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Promoting Public Confidence in the Legal Profession: The State Bar of Michigan Client Protection Fund

How many times have we heard people say, “You lawyers all stick together” or “A law license is just a license to steal”? We’re lucky if these comments are made in a half-joking fashion, but all too often they are accompanied by a sneer.

These comments upset us as lawyers, because we know that no profession does a better job at self-regulation. We are aware of the disciplinary actions taken by the Michigan Attorney Grievance Commission and the Attorney Discipline Board, and as a sign that our profession is open and healthy, we sometimes debate the appropriateness of the actions taken by these disciplinary agencies.

But many lawyers do not realize that each of us supports another entity whose purpose is to promote public confidence in the legal profession—the State Bar of Michigan Client Protection Fund. The Client Protection Fund was created by the State Bar of Michigan in 1966 to reimburse clients whose funds were embezzled or misappropriated by their lawyers. The goal of the Client Protection Fund is to promote public confidence in the administration of justice and the integrity of the legal profession by compensating those who have been victimized by dishonest lawyers. All 50 states have created client protection funds. The Client Protection Fund is financed out of the annual membership dues of Michigan lawyers.

The State Bar of Michigan Client Protection Fund Standing Committee, comprised of 12 volunteer members, meets about four times a year to review the claims filed and

make a recommendation to the State Bar of Michigan Board of Commissioners as to whether the claims should be paid or denied. The Board of Commissioners will review the recommendations and issue a final decision on the claims.

In order to be eligible for payment, a claim must result from the dishonest conduct of a Michigan lawyer and must arise out of a lawyer-client relationship or a fiduciary relationship between the lawyer and claimant. The lawyer must have been an active member of the State Bar of Michigan at the time of the dishonest conduct, or under an interim order of suspension or revocation issued not more than six months prior to the dishonest conduct.

Six states have no “caps” on claims and attempt to reimburse claimants in full for their losses.¹ Most states, like Michigan, have “caps” on the amount paid per claim and the amount the fund will pay, in total, for the dishonest conduct of one particular attorney. Pursuant to Rule 12(b) of the Michigan Client Protection Fund Rules, the maximum amount of reimbursement a claimant can receive from the Client Protection Fund is \$25,000. The maximum amount the Client Protection Fund will pay to all claimants victimized by a specific attorney is \$100,000. Until recently, the Client Protection Fund never had claims presented to it that exceeded the \$100,000 cap. In 1999, the Client Protection Fund received claims by the clients of a Northern Michigan attorney that approximated \$300,000. The claimants shared the \$100,000 Client Protection Fund reimbursement on a pro rata basis. In 2001–

2002, the Client Protection Fund received claims regarding three attorneys that exceeded the \$100,000 maximum; two of the attorneys are accused of misappropriating in excess of one million dollars. One of these attorneys has admitted to misappropriating over one million dollars from his clients. Another attorney is charged with 26 counts of embezzlement and forgery.

Some of the situations presented are especially heart-wrenching. Last year, two claims were made by the personal representative of minor children whose attorney misappropriated from a revocable living trust set up for the children after the death of their parent. In another instance, an attorney misappropriated the funds a community raised on behalf of two minor children whose mother died in a car accident.

In 2001–2002, 168 claims were filed with the Client Protection Fund, almost triple the amount of claims filed in the previous year. This is in addition to the previously mentioned 150 percent increase in the number of attorneys who misappropriated in excess of \$100,000 from their clients.

Substance abuse and mental illness have always been a factor in attorney misconduct. Now with the advent of legalized gambling, it appears that gambling addiction may be fueling the dramatic increase in the number and severity of Client Protection Fund claims.

The dramatic increase in claims is occurring at a time when the Client Protection Fund is the least financially equipped to handle such an increase. Michigan’s caps on claims are among the lowest in the nation, especially when ranked in comparison to

states of similar size and population.² This leaves claimants sometimes receiving only a fraction of the money they lost as a result of the dishonest conduct of their attorneys.

Like all programs within the Bar funded by the "fixed income" of membership dues,³ the Client Protection Fund has been subject to budget constraints. The Fund has not received an appropriation through the State Bar of Michigan budget for the last three years. Although the Client Protection Fund currently has a positive balance, it will be bankrupt within three years if no other appropriation is forthcoming and claims continue to be paid at the current rate.

The 1999 Conference of Chief Justices National Action Plan on Lawyer Conduct and Professionalism recommends that all client protection funds create a structure to ensure a stable source of funding for client protection funds and to make full reimbursement of client claims the goal of each state's fund. To that end, the Client Protection Fund Standing Committee has proposed that

the State Bar of Michigan Client Protection Fund be funded through a yearly, per lawyer assessment of \$15 per year, as opposed to the uncertainty of whether the Client Protection Fund will receive an appropriation through the general State Bar of Michigan budget each year. The Committee also proposes that the caps be raised from \$25,000 to \$50,000 per claimant, and \$100,000 to \$200,000 per attorney to more fully compensate those who have been victimized by the "bad apples" of our profession.

You may ask yourself why should the honest attorneys have to pay for the misconduct of others. Robert Welden, General Counsel for the State Bar of Washington, answered that question as follows:

Attorneys are privileged to be members of a self-regulating profession. With that privilege comes the responsibility of protecting the public when one of the persons the Bar has assured the public may be trusted as a lawyer turns out to be unworthy of that trust. The Fund is a last resort when no other remedies are available to the victims.⁴

The assessment proposal is expected to be presented to the Representative Assembly at its February 2003 meeting for its consideration. If you would like a copy of the proposal or if you have any questions regarding the State Bar of Michigan Client Protection Fund, contact the State Bar at 1-800-968-1442. ◆

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FOOTNOTES

1. Connecticut, Delaware, District of Columbia, Massachusetts, Montana, and Oklahoma
2. For the detailed chart, contact the State Bar of Michigan at (800) 968-1442.
3. Membership dues have remained unchanged since 1993.
4. *Proposed APR 15: Lawyers' Fund for Client Protection*, Robert D. Welden, Washington State Bar News: August 1993.