy Ave 106409 St. Paul, Minnesota 55119
Garfield E. Smith Garfield E. Smith	8954 Jasmine Lane So. #102398 Cottage Grove, Mn. 55016
Stephen E. Krenkel STEPHEN E. KRENKEL	1188 Bethland # 58245 St. Paul, MN 55104
Terese M. Koenig TERESE M. KOENIG	439 Wheeler St. N. Apt. #1 St. Paul, MN 55104 #176369
Thomas J. Seidl Thomas J. Seidl	1263 Allen Mem W. St. Paul Mn 55118 98826
Patrick J. Finnegan Patrick J. Finnegan	10609 Wyoming Rd Bloomington, Minn 55438 # 29373
Neal Scott	574 Cretin Ave S 98462 St Paul MN 55116
John M. Zanmo John M. Zanmo	1156 Allen Ave # 119726 West St. Paul, Minn 55118
Thomas K. Overton Tom Overton	#83355 806 E. Minnehaha Pkwy, Mpls MN 55417
Thomas M. O'Hern, JR. Thomas M. O'Hern, JR.	2673 Rivera Dr. South White Bear Lake, MN. 55110 #155767
Michele M. Owen MICHELE M. OWEN	1362 Wynne Ave #12 St. Paul, MN. 55108 #72862
David T. Schultz DAVID T. SCHULTZ	265 Brimhall St. St. Paul, MN. 55105 # 169730
Michael E. Boekhaus Michael E. Boekhaus	1399 Portland St Paul MN 55104 13928

Signature and Printed Name of Attorney or Judge	Address and License No.
William Dixon William DIXON	3525 Fremont Ave S. Mpls. MN Atty License # 23127
Samuel G Fried [Employed by MN Dept of Jobs + Training] Samuel G Fried	825-J McKnight Rd, St Paul 55119 Attorney License 32098
Earle C Dunn (Mn Dept of Jobs + Trainings) Earle C. Dunn	1495 Salem Church Rd, Inver Grove Hts 55075 Atty license 34880
Philip J Franklin PHILIP J. FRANKLIN LICENSE 31549	2129 HARTFORD AVE ST PAUL, MN 55116 LICENSE 31549
Ordner J Bundlie ORDNER J. BUNDLIE ATTY LICENSE # 12920	17646 McKNIGHT RD N MAPLEWOOD, MN 55109
Hilory A Seaton Hilory A. Seaton	4306 Sunnyside Road Edina 55424 Atty License # 103275
Theodore B Mikszan THEODORE B. MIKSZA LICENSE # 72965	11824 WINNETKA AVE. NO. CHAMPLIN, MN. 55316 LICENSE # 72965
Laurence J Vaubel LAURENCE J. VAUBEL	4321 YORK AVE. SO. MPLS. MN 55410 ATTY LICENSE # 112549
Bert O. Oygaard BERT NYGAARD MINNESOTA DEPT OF JOBS + TRAINING	1900 WISCONSIN AVENUE NO. MINNEAPOLIS, MINNESOTA 55427 ATTY LICENSE # 80214
Dwight R. Witt 607 E. PORTLAND DR. BURNSVILLE MN 55337	Dept. of Jobs + Training Attorney License # 118229
Barbara Jo Walters Barbara Jo Walters	2200 Burd Ave No St Paul, Mn. #11425 X
Clarence A Anderson, Jr Clarence A. Anderson, Jr.	5523 E. Oberlin Circle Fridley MN 55432 Atty. Lic. # 2562
Mark A Jothen (Employed by Minn. Dept of Jobs + Training) Mark A. Jothen	2643 Alabama Av. S. St. Louis Park, Minnesota 55416 Attorney License # 52826
John E Chapman JOHN E. CHAPMAN	1460 RED CEDAR RD EAGAN, MN 55121 ATTY LIC # 16196

Signature and Printed Name of Attorney or Judge	Address and License No.
	Dept. of Labor and Industry
Gary Hall (Gary HALL)	4107 VICTORIA STREET #142232
Vic Oace (VICTORIA OACE)	#177398 341 GRAND AVE, So. ST. Paul
Jim Froeber (Jim Froeber)	#167228 5528 W. 130th St. Savage, MN
James F. Cannon (James Cannon)	5932 Elliot Avenue So., Mpls., Mn. 55417
Shawn R Kerns (Shawn Kerns)	124771 9505 Birch Lane, Lakeville, MN 55044
Charlotte Neigh (Charlotte Neigh)	#179218 1106 Summit Ave St Paul 55105
K B Peter (Kenneth B. Peterson)	#86058 292 Ryan St. Paul 55105

Dear Clerk:

Enclosed are 10 copies of a comment regarding the proposed rules of the Client Security Board. Thank you.

Robin Sjaastad
304 Marshall Ave.
St. Paul, MN 55102

March 4, 1987

To: Minnesota Suprme Court

Re: Client Security Board proposed rules
C0-85-2205

As a licensed attorney, I write to protest the imposition of the $100 assessment pursuant to the proposed rules of the client security board.

Preliminarily, I can see no reason for applying a special assessment measure to lawyers. Certainly fraud and false dealing are nothing new in any profession. Is theft by lawyers so unique, or does it occur so much more frequently, that it requires special attention? Does the court have the data necessary to answer these questions?

The plan's proponents call it a public relations victory for all lawyers. Even if true, that is a dubious motive for any action. Yet it is not true. I, and many other licensed attorneys in this state, do not practice, have no clients, keep no client funds and have no intention of doing so. I perceive no "victory" or any other benefit, but only burden, for this group of lawyers. In short, we pose no risk and derive no benefit which might justify our participation in the plan.

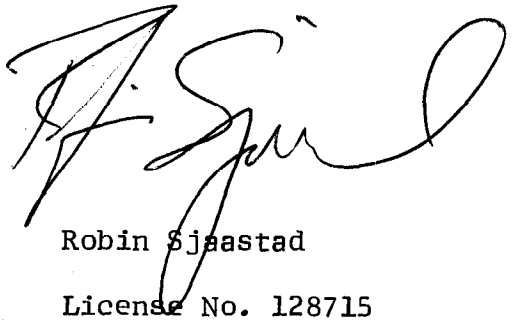
It is clear, however, just who does benefit, not only in terms of public relations but in dollars and cents too: the practicing bar, specifically those attorneys who hold client funds or will in the future. The financing of the client protection plan with the funds of all licensees directly subsidizes the arrangements between these attorneys and their clients. This is too plain to be denied.

Subsidies, which as often as not distribute wealth upward, generate antagonisms within otherwise harmonious groups. Asking practicing attorneys and their clients to pay their own way not only avoids these antagonisms, but achieves also the simple virtue of being fair and just for all concerned. The alternative is an absurd example of collective justice: person A (nonpracticing lawyers) pays person B (defrauded clients) for the crimes of person C (delinquent lawyers) to the public relations and financial benefit of person D (practicing lawyers). This can't be justified by the bland, and untrue, assertion that "we're all in this together". It is justifiable only when influential persons who stand to benefit by externalizing their costs externalize their scruples as well.

A protection scheme tailored to place the burden on those who benefit has sufficient precedent. Federally sponsored insurance for bank deposits is funded by those institutions which accept deposits and enjoy the position of then being able to offer this security to their depositors. And deposit insurance is not compulsory, even though all banks, unlike all attorneys, accept money from their customers. The system is not maintained by blanket assessments of persons or institutions unconnected with the purpose of the coverage. A different example is automobile insurance, which is compulsory not for licensees generally but for those who present the risk by owning and driving cars.

Finally, the protection proposal, by merely funding the problem, does nothing to encourage client diligence or discourage attorney defalcation. As with any involuntary insurance scheme, it presents primarily the prospect of more claims and more assessments. It is a grandstanding and blunderbuss response to a problem that is in large part media agitation. (I perceive no fervor for the plan, and even a little incredulity, in my day-to-day contacts with nonlawyers.) If there is concern among practitioners and their clients that entrusted funds need protection, any solution is a cost which ought to be borne by those who participate in the business and receive its benefits.

Sincerely,



Robin Sjaastad

License No. 128715

304 Marshall Ave.
St. Paul, MN 55102

3-5-87

HENNEPIN COUNTY UNION OF LAWYERS AND PROFESSIONALS
Hennepin County Government Center
Minneapolis, Minnesota 55487

March 4, 1987

Wayne Tschimperle
Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

RE: In re the petition of the Minnesota State Security Board for Adoption of Proposed Rules, Supreme Court No. CO-85-2205

Dear Mr. Tschimperle:

Enclosed please find the original and ten copies of the Hennepin County Union of Lawyers and Professionals' written statement in the above-entitled matter. This statement is in letter form.

Also enclosed please find the original and ten copies of the Union's Request for Oral Presentation in the same matter.

Very truly yours,

Beverly J. Wolfe

Beverly J. Wolfe
Secretary, Hennepin County
Union of Lawyers and
Professionals
Attorney Lic. No. 131751
Phone: (612) 348-8794

[enc.]

CO-85-2205

STATE OF MINNESOTA

IN SUPREME COURT

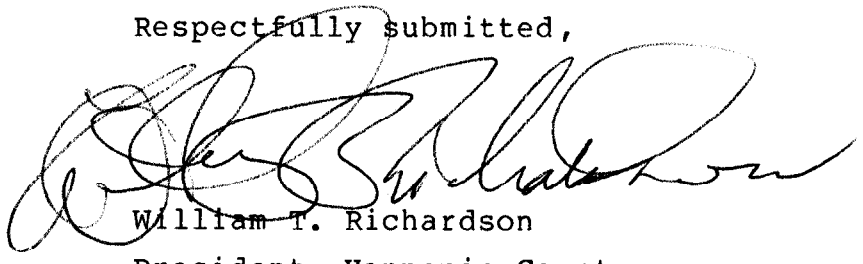
In re the Petition of the Minnesota State Client Security Board for Adoption of Proposed Rules	Request for Oral Presentation

To The Supreme Court, State of Minnesota:

Pursuant to this court's Order For Public Hearing dated December 22, 1986, the Hennepin County Union of Lawyers and Professionals (AFSCME 2938) respectfully requests to make an oral presentation at the public hearing concerning the above-captioned Petition on March 19, 1987, at the Supreme Court chambers in the State Capitol in St. Paul, Minnesota. Paul Jennings, an Assistant Hennepin County Attorney and a member of our union, will make our oral presentation. Mr. Jennings' address is C-2000 Government Center, Minneapolis, Minnesota 55487, and his phone number is (612) 348-5588. His attorney licence number is 49943.

Mr. Jennings presentation will be based on the written letter statement that the Union is submitting along with this request.

Respectfully submitted,



William T. Richardson
President, Hennepin County
Union of Lawyers and
Professionals
Atty. Lic. No. 91431
(612) 348-8836

HENNEPIN COUNTY UNION OF LAWYERS AND PROFESSIONALS
Hennepin County Government Center
Minneapolis, Minnesota 55487

March 4, 1987

Minnesota Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

RE: In re the Petition of the Minnesota State Security Board for Adoption of Proposed Rules, Supreme Court No. CO-85-2205

To The Supreme Court, State of Minnesota:

Pursuant to this Court's Order For Public Hearing dated December 22, 1986, the Hennepin County Union of Lawyers and Professionals (AFSCME 2938) submits this written statement concerning the proposed Rules of the Minnesota Client Security Board. Our union represents the assistant county attorneys and assistant public defenders of Hennepin County. After review of the proposed rules, our membership respectfully submits that the Minnesota Client Security Board in drafting the rules failed to consider either the role played by government attorneys in the legal system or their limited financial resources.

First, Rule 102 governing assessments fails to consider the fact that certain attorneys, especially government attorneys and judges, never handle client funds. The Client Security Fund will essentially operate as a self-insured insurance plan for the clients of attorneys who handle client funds. Unless exempted, government attorneys will be paying premiums to a fund which its clients, the government or indigents, will never be eligible to make claims against for services rendered by government attorneys.

Second, imposing a premium on government attorneys for the Client Security Fund is also unfair because government attorneys have much more limited financial resources than attorneys in private practice who handle client funds. Attorneys who devote their careers to public service traditionally receive salaries significantly lower than salaries received by attorneys in the private sector. Moreover, although most law firms pay licensing fees for their attorney employees and will also probably pay for their assessment fees, attorneys who work for Hennepin County must pay for their licensing fees, assessment fees and much of the costs for their C.L.E. credits out of their own pockets. Even if government were to pay these fees for their attorney employees, as Anoka County does, this would result in the taxpayers rather than attorneys paying for part of the Fund. Such a result would be most incongruous. It would put government in the position of partially reimbursing victims of attorney theft even though government does not reimburse other theft victims.

Third, as a result of the recent federal tax code reform, government attorneys will effectively be paying a higher assessment fee than that paid by private attorneys. Private attorneys will be able to deduct the fee from their pre-tax income as a business expense whereas government attorneys, due to their status as salaried employees, will not. Therefore, at the very least the amount of the assessment levied against government attorneys should be reduced so that they do not suffer a greater out-of-pocket monetary loss than that incurred by private attorneys.

Fourth, the Board ignored entirely the conflicts of interest the proposed rules create for government attorneys. For example, Rule 301 only recognizes conflicts which arise for attorneys in private practice. It disqualifies a Board member from considering a claim when (1) the member has a lawyer-client relationship with the claimant; or (2) the member is in the same law firm or company as the lawyer subjects to the claim. Government attorneys serving on the Board, however, will have

conflicts of interest that do not fall into either of the above two categories. Because claims are only eligible for consideration if the loss to the claimant is caused by the intentional dishonest act of the lawyer, all eligible claims will be the subject of a criminal investigation and possible prosecution. Many government attorneys on the federal, state and local level serve as prosecutors and should disqualify themselves for considering a claim if their office has or may initiate criminal proceedings against the lawyer who is the subject of the claim. Government attorneys who work as public defenders should disqualify themselves from considering a claim if it appears that their office may be appointed to defend either the attorney who is the subject of the claim or an accomplice to the attorney theft. Therefore, the rules should be amended to provide for the disqualification of any government attorney whose office may be involved in either the prosecution or defense of the dishonest attorney.

The proposed rules also fail to recognize that by subjecting government attorneys to the Client Security Fund's variable assessment, it creates an inherent personal conflict of interest for government attorneys. For example, when prosecutors investigate fraud or embezzlement cases, they usually uncover the existence of multiple victims who otherwise may never have known they were defrauded or have reported the theft. Often the amount stolen from these additional victims is much greater than the amount taken in the case that was the subject of the original investigation. Because the size of the yearly assessment will depend upon the dollar value of the claims, a prosecutor's professional duty to uncover and notify all possible victims will conflict with his or her personal interest in limiting the cost of the assessment fee.

Similarly, the desire to limit the dollar amount of the victim's losses may conflict with a public defender's duty to negotiate a favorable plea bargain for his or her client. For example, a plea negotiation that will permit a client to serve a probationary rather than prison sentence may be contingent upon

the client stipulating to a larger amount of restitution than the prosecution could establish at trial. The amount of restitution that is not paid by the client will result in a claim against the Client Security Fund, which in turn will result in increased assessment fees for the public defender. Consequently, the public defender's duty to obtain the best possible plea negotiation for his or her client will conflict with his or her personal interest in limiting the amount of the yearly assessment fees.

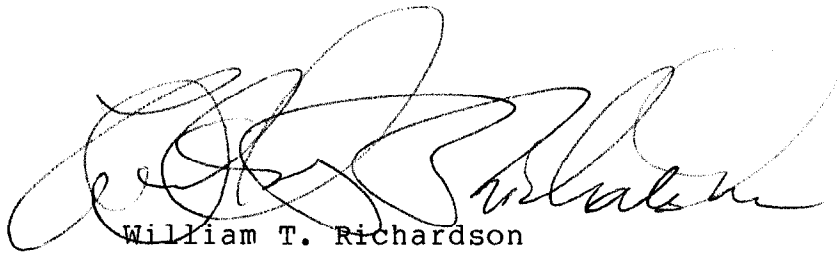
Imposition of the assessment upon judges will also create a conflict between professional duties and personal interests. Judges often are the final determiners of the amount of monetary loss in both criminal theft cases and in civil fraud cases. The offending party often does not have the financial resources to pay the full amount of the determined loss. Thus, the higher the determined loss, the higher the amount of monetary claims made against the Client Security Fund and the higher the assessment fees paid by the individual judge. These personal conflicts of interest can only be avoided by exempting government attorneys who do not handle client funds from the assessment fees.

Based on the above, the Hennepin County Union of Lawyers and Professionals respectfully submits that the rules be amended to reflect consideration of both the ever present conflicts of interest the Client Security Fund creates for government attorneys and to exempt government attorneys from the assessment. Because conflicts of interest concerns will effectively bar government attorneys from any meaningful membership on the Minnesota Client Security Board and because our clients will never be eligible to file claims against the Fund as a result of our professional services, fairness dictates that government attorneys should not be subject to assessments.

Attorneys dedicated to government service comprise only a small percentage of the bar's membership and this limited exemption should not significantly affect the Client Security Fund. We also respectfully suggest that a more equitable and

efficient way to raise money for the Client Security Fund would be to assess each attorney who handles client funds a percentage of the yearly monetary value of the attorney's trust fund.

Thank you for your consideration of this statement. Enclosed are ten copies of this statement and the original and ten copies of our request to make an oral presentation.



William T. Richardson
President, Hennepin County
Union of Lawyers and
Professionals
Atty. Lic. No. 91431
(612) 348-8836

3/4/87

March 3, 1987

Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

RE: C0-85-2205
Proposed Rules Client Security Fund C0-85-2205

Dear Sir:

Enclosed please find ten copies of my personal written comments (only) to the proposed rules. As per the footnote therein, please also note that I have been asked by our local professional association (AFSCME local 2938) to make an oral presentation on behalf of their separately authored written comments.

Thank you for your attention to this matter.

Respectfully submitted,

Paul R. Jennings
Attorney at Law
Atty. Lic. No. 49943
C-2000 Government Center
Minneapolis, MN 55487
Phone: 348-5588

PRJ:BB

Enclosures

C0-85-2205
STATE OF MINNESOTA
IN SUPREME COURT

In re the Petition of the Minnesota State Client Security Board for Adoption of Proposed Rules

WRITTEN COMMENTS (only)

I. Introduction

The author of these comments, Paul R. Jennings, has been an Assistant County Attorney in Hennepin County for thirteen years. My present assignment is in the Criminal Appeals Section of the office, but I have also served in Juvenile prosecution and the Civil Sections of the office. Including service in the Navy and the Minneapolis City Attorney's Office, I am now in my 24th year of public service.

The below-written comments (only)[1] address themselves principally to two problem areas of the proposed rules: (1) section 102(c), the assessment imposed on those in goverment service; and (2) sections on lawyer cooperation and disclosure of information (sections 307, 318, 320, and IV).

II. Assessment of the full amount of $100 on public sector lawyers under section 102(c) is unfair and unwise.

(a) As a principal of insurance, one would never expect the insuror to collect premiums from individuals who have no chance of creating the risk. Yet section 102(c) on assessments does

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[1] I have been asked to present oral comments relative to the separately authored comments of AFSCME loal 2938 and have agreed to do so.

exactly that by requiring public sector lawyers to pay the full $100 assessment. These lawyers do not handle client funds (and therefore do not create a risk of loss) and many like myself are committed to long term public service. Yet we, if section 102(c) remains as is, will be asked to pay continuing $100 assessments each time it is necessary.

Besides being patently unfair, said full assessment on public sector lawyers will act to reduce the assessment on those private sector lawyers who create the risk. Presumably such reduction will act to encourage those private sector lawyers not to conform their behavior as exactly as necessary to reduce the elements of the risk. This happens because said private attorneys will not be paying the true costs of insuring the risk of client fund losses.

(b) Public sector lawyers will be paying full continuing assessments during the same time that they are asked on another basis (in the criminal law) to directly handle the results of the risk. That is, many public sector attorneys will be prosecuting, defending, or judging the criminal prosecution of lawyers who have intentionally stolen client funds.

This leaves public sector lawyers inherently in a conflict position relative to seeking representation on the client security board and the way it operates the fund. It is not fair or wise to impose both the full duties of payment of the full assessments and prosecution or defense of the accused lawyer upon public sector lawyers who will have an inherent conflict in

setting the policies of the fund. Obviously the long-term impact could also act to cause an individual prosecutor (as an example) to compromise his duty to prosecute (because his assessments would go up).

(c) Full assessments are unfair to public sector lawyers because of ability to pay. Everyone recognizes the public employee (lawyer or otherwise) exchanges lower salary for employment security and the "good feelings" of public service. This leaves public sector lawyers paying assessments from a salary. The public lawyer cannot raise fees nor share in the rewards (profits) which create the risk. There is a substantial difference in wages between the public and private sector.

In Hennepin County, a recent undertaking (the job market study for comparable worth) started with the assumption that the amount of the wage difference should be more than 25%. I say more than 25% because in surveying supposed total wages of private lawyers to compare to lawyers working for Hennepin County, the firm (D.C.A. Stanton Group) conducting the job study for Hennepin County started by eliminating from consideration the top quartile of practioners in the private sector in all job classifications (the project page explaining this difference is attached). For lawyers, the practical result is that the difference will become more than 25% because every other indication from other studies of private lawyer compensation is that the truly successful private lawyer (economically) makes four to five times the average compensation of all lawyers.

Obviously, the public employees in Hennepin County (not just lawyers) were not prepared to accept even the 25% assumption and have appealed that process.

Many outstate and even metropolitan public sector lawyers make far less than Hennepin County public sector lawyers. Assessing these public sector employees the full amount will simply widen an already wide economic gap between public and private attorneys. A brief glance at any two recent issues of Finance and Commerce to see how many low paying public sector jobs are being advertised and not filled at a time when the supply of "new" lawyers is still good illustrates the impact of low wages.

The lawyer in private practice can choose to structure his practice under the tax code to show his client security assessments as a business expense and simply take 100% of the assessment (along with many other costs of doing business like cars, legal education, etc.) away from income. Under the new tax code, the public sector attorney will have a most difficult time deducting even a part of such assessments.

I cannot speak for other public employers, but Hennepin County is very resistant to paying additional fees for lawyers who are already among their highest salaried employees. Hennepin County does not currently even pay basic license fees or expenses of legal education for lawyers. It also does not make particular sense to pass the "expense" (client security assessments) of dishonest lawyers onto the public, which presumably already

suffered the loss originally and is paying the public expense of any prosecution.

Obviously such assessments are not just "insurance." I, more perhaps than some of my colleagues in our local public sector lawyer "union," recognize the assessment goes to maintain public confidence in our profession not just to pay losses. Presumably at any time I could give up public service and go for the economic rewards of private practice. I should and am willing, individually, to pay some basic amount to maintain public confidence in our profession.

A basic reduced assessment for public sector lawyers would not substantially reduce the overall moneys collected because (as a percentage) the number of lawyers in public sector service is small. I would not extend reduced assessment to lawyers who work in the private sector but do not handle client funds because presumably they share in financial rewards (profits) of their employers by higher salaries. I would leave the matter of the definition and extent of including lawyers working for non-profit public charities to them.

If there is a pressing need to maintain public sector lawyers as a part of some larger paying "base" to the fund, I would suggest an assessment at half the level of private lawyers would not be unreasonable. Or, in the alternative, a base rate be established and added to a percent fee applied to client fees handled.

III. Public Education versus Confidentiality and Cooperation Provisions.

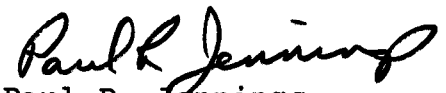
My limited indirect experience with a small number of lawyer theft cases in Hennepin County still leaves me with a strong feeling I should briefly comment on sections 307 (lawyer cooperation), 318 (confidentiality), 320 (information released) and IV (education).

It has been my experience that even when lawyers are caught red-handed cheating not only the public but their own law firms, that these same private law firms are very reluctant to cooperate with an investigation because public disclosure will make the firm "look bad."

In view of that experience, I would suggest section 307 in lawyer cooperation be extended to require cooperation of the lawyer's law firm. Second, to favor public education (and presumably help prevent future losses) I would specifically amend section 320 (information released) to allow disclosure of claims paid by individual lawyer name as well as the remedial action taken by any associated law firm. Corresponding changes to section 318 (confidentiality) and IV (education) might follow.

DATED: March 3, 1987

Respectfully submitted,



Paul R. Jennings
Attorney at Law
Atty. Lic. No. 49943
C-2000 Government Center
Minneapolis, MN 55487
Phone: 348-5588

PROJECT SUMMARY

The salary market data provided in this report are the final results of the market compensation study conducted by DCA Stanton Group for Hennepin County.

A 1986 market rate is provided for 361 Hennepin County job classifications. The job classifications are listed in job series order.

The 1986 market rate for each classification is calculated by using a weighted average of pay range maximums from public sector employers and the third quartile (Q^3) of actual salaries collected from private sector employers. The average is weighted by the number of public and private sector salary rates available. The formula for calculating the 1986 market rates can also be shown as follows:

$$\text{1986 Market Rate} = \frac{(\#\text{ of public rates} \times \text{public range max avg}) + (\#\text{ of private rates} \times \text{private } Q^3 \text{ avg})}{\text{Total \# of public and private rates}}$$

For those job classifications where private sector salary data is not available, the 1986 market rate is the public sector pay range maximum average. For those job classifications where public sector salary data is not available, the 1986 market rate is the third quartile of actual salaries reported from private sector employers.

Data for this report was collected for Hennepin County to be effective as of December, 1985. All data has been updated by 4.6% from public sector employers and 5.0% from private sector employers to reflect average salary increases granted during 1986. As a result, the effective time period of all 1986 market rates reported is late 1986.

Market rates are not provided for those classifications where comparable salary market data was insufficient, unavailable or nonexistent.

Consultant recommends referring to the job evaluation results for those classifications where salary market data is not provided. Salary market estimates can be obtained for these job classifications by referencing 1986 market rates of job classifications which have similar job evaluation point values.

MARK D. NYVOLD
ATTORNEY AT LAW
Suite 380
608 Second Avenue South
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TELEPHONE
(612) 339-1431

January 30, 1987

Mr. Wayne O. Tschimperle
Clerk of Appellate Courts
230 State Capital Building
St. Paul, MN 55155

Re: Hearing on the Petition to Establish a Client Security Fund
C0-85-2205

Dear Mr. Tschimperle:

I understand that on March 19, 1987 at 9:00 a.m. the Supreme Court will hear testimony on proposed rules for the Client Security Board. I would like to request the opportunity to appear at that time to address several issues concerning the proposed rules, which I have reviewed. I request 15 minutes to present my views.

Prior to the hearing I shall be submitting a memorandum fully setting forth the problems I see in the Rules as proposed. It would be extremely helpful, however, to be able to address the court personally to elaborate on these issues. Could you please let me know if this would be possible.

Sincerely yours,

Mark D. Nyvold

Mark D. Nyvold

MDN/ka

Judy

James B. Bleeker
Carleton College: B.A.
Northwestern University: J.D.

James B. Bleeker.
CHARTERED
LAW OFFICE

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1308 Coon Rapids Boulevard
Coon Rapids, Minnesota 55433
612/755-1516

January 5, 1987

JAN 0 7 1987

Supreme Court
230 State Capitol Building
St. Paul, MN 55155

Re: Client reimbursement for attorney theft of trust account funds

C0-85-2205

Dear Sirs:

This letter is to express my concern regarding reimbursements to victims of attorney trust account theft. While I strongly support reimbursement, I equally strongly oppose 100% reimbursement, for these reasons:

1. People should be aware that there are risks in all aspects of life and acutely search out those risks.

2. People should assess an attorney's integrity as well as his competence. With the mushrooming of the legal profession, the recent two occurrences may only be samples of that to come.

3. People should be cautious in their dealings and prudent in the management of their affairs. They should promptly search for explanations and second opinions for all advice and statements, especially those that do not comport with common sense.

4. A 100% reimbursement weakens the very people it seeks to protect, at a time when people seem more disposed than ever to blame others for their misfortunes.

An alternative to a 100% reimbursement would be an 85% reimbursement, which would provide the necessary protection and encourage equally important caution.

Sincerely,

James B. Bleeker

C0-85-2205

March 6, 1987

To: The Minnesota Supreme Court
Re: Client Security Board proposed rules

The purpose of this letter is to comment on the proposed rules of the Minnesota Client Security Board and to encourage rejection of the proposed rules in their present form.

Proposed Rule 102 would impose an assessment on virtually all lawyers to compensate client-victims of dishonest lawyers. Economics teaches that, generally, the cost of loss prevention should be borne by the party who is in the better position to prevent the loss. The proposed rule externalizes the cost of dishonest acts of lawyers and places the cost on parties who have no opportunity to prevent the loss. Many lawyers, such as county attorneys, district attorneys and corporate counsels, never handle client funds, yet all attorneys are being asked to insure the dishonest acts of a few attorneys. The extent of the externalization is evident from proposed Rule 102 which makes no attempt to limit the assessment to lawyers who handle client funds. This information is available from the Attorney Registration Statement which requires information to help identify persons who do not handle client funds and whose conduct therefore is not likely to give rise to claims against the proposed Client Security Fund. The proposed assessment should at least make this important distinction.

Consideration should be given to a bonding requirement to insure compliance with Rule 1.15 of the Rules of Professional Conduct. This would help ensure that the cost of a loss is borne by the parties who are in the best position to prevent it and would also help ensure that injured parties are fully compensated. Determination of a claim under proposed Rule 314 might lead to a partial or even token payment.

The proposed rules would establish a board empowered by proposed Rule 205.f. to establish its own administrative budget to be paid from the Fund. Proposed Rule 206 anticipates a staff, the cost of which would become a part of the budget; there seems to be the danger that administrative costs could make significant demands on the Fund, thereby diverting monies from the purpose of the Fund, i.e. to compensate injured clients. Proposed Rule 105.B. provides that the budget is "...to be approved by the Supreme Court..." and proposed Rule 207 would require an annual report to the Court. They do not provide strong mechanisms to control administrative costs and raise the question that the Court, in the press of its judicial responsibilities, may not have the resources to critically review a budget. The spectre of "rubber-stamping" lurks in the proposed rules.

This is of special concern in light of proposed Rule 103 which would permit additional assessments "...depending in the financial condition of the Fund...." Proposed Rule 314.B.1 provides that a factor for the Board to consider in determining a claim is "Monies available and likely to become available to the Fund...." Without adequate controls, these rules, when combined, create the possibility of unlimited periodic assessments. If there must be assessments, they must be limited in number, frequency and amount.

The Client Security Fund and proposed rules seem to be the result of two incidents that recently received widespread media attention and, indeed, have been characterized by proponents as good "public relations" for the Bar. Without surveys or statistics measuring public response, one must question the extent to which the good name of the legal profession has been sullied by these incidents.

The proposed Fund and rules may placate a few injured clients and stave off media attacks, but they do not address other public relations concerns. They do not encourage the Bar to accept responsibility of educating the public on what to expect in the delivery of legal services. Under proposed Rule 314.B.6, the "...culpability or negligence of the claimant..." would be a factor for the Board to consider in determining a claim; yet the proposed rules do not address the need for clients to be better informed consumers of legal services. It is not hard for clients to be negligent when they do not know what they should and can be doing to monitor their lawyer's handling of their case. In short, the proposed rules provide no incentive for clients to help prevent loss.

Whether persons injured by dishonest acts of lawyers should be compensated, and if so, how, is an important issue; but the proposed rules do not adequately address the concern such an issue raises. The proposed rules should be rejected.

Karn L. Haugen
License 142360

Kittie L. Graf
License 167356

Scott A. Ritchie
License 161147

Debra K. Guertin
License 132214

City of ROCHESTER
Minnesota

February 25, 1987

OFFICE OF APPELLATE COURTS
FILED
FEB 26 1987
WAYNE TSCHIMPERLE
CLERK

FREDERICK S. SUHLER, JR.
City Attorney
Room 1, City Hall
Rochester, MN 55902-3164
(507) 285-8066

Honorable Chief Justice
and Associate Justices
of the Minnesota Supreme Court
c/o Clerk of Appellate Courts
Room 230, State Capitol
St. Paul, MN 55155

RE: Proposed Rules of Client Security Fund
CO-85-2205

Dear Sirs:

Please accept this letter as my written statement regarding the proposed rules which I understand include provision for a rather substantial assessment in order to provide the fund with sufficient assets to cover several potential claims which have recently received public attention. The views expressed herein should be construed as those personally of the undersigned, and not my present employer, the City of Rochester.

Since my admission to practice before this Court on October 17, 1969, I have been employed in the public sector. The first eleven years with the Minnesota Attorney General, the past seven as the full time City Attorney of Rochester.

Even though I have never engaged in the private practice of law, I do not consider myself to be any less of a lawyer than my brothers and sisters in private practice. I am subject, and rightfully so, to the same requirements as to appropriate conduct and maintaining my legal continuing education. If I violate these rules, I would expect to be subject to the same kind of discipline that a private practitioner would.

I am willing to pay my fair share of the costs of administration of the Court's programs regarding the qualifications for admission to practice, administration of continuing legal education, and attorney discipline.

I do not however feel it is necessary or appropriate for me (or my governmental employer) to pay a substantial amount of money on a one time or annual basis to help solve a potential problem for my clients which cannot happen because of the nature of my employment.

Although it is possible for me to be dishonest or to steal, it will not happen as it so frequently does in private practice, because of my handling of client funds on a trust basis. I do not have a trust account, and for that reason am presently exempt from certifying my compliance with rules relating thereto.

I would assume that a substantial number of licensed attorneys in Minnesota who are employed full time by Federal, State and local governmental subdivisions; and those employed full time as corporate counsel in the private sector would be similarly hard pressed to appropriate client funds in the same manner as illustrated by the Flanaghan and Sampson incidents.

In my judgment, if the Board's rules require an assessment of those of us who do not maintain trust accounts, it is in essence a subsidy which is being given for one segment of the practicing bar to another. For these reasons, I am opposed to a rule which would require a substantial assessment.

Thank you for your consideration of these written comments.

Respectfully,

FREDERICK S. SUHLER, JR.
Rochester City Attorney

lmm

WALLACE C. SIEH, LTD.
ATTORNEY AT LAW

314 Exchange Building
Winona, MN 55987
Telephone (507)452-8335

February 13, 1987

Clerk of the Appellate Courts
230 State Capitol
St. Paul, MN 55155

RE: Client Security Board Rules

Dear Sir:

I herewith enclose and file the original and ten copies of my statement on the above for the hearing March 19, 1987.

Sincerely,

Wallace C. Sieh, Ltd.

Enclosures

WCS/rg

STATE OF MINNESOTA

IN SUPREME COURT
CO-85-2205

In re the Petition of the
Minnesota State Client Security
Board for Adoption of Proposed Rules

WRITTEN STATEMENT OF
ATTORNEY WALLACE C. SIEH
for hearing March 19, 1987

The undersigned, Wallace C. Sieh is an attorney at law practicing in Winona, admitted to the Minnesota Bar October 5, 1939.

In discussing this subject with other attorneys, we are at a loss to know how an attorney can accumulate so much of clients funds and over such a long period of time.

So the first question for the court to decide is the foregoing to wit: how an attorney can manage to accumulate over a period of time several hundred thousand dollars of clients funds.

The second question is what rules or regulations can be adopted to control or prevent this; for example, a regulation could provide that an attorney post a surety bond if he had over $50,000.00 in client funds, etc.

Having determined the foregoing the next question is how much of a theft loss should be borne by the client, by other attorneys and by the public.

I think the client has some responsibility to use diligence and require accountings of funds held by an attorney.

It seems to me that it is more of a reflection on attorneys as a whole that a unlimited surety fund has to be set up, than is the adverse publicity of the individual thefts.

I seriously doubt that the bar reimbursement enhances attorneys' image. The image might better be enhanced by prompt client service at reasonable fees.

Perhaps the public should bear some of the cost as in crime reparations.

Respectfully submitted,

Dated: February 17, 1987.

Wallace C. Sieh, Ltd. Reg. No. 100882
314 Exchange Bldg., Winona, MN 55987

Law Office of
GLEN A. NORTON
210 National City Bank Building
1809 South Plymouth Road
Minnetonka, Minnesota 55343
Telephone (612) 545-5008

January 19, 1987

Hon. Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
230 State Capitol
St. Paul, MN 55155

C0-85-2205

Dear Chief Justice Amdahl:

I'm writing with regard to the news releases I have seen about the proposed compensation plan for people whose attorneys have defrauded them. I am alarmed at the prospect of receiving a bill for $100 based on the conduct of attorneys with whom I have no contact. Without commenting on the potentially huge administrative costs and the massive bureacracy such a fund could generate, I will address my comments to the abject unfairness of this proposal.

I am sorry to hear that some people have been cheated by their attorneys, and I don't wish to appear to be uncharitable. However, I don't think it should be my responsibility to underwrite the malpractice of other attorneys, in addition to paying for premiums on my own malpractice insurance. Insurance is already a nightmare for professionals.

This proposal also raises the question of due process of law. It would seem that a person unwilling to consent would stand to lose either his business or his control over his own money if he were simply forced by the Bar Association to pay another insurance bill.

I am also concerned with regard to equal protection under the law. Who would pay to indemnify me were I to be swindled by a plumber or an electrician or any other small businessman? Why should there be a fund to indemnify only the clients of fraudulent attorneys? Who will indemnify attorneys who have been defrauded by clients? Why should attorneys be singled out from all the other business and professional persons, and required to indemnify the public for the wrongdoing of a colleague, whom they probably do not even know?

Also, I am concerned that such a program of indemnification might encourage those among us who resist the temptations to steal now, because of guilt over the straits they could plunge their clients into. By removing that aspect of the theft of a client's funds, an individual attorney who considers theft from clients could justify it to himself by thinking of all that he paid into the plan to protect the client and figuring that the client was thereby covered. Basically, I believe insurance against certain undesirable conduct encourages that very conduct.

In conclusion, I wish to register my strong disagreement and disapproval of this proposal to indemnify only a client who claims he's been defrauded by his attorney.

An indemnification process that would indemnify all people against the wrongdoing of a business or professional person also smacks of a venal and contemptible form of socialism or communism. As a United States citizen, a taxpayer, and a member of the Hennepin County Bar Association, the Minnesota Bar Association and the American Bar Association, I urge you not to adopt the proposal and, indeed to discourage any further discussion of it as it casts attorneys in a bad light in the public eye and brings the profession into undeserved disrepute. But, if you should choose to appoint a commission to study this proposal, please consider this my application for appointment to such a commission.

Sincerely,

Glen Norton

GLEN A. NORTON
Attorney at Law

GAN/snc

Room 201, Courthouse
Red Wing, MN 55066

January 30, 1987

Minnesota Supreme Court
Chief Justice Douglas K. Amdahl
State Capitol Building
St. Paul, MN 55155

RE: Client Security Board Proposal, C0-85-2205

Dear Justice Amdahl:

The Client Security Board proposal that each attorney pay $100.00 in licensing fees as a type of restitution for other attorneys who commit malpractice raises some important questions.

First, under M.S. 480.05, where does the Supreme Court get the power to collect money for a non-licensing purpose? The Supreme Court's power of "examination and admission" seems limited to collecting money for the purposes of determining whether an individual meets minimum educational and moral standards. This question concerning the authority of the Supreme Court should be decided by a neutral party like the Federal Court System.

Second, how can the Supreme Court deprive an attorney his/her license for failing to pay restitution for another's intentional criminal misconduct? This is a deprivation of federal liberty or property rights without due process.

A reasonable alternative to the Client Security Board's proposal would be to ask the State Bar Association to adopt the proposal. Most attorneys probably favor the proposal, so it would probably be adopted. But those who oppose the resolution could choose not to be a member. And their constitutional rights would be protected.

Respectfully yours,

Peter Scheuer

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Robert H. Peahl
Don C. Day

David K. Wendel
Jerry J. Lindberg
Richard D. Hodsdon
Craig A. Larsen

January 29, 1987

OFFICE OF
APPELLATE COURTS
FILED
JAN 30 1987
WAYNE TSCHIMPERLE
CLERK

Clerk of Supreme Court
Minnesota Supreme Court
230 State Capitol Building
St. Paul, MN 55155

Re: Proposed Client Security Rules
CO-85-2205

Dear Sir/Madam:

I note that the Supreme Court has scheduled a Public Hearing for March 19, 1987, to hear testimony on proposed rules for the Client Security Board and specifically for the proposal to establish a fund by assessing $100.00 against each attorney upon license renewal. In lieu of submission of any material at the hearing I take this opportunity to make public comment upon the proposal.

I object to a proposal which would effectively assess all attorneys on and across the board basis when many licensed attorneys do not engage in the practice of law so as to involve themselves in holding funds in trust for clients. There are many licensed attorneys who do not practice law and it seems unfair to assess those persons. Furthermore, there are many of us who although actively practice law have a practice that is of such a nature that we rarely, if ever, hold any funds for our clients. It is simply unfair to assess such individuals the charges of maintaining such a fund.

I recognize that the bar must act to ensure the integrity of this profession and of the funds which are held in trust for clients. However, rather than creating some large pool of money, which will inevitably be viewed as simply another "deep pocket" to try and go after, it would make more sense to establish more strict monitoring and audit controls to ensure increase the accountability for such funds. Changes in this regard would serve to prevent or reduce the loss to future clients, rather than to simply act as little more than an excess insurance carrier for those who are injured by attorney misconduct.

Very truly yours,

Richard Hodsdon

Richard Hodsdon

RH/kg

January 13, 1987

The Honorable Douglas K. Amdahl
Chief Justice, Minnesota Supreme Court
223 State Capitol Building
Saint Paul, MN 55155

C0-85-2205

Dear Justice Amdahl:

I must express in the strongest possible manner my absolute opposition to the proposed assessment of every licensed attorney in order to build up the balance in the client security fund.

In addition to the two particular attorneys dragging my chosen profession further into the mud by absconding with client funds, I now learn of the proposal to assess each licensed attorney, whether or not he or she handles client funds, in what I can only see as an absolutely futile attempt to purchase back whatever goodwill these two embezzlers have siphoned from the legal profession.

You may have viewed, as I did, the television interview with one of the defrauded clients wherein she was asked about the possibility of being reimbursed for her losses. Her reply was simple and stated in essence: "That would be alright, but I'll never trust a lawyer again." In my opinion, that says it all.

I understand a committee of licensed attorneys have originated the proposal to assess. I don't doubt that each member of that committee probably possesses double my legal experience and ability as well as perhaps four times my annual income. If this be the case, I would take it as proof that legal experience, ability and earnings bear little correlation to common sense.

I am an attorney employed by the legislative branch of government. I handle no client funds. I would never steal if I did. The attorney registration system should make it quite easy to determine which attorneys handle client funds. I will not speculate on the wisdom of assessing these attorneys only, but if any assessment is to be made, it should be so limited.

Sincerely,

Paul E Rohde

Paul E. Rohde
761 State Office Building
435 Park Street
Saint Paul, MN 55155

LAW OFFICES

MUIR, HEUEL & CARLSON
A PROFESSIONAL ASSOCIATION

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ROSS MUIR
DANIEL HEUEL
JAMES CARLSON
ROBERT SPELHAUG
WILLIAM FRENCH

MINNESOTA STATE SUPREME COURT
State Capitol Building
Aurora and Park Avenue
St. Paul, MN 55155

December 29, 1986

RE: Client Security Fund CO-85-2205

Dear Members of Minnesota Supreme Court:

This letter is to object to any mandatory charge made to fund a client security fund to pay for the criminal actions of Minnesota lawyers.

The sponsors of this proposal appear to have lost contact with the average attorney. The average attorney in this state is under severe financial pressure right now. There is a glut of attorneys being graduated by the three Minnesota law schools. Attorney malpractice insurance premiums have reached the point where many, many attorneys are going without malpractice insurance coverage. CLE requirements cost a significant amount of money. An additional fee for this client security fund will be an additional burden which will cause many lawyers to question whether they should continue in this profession. I personally know of some attorneys in Rochester who have simply quit the practice of law because it is simply not worth it. They have gone into selling insurance or they have gone into selling real estate.

Unfortunately, I believe that there is a widening division between attorneys in this state. There are a few very wealthy attorneys who seem to spend a great deal of time thinking up ways to spend lawyer's money in solving the ills of society and on the other hand there is a vast bulk of attorneys who are forced to pay for these ideas. A few extremely rich attorneys in the Twin Cities should not dictate the programs which all attorneys in this state must pay for.

Sincerely,

James R. Carlson

JRC:jrl

STAN NATHANSON

ATTORNEY AT LAW

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AREA CODE 612

TELEPHONE

333-7888

STAN NATHANSON

OFFICE OF
APPELLATE COURTS
FILED

MAR 20 1987

WAYNE TSCHIMPERLE
CLERK

March 19, 1987

Supreme Court
230 State Capitol
St. Paul, MN 55155

RE: Adoption of Rules on Mandatory Assessment of Attorneys - Security Fund

Dear Honorable Judges of the Supreme Court:

Since I am unable to participate in today's Public Hearing on the matter due to prior committments, I write urging you not to adopt any rules whereby the lawyers of Minnesota would be required to pay into the State run Client Security Fund.

Such a requirement would be both unfair and unnecesary. There is no reason to believe that lawyers more than any other citizens are individually responsible for the criminal actions of other lawyers in stealing their clients' monies as would justify the requirement of lawyers, and there is no reason to believe that lawyers are any less than any other citizens subject to the civil and criminal proceedings in this State which are designed to remedy the same conduct addressed by the Client Security Fund.

Finally, granting that supporting a Client Security Fund is a worthwhile committment for the lawyers of this State, I am aware of no evidence that the needed funds could not be raised voluntarily through fundraisers of various sorts aimed at lawyers and non-lawyers alike.

Thank you for your attention.

SINCERELY,

Stan Nathanson

3-4-87

Minnesota State Bar Association

CLIENT SECURITY FUND

OFFICE OF
APPELLATE COURTS
FILED
MAR 04 1987
WAYNE TSCHIMPERLE
CLERK

March 2, 1987

Clerk of Court
Minnesota Supreme Court
230 State Capitol Building
St. Paul, MN 55155

Re: State of Minnesota In Supreme Court C0-85-2205

Dear Sir or Madam:

I am enclosing herewith the original and ten copies of the Minnesota Client Security Fund Board Report for filing in the above file. This Report is filed in support of the Petition of the Minnesota Client Security Board for adoption of the proposed rules.

You will be receiving an amendment to Rules 102 and 103 from Marcia Proctor in the next few days which should be incorporated in the rules to be approved. The amendment is in the nature of a clarification and does not change the substance of those rules.

I will appear on behalf of the Minnesota Client Security Board, to argue in support of the adoption of the proposed rules, on March 19, 1987 at 9:00 a.m.

Very truly yours,

Melvin I. Orenstein
Chairman
Client Security Board

MIO:gjh

Enclosures

MINNESOTA CLIENT SECURITY FUND BOARD REPORT

January 12, 1987

On April 15, 1986, the Supreme Court of the State of Minnesota issued its Order establishing the Minnesota Client Security Board. On July 18, 1986, the Supreme Court appointed the following members to the Client Security Board:

Melvin I. Orenstein, Minneapolis
Ronald B. Sieloff, St. Paul
Nancy L. Vollertson, Rochester
James B. Vessey, Minneapolis
Gilbert W. Harries, Duluth
Constance Otis, St. Paul
Jean King, St. Paul

The new Client Security Board was established upon the Petition of the Minnesota State Bar Association filed with the Court in November of 1985, requesting that the Court create a Client Security Board under the jurisdiction of the Supreme Court. The Petition was based upon action taken by the Board of Governors of the Minnesota State Bar Association at its mid-winter meeting in 1985 upon the recommendations of the Minnesota State Bar Association Client Security Fund Committee which had been charged during the prior year with the responsibility for formulating recommendations for effective methods of providing reimbursement to clients who have suffered losses by reason of the dishonest acts of lawyers during the attorney-client relationship.

The Client Security Fund Committee of the Minnesota State Bar Association was established in 1963 and had been funded by periodic allocations from the general revenues of the Minnesota State Bar Association. During those years the Fund had been maintained at levels up to approximately $140,000 which had

generally proven adequate to pay the claims that were made against the Fund.

From the period of the establishment of the Fund until 1979, the claims filed against the Fund were generally in the $500 to $5,000 range and were the result of isolated instances of attorneys' misconduct. In 1979, for the first time, substantial multiple claims were filed against the Fund arising out of the misconduct of one attorney. Twenty-two claims arising from the conduct of that one attorney were filed against the Fund aggregating approximately $700,000. The size of the Client Security Fund at that time was approximately $125,000. The Committee was forced to adopt an arbitrary limit of $5,000 as a maximum reimbursement from the Fund for each claimant in order to preserve the integrity of the Fund so that other claimants would have recourse to some remaining proceeds for reimbursement. The claimants in that case were able to recover a portion of their losses from third-party sources, but, in total, were reimbursed at the rate of approximately only 45% of their losses from all sources.

In August of 1985, a series of claims were filed against the Fund arising out of the conduct of one lawyer, totalling over $350,000. Again in September of 1986, the Fund was presented with another series of claims arising out of the conduct of one lawyer with the potential of such claims amounting to approximately $400,000. At the present time, over $800,000 of claims are pending against the Client Security Fund of the Minnesota State

Bar Association and approximately $140,000 is available to pay those claims. Through the action of the Board of Governors of the Minnesota State Bar Association at its mid-winter meeting of 1985, the amount remaining in the present Client Security Fund will be transferred to the Supreme Court, and all claims outstanding against the Client Security Fund of the Minnesota State Bar Association will be transferred for consideration and payment to the new Client Security Board.

In accordance with the Order of the Supreme Court establishing the Client Security Board, the Client Security Board has prepared internal rules and rules of procedure which it has presented to the Supreme Court for its adoption. An Order for Public Hearing has been issued by the Court setting a hearing on the Petition of the Client Security Board for approval of the rules at 9:00 a.m. on March 19, 1987, at the Supreme Court in St. Paul.

The rules are organized in four sections:

I. Establishment of the Fund to pay claims.

II. Creation of the Board outlining the scope of authority of the administering agency.

III. A claims process addressing eligibility of claims, rights of attorneys subject to claims, and a decision-making process for payment.

IV. Education.

I. ESTABLISHMENT OF THE FUND.

Rule 100. Financing. The Fund will be financed by assessments levied against all attorneys to be paid with the annual license renewal. The Client Security Fund Committee of the

State Bar Association had recommended this procedure based upon its review of the Report on Insurance and Bonding as Alternatives or Supplements to Creation of Client Security Funds promulgated by the American Bar Association Standing Committee on Lawyers' Responsibility for Client Protection on April 1, 1985. The lack of availability of insurance and bonding, as well as the cost of those alternatives, has caused a substantial number of states to move to the adoption of client security fund systems under the jurisdiction of the judiciary with its inherent power to levy assessments on lawyers through the registration process.

The Board concluded that an amount of $1,000,000 would allow the Board sufficient means to satisfy claims against the Client Security Fund without unduly restricting the amounts due per claim due to lack of funds. One of the major weaknesses in the prior Client Security Fund system under the Minnesota State Bar Association, which relied on voluntary allocation of revenues to support the Fund, was the relatively minimal size of the Fund in comparison to the size of the claims that were being filed. The reimbursement of claimants with relatively small payments in relation to their respective losses did little to re-establish the confidence level of the claimants in the legal profession and may well have aggravated the already strained relationship. Since one of the primary objectives of the Client Security Fund is to maintain the confidence of the public in the legal profession, the Board deemed this result to be counterproductive.

The attorney registration fee provisions under which lawyer licenses are renewed consist of three different payment

categories: an exempt category of retired lawyers, a low-fee category for the military, out-of-state and new lawyers, and a higher fee for the lawyers licensed for more than three years. The Board has incorporated these categories in its assessment recommendations in Rule 102. The Board has recommended no exemption or reduction in the assessment for lawyers who currently hold active licenses but who are not in private practice. Some states allow government lawyers, corporate lawyers or the judiciary to avoid the Client Security Fund assessment on the grounds that they do not come in contact with client monies. Since defalcation reflects on all lawyers and since the Board is recommending a one-time assessment, there should be no reason for any exemption at this time.

The Board discussed at length the pros and cons of assessing in small dollar amounts on a continued basis versus assessing a one-time larger amount. In view of the current number of claims outstanding against the Fund, the press coverage those losses have received, and the length of time those claimants have been without recovery, the Board recommends assessing the larger fee to enable it to take quick action on the backlog. A substantial number of claims have been on file with the Fund for a period of more than a year, either in situations in which the claimant has opted to wait for treatment of his or her claim under the new Client Security Board rules, or where the claimant is in the process of recovery of his or her claim against a third party before proceeding against the Fund. A larger assessment also

allows investment of funds and the generation of income which will allow for payment of expenses of administration without depletion of the Fund principal.

The Board has recommended an assessment of $100 for each lawyer, who under the attorney registration fee provisions, annually pays the highest license renewal fee. New lawyers and lawyers who are in the military or who are out-of-state residents will be assessed at the rate of $50 per lawyer. As lawyers in this category reach the end of three years of practice, they will be assessed an additional $50. As there are presently approximately 10,753 lawyers in the highest registration fee category, a sum of $1,340,350 will be raised by the $100 assessment. There are approximately 5,301 lawyers in the registration fee category who have practiced less than three years or who reside out-of-state who will be assessed at the rate of $50, resulting in a total assessment of $265,050.

The Board will not have these funds available to it in one lump sum since the assessments will be levied quarterly along with the attorney registration fees.

It is impossible to predict the extent to which the claimants will recover against third-party sources. However, initial results of the claims filed against the Fund in 1985 appear to permit a reasonable assumption that those claimants will make a high degree of recovery and the ultimate claim against the Fund would appear to be subject to substantial reduction. It is too early to predict the extent to which recovery might be made on

those claims arising out of the most recent defalcations in 1986, but, based upon the initial information available on those claims, the Committee is of the opinion that a higher degree of recovery will be sought against the Fund on those particular claims. Finally, approximately $200,000 worth of claims would appear to have little or no chance of third-party recovery and those claims will have to be dealt with accordingly. Attached hereto is a summary cash flow projection of the Fund's estimated income and disbursements for its first year of operation beginning July 1, 1987.

There are approximately 31 claims pending against the Fund. The size of the claims are as follows:

Size of Claims	No. of Claims
0 to $10,000	14
$10,001 to $20,000	9
$20,001 to $30,000	1
$30,001 to $40,000	1
$40,001 to $50,000	2
$50,001 to $60,000	1
$60,001 to $70,000	1
$70,001 to $120,000	1
$120,001 to $150,000	1

Rule 101. Subrogation. This rule continues the policy of the Minnesota State Bar Association Client Security Fund to obtain subrogation rights upon payment to the claimant by the Fund against the lawyer responsible for the defalcation.

Rule 102. Assessments. The assessment system is fundamental to the new Client Security Fund program. Under the Minnesota State Bar Association Client Security Fund program, only lawyers who were members of the State Bar Association paid for losses caused by dishonest lawyers whether or not the dishonest

lawyer was a member of the Bar Association. Additionally, if dues were raised in amounts necessary to provide for significant reimbursement of losses to claimants victimized by dishonest lawyers, membership in the Bar Association and assessments or dues increases could only be based upon voluntary acceptance by the membership. Under the new system, all lawyers must bear a fair aliquot share of the losses covered by the act of a dishonest lawyer. While questions of principle may exist as to whether or not honest lawyers should pay for the acts of dishonest lawyers, the Board has proceeded on the basis that protection to the public and the maintenance of public confidence in the legal profession far outweigh questions of principle which may be inherent in the indirect payment of losses by all lawyers for the acts of some dishonest lawyers. The purpose of Client Security Funds was best expressed in the Preamble to the Report of the Special Client Security Fund Committee which established the Client Security Fund in 1963, as follows:

> "One of the legal profession's most cherished attributes is its professional integrity. Without it there could be no confidence in the legal profession and its vital work, and the livelihood of its members would cease.
>
> Insofar as the confidence in the legal profession's integrity held by the public is diminished, shaken or destroyed by the wrongful act of any lawyer, it has a direct adverse effect on all lawyers. Although the past shows that there are a few instances of wrongful acts on the part of only a minute portion of the entire Bar, it is only natural that such instances are magnified out of proportion in the public eye. The end result is that not only those directly involved in such a lawyer's wrongful act, but the Bar as a whole has had to suffer as a result of such an occasional misfit in the legal profession."

That same principle holds true today, and since no other effective means of providing reimbursement has been made available, the Board has determined that assessment of the character recommended is the only feasible alternative to protect the public and maintain the confidence of the public in the legal profession.

Rule 103. Cancellation of Assessments. If the number and size of claims against the Fund should recede, and the Fund is at a level which will permit adequate payment of claims, the Court may suspend assessments. It is noteworthy that for most of the time that the Minnesota State Bar Association Client Security Fund was in existence it was able to pay claims out of a Fund of a much smaller size than the presently contemplated Fund.

Rule 104. Failure to Pay Assessment. The failure to pay assessments when due will result in automatic suspension of the right to practice law.

Rule 105. Disbursements from the Fund. After an investigation and report have been made, the seven-member Board will meet and consider the payment of claims. Claims will be paid by the Board only upon an affirmative vote of a majority of its members and only upon written authorization of the Board.

II. CREATION OF THE BOARD.

The Supreme Court has adopted the recommendations of the Client Security Fund Committee of the Minnesota State Bar Association with respect to the constitution of the membership of the Client Security Fund Board. The designation of two members from

the public sector is consistent with the perception that the public interest should be fully protected. The input from members of the public will advance that protection.

Rule 201. Terms of Office. The terms of office for all members shall be for three years after the first three years of the existence of the Board. Members will be appointed by the Supreme Court and no member may serve for more than two consecutive three-year terms.

Rule 202. Expense Reimbursement. All members of the Client Security Fund Board serve on a voluntary basis without compensation. Members will be allowed reimbursement of regular and necessary expenses.

Rule 203. Meetings. The Board will act upon a quorum of four members and may utilize telephonic meetings as well as written action of its members.

Rule 204. Immunity. The Board is composed of a group of volunteers appointed by the Supreme Court. The Board deems itself to be acting under the jurisdiction of, and subject to the authority of, the Supreme Court and, as such, its members deem themselves clothed with the immunity from suit for action taken in their official capacity as members of the Client Security Fund Board.

Rule 205. Duties of the Board. This rule outlines the duties of the Board. The Board will make final determinations on the payment of each claim and will make payment accordingly on a majority vote of its members. The Board has not recommended limits on the payment of individual claims or total claims arising

from the misconduct of one lawyer. The Board deems it desirable to permit the Board to make payments in its discretion upon a determination of the factors set forth in Rule 314. While a number of states do establish a limit on each claim as well as an aggregate limit on claims arising from one lawyer's misconduct, the Board believes that the setting of arbitrary limits is not desirable. In the consideration of this rule, it was the consensus of the Board, that if the Board is in a position to pay claims in full based upon all of the factors set forth in Rule 314, claims should be paid in full. The Board concluded that partial payment of claims within arbitrary limits, when the Fund has sufficient funds to pay such claims, will result in as much dissatisfaction with the profession as the initial loss caused by the conduct of a dishonest lawyer. Moreover, the setting of arbitrary limits on claims may result in a perception by the claimant that the amount of the limit set by the Board under the rules is in the nature of an entitlement, and pursuit of third-party sources may result in settlements which are geared to a specific recovery in that amount from the Fund. Finally, nothing would prevent the Board from establishing limits if, in fact, claims are disproportionate to the size of the Fund and the cost of funding which would be imposed on the lawyers.

Rule 206. Staff Responsibility. Unlike the Minnesota State Bar Association Client Security Fund Committee, the new Board will have the aid of a staff member to perform the routine administrative duties of the Board and particularly to perform

investigations of claims. The staff member will act only upon the direction of the Board and will have no vote on any issue to be determined by the Board. It is contemplated that the staff member will work closely with the Lawyers' Professional Responsibility Board which investigates and hears matters which are closely related to the issues which come before the Client Security Fund Board. The avoidance of duplication of the investigative function should result in substantial savings and effort.

Rule 207. Annual Report. The filing of an annual report follows the practice of the Minnesota State Bar Association Client Security Fund Committee.

III. CLAIM PROCESS.

The Board deems the reimbursement of losses to be totally within the discretion of the Board and that a claimant does not have a claim to reimbursement as a matter of right. The only persons eligible to recover against the Fund will be the claimant whose loss occurred during the attorney-client relationship within the periods defined by these rules. The Board discussed the issue of whether or not to consider corporations and partnerships as qualified claimants under the Rules. It concluded that such entities should be eligible claimants subject to the appropriate standards under Rule 314. Persons, firms, or entities, which have partially reimbursed the claimant through litigation, insurance or otherwise, will not have standing to recover the amount paid by them to the claimant.

Rule 301. Conflict of Interest. This rule seems clear and the Board did not engage in any discussion on said rule.

Rule 302. Filing Claims. The Board will prepare and provide claim forms for the filing of claims. All claims will be filed at the office of the Client Security Board at an address and location to be determined. Claimants need not retain lawyers for the purpose of filing claims, although claimants may retain a lawyer if they so desire. Claimants will be reimbursed for out-of-pocket losses only. Loss of profit, consequential damages, interest and costs of recovery are excluded from reimbursement. The rule attempts to define in detail the circumstances under which a claimant may recover. The Board will continue to follow the practice of the Minnesota State Bar Association Client Security Fund Committee in considering unearned retainer claims but will not consider such disputes if they are primarily fee disputes. Malpractice claims are not within the ambit of the Board's authority.

The loss to be reimbursable must arise during the course of a lawyer-client relationship concerning representation of a matter in this state, or during a fiduciary relationship between the lawyer and the claimant in this state. Moreover, the loss must be caused by the intentional dishonest act of the lawyer and not by his negligence.

The Fund continues the policy of the Minnesota State Bar Association Client Security Fund Committee in that the Fund is a source of last resort for reimbursement. Claimants will be

expected to pursue any collateral source of reimbursement if there is a reasonable possibility of recovery. The requirement that a lawyer be licensed to practice law within the state within three years prior to the misconduct is to protect against the circumstance in which a lawyer unbeknownst to a client has failed to renew his license and continues to hold himself out as a lawyer to the detriment of the client upon the performance of the dishonest act. The statute of limitation provisions were arbitrarily set at three years, based upon the knowledge or deemed knowledge of the claimant of the dishonest conduct. In circumstances under which the client was unable to discover the dishonest conduct due to fraudulent concealment of lack of capacity or similar circumstances, the Board set the outside date under which a loss of this type might be reimbursable back to the date of the establishment of the original Client Security Fund under the auspices of the Minnesota State Bar Association.

Rule 303. Privileged Complaints. Since the claim statement is an unproven statement, the Board concluded that the claim statement should be absolutely privileged and should not have any probative value in and of itself in any proceedings.

Rule 304. Screening Claims. The Board concluded that every lawyer should have the right to respond to any claim in writing. Any lawyer against whom a claim is filed will receive a copy of the claim.

Rule 305. Claim Investigation. The Board will take advantage of any reports or findings of the Lawyers' Professional

Responsibility Board, but is also free to conduct additional investigation if it deems such an investigation to be necessary.

Rule 306. Rights of Lawyer Subject to Claim. This rule should be read in conjunction with Rule 307, Rule 310, Rule 312 and Rule 313. The Board has left it to the Chairman to handle requests from lawyers accused of dishonest conduct under a claim before the Client Security Board for a hearing and to determine the time for the hearing consistent with the proceedings which may be pending before the Lawyers' Professional Responsibility Board in order to fully protect the rights of the lawyer.

Rule 307. Lawyer Cooperation. See Rule 306.

Rule 308. Investigatory Subpoena. Rules 308 and 309 give the Board subpoena power which was lacking under the Minnesota State Bar Association Client Security Fund system.

Rule 309. Investigative Challenge. See Rule 308.

Rule 310. Action after Investigation. See Rule 306.

Rule 311. Panels. This rule will permit the Board to act through panels consisting of a quorum of the Board at which at least one of the Board members will be a non-lawyer.

Rule 312. Request for Hearing. See Rule 306.

Rule 313. Hearing. See Rule 306.

Rule 314. Determination. This rule reiterates that a claim from the Fund can only be paid on affirmative vote of four members of the Board. Consistent with the Board's perception that payments should be made on a discretionary basis without applying arbitrary cutoffs or limits to the payment of claims, the rule

incorporates a set of standards which the Board will apply in its consideration of the payment of each claim. The standards are modeled after the rules in effect in the State of Delaware, which also pays claims based upon these considerations. An alternative approach would have been to have set a limit on each claim and a limit on the aggregate claims arising out of the dishonest conduct of one lawyer. The Board rejected this latter approach in favor of a system which will pay claims based upon an application of the discretionary factors outlined in this rule.

Rule 315. Denial. This rule gives the Board maximum flexibility to pay any part of a claim or to spread the payment of claims over several years, consistent with the financial condition of the Fund at any time during subsequent years.

Rule 316. Reconsideration. The Board deemed it appropriate to provide a vehicle for the reconsideration of a claim by either the claimant or the lawyer against whom the claim has been filed, and the Board will give reconsideration to a claim upon written request of either the claimant or the lawyer. The Board expresses no opinion with respect to any other type of appeal rights which may or may not exist.

Rule 317. Subrogation Agreements. The Board continued the policy of the Minnesota State Bar Association Client Security Fund of obtaining subrogation rights from the claimant upon payment of a claim.

Rule 318. Confidentiality. Confidentiality of the files, records and proceedings of the Board and Director will be

maintained on the same basis as those set forth in the rules of the Lawyers' Professional Responsibility Board, except as provided under Rules 319 and 320.

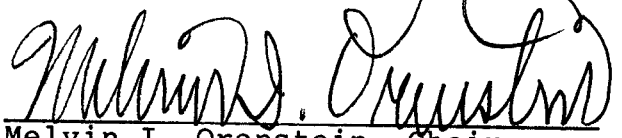
IV. EDUCATION.

The American Bar Association is now conducting periodic forums for Client Security Fund Boards or Committees. Several of the members of the Client Security Board who have served in the past on the Client Security Fund Committee of the Minnesota State Bar Association have attended one or more of these forums. The Board members anticipate that the new Board will be represented at a substantial number of these forums in the future in order to obtain and correlate the latest developments in the Client Security Fund area. A subject which has received a good deal of attention at these meetings is the need for the education of law students and lawyers in the areas of office management and bookkeeping methods relating to the handling of clients' trust funds. The education process also contemplates the discussion of methods and programs that will serve to minimize the risk of lawyer misconduct resulting in claims against the Fund. While the Minnesota State Bar Association Client Security Fund program received little publicity and lawyers were generally not fully educated as to its function and purpose, the creation of the new Client Security Fund Board appears to have caught the attention of the entire Bar. Moreover, in view of the financial responsibility imposed on all lawyers, the Board will undoubtedly be required to

engage in a more concerted educational effort in order to apprise all lawyers as well as the public of the function, performance and objectives of the Client Security Fund Board.

Respectfully submitted,

MINNESOTA CLIENT SECURITY BOARD

By 

Melvin I. Orenstein, Chairman
Ronald B. Sieloff
Nancy L. Vollertson
James B. Vessey
Gilbert W. Harries
Constance Otis
Jean King

ATTORNEY REGISTRATION FEE CATEGORIES

"Each attorney admitted to practice law in this state and those members of the judiciary who are required to be admitted to practice as a prerequisite to holding office"	FEE A for client security fund purposes, Rule 102c. 10,753 lawyers
"Any attorney or judge whose permanent residence is outside the State of Minnesota and who does not practice law within this state; any attorney who has not been admitted to practice for more than three years; any attorney while on duty in the armed forces of the United States"	FEE B for client security fund purposes, Rule 102a. 5301 lawyers composed of 2417 new lawyers and 2884 nonresident/military lawyers
"Any attorney who is retired from any gainful employment or permanently disabled, and who files annually with the clerk of the supreme court an affidavit that he is so retired or disabled and not engaged in the practice of law"	exempt for client security fund purposes, Rule 102b. 758 retired lawyers and 114 disabled lawyers

CLIENT SECURITY FUND ASSESSMENT SCHEDULE

	Fiscal Year July 1987 through June 1988	FY 9	FY 10	FY 11
FEE A @ $100	$1,075,300	0	0	0
FEE B @ $50	265,050	$80,000	$80,000	$80,000
COMBINED TOTAL	$1,340,350	$80,000	$80,000	$80,000

ANTICIPATED CASH FLOW

FY 8, July 1, 1987			
INCOME:	MN State Bar Asso. transfer		$140,000
	FEE A collection (1/4)		268,825
	FEE B collection (1/5)		53,010
	subtotal	$461,835	
CLAIMS:	existing claims, no 3rd party recovery		-200,000
ADJUSTMENT		$261,835	
Interest accrued @ 6%		3,928	
SEPTEMBER BALANCE			$265,763

FY 8, October 1, 1987			
INCOME:	September Balance carryover		$265,763
	FEE A collection (1/4)		268,825
	FEE B collection (2/5 bar exam new admittees)		106,020
	subtotal	$640,608	
CLAIMS:	Estimated claims req. payment		-200,000
ADJUSTMENT		$440,608	
Interest accrued @ 6%		6,609	
DECEMBER BALANCE			$447,217

FY 8, January 1, 1988			
INCOME:	December Balance carryover		$447,217
	FEE A collection (1/4)		268,825
	FEE B collection (1/5)		53,010
	subtotal	$ 769,052	
CLAIMS:	Administration (investigations, hearings, staffing, miscellaneous)		- 40,000
ADJUSTMENT		$ 729,052	
Interest accrued @ 6%		10,936	
MARCH BALANCE			$739,988

FY 8, April 1, 1988			
INCOME:	March Balance carryover		$739,988
	FEE A collection (1/4)		268,825
	FEE B collection (1/5)		53,010
	subtotal	$1,061,823	
CLAIMS:	Estimated claims req. payment		-250,000
ADJUSTMENT		$ 811,823	
Interest accrued @ 6%		12,177	
JUNE BALANCE			$824,000

Minnesota State Bar Association

MINNESOTA BAR CENTER • SUITE 403, 430 MARQUETTE AVE. • MINNEAPOLIS, MN 55401 • PHONE 612-333-1183
In-state 1-800-292-4152

March 4, 1987

President
RICHARD L. PEMBERTON
110 N. Mill St.
Fergus Falls, MN 56537
(218) 736-5493

Clerk of the Appellate Courts
230 State Capitol
St. Paul, MN 55155

Re: C0-85-2205
In re petition of the Minnesota Client Security Board
for adoption of proposed rules

The Minnesota State Bar Association requests permission to appear through its President, Richard Pemberton, at the March 19 hearing before the Minnesota Supreme Court on the subject of proposed rules for the State Client Security Board. At its February 21 House of Delegates meeting the Minnesota State Bar Association took a position in support of the State Client Security Board's petition.

Mr. Pemberton's presentation should take no more than five minutes.

Sincerely,

Tim Groshens
Executive Director

TG/rs
c: Richard Pemberton
Melvin Orenstein

ORAL PRESENTATIONS
Supreme Court Chambers - St. Paul, MN
March 19, 1987

PUBLIC HEARING CONCERNING PETITION OF THE
MINNESOTA STATE CLIENT SECURITY BOARD
FOR ADOPTION OF PROPOSED RULES
C0-85-2205

9:00 a.m.

Melvin Orenstein	Chairman, Client Security Fund
Richard L. Pemberton	President, Minnesota State Bar Association
Paul Jennings	AFSCME Local 2938, Attorney
Mark D. Nyvold	Attorney
Robert Tarbox	Attorney

PUBLIC HEARING IN RE THE PETITION OF THE
BOARDS OF LAW EXAMINERS, CONTINUING LEGAL EDUCATION
AND LAWYERS PROFESSIONAL RESPONSIBILITY FOR
AMENDMENT OF RULES RELATING TO REGISTRATION OF ATTORNEYS
C5-84-2139, C2-84-2163 and C9-81-1206

10:00 a.m.

Margaret Fuller Corneille	Director, Board of Law Examiners/ Board of Continuing Legal Education
Gerald Rufer	President, Board of Law Examiners
Edward Schwartzbauer	Chairman, Continuing Legal Education
William J. Wernz	Director, Lawyers Professional Responsibility Board